

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI V. DURGA RAO, JUDICIAL MEMBER

I.T.A. No. 564/Mds/2012

(Assessment Year : 2008-09)

The Deputy Commissioner of
Income Tax,
Company Circle I(3),
63-A, Race Course Road,
Coimbatore.

(Appellant)

M/s Kirtilal Kalidas Jewellers
(P) Ltd.,
v. No.601, Raja Street,
Coimbatore – 641 001.

PAN : AADCK2544B
(Respondent)

C.O. No. 70/Mds/2012

(in I.T.A. No. 564/Mds/2012)

Assessment Year : 2008-09

M/s Kirtilal Kalidas Jewellers
(P) Ltd.,
No.601, Raja Street,
Coimbatore – 641 001.
(Cross-objector)

The Deputy Commissioner of
Income Tax,
v. Company Circle I(3),
Coimbatore.
(Respondent)

Revenue by : Shri K.E.B. Rengarajan,
Junior Standing Counsel
Assessee by : Shri R. Meenakshisundaram,
Advocate

Date of Hearing : 05.09.2012
Date of Pronouncement : 05.09.2012

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

These are appeal by the Revenue and cross-objection by the assessee, directed against an order dated 16.12.2011 of Commissioner of Income Tax (Appeals)-I, Coimbatore.

2. Revenue in its appeal is aggrieved that CIT(Appeals) deleted an addition of ₹ 1,32,34,396/- made by the A.O. alleging violation of Section 40A(3) of Income-tax Act, 1961 (in short 'the Act'). One other grievance of the Revenue is Id. CIT(Appeals) deleted an addition of ₹ 58,62,020/- made by the A.O. for certain purchases, which, according to it, were not sufficiently substantiated. As per the Revenue, these additions were deleted by the CIT(Appeals) in violation of Rule 46A of Income-tax Rules, 1962, based on new evidence produced by the assessee before CIT(Appeals). Further, as per the Revenue, assessee could not prove the identity of the customers from whom it had effected purchase of old gold and diamonds, for cross verification. Again as per the Revenue, assessee's version that purchases were effected in the course of exchange of old gold and diamonds for new ornaments should not have been believed.

3. Facts apropos are that assessee, a company which was formed on 1.1.2008, had taken over the business of a firm, named, Kirtilal Kalidas & Co. From then on, assessee was filing its returns. For the assessment year covering the previous year 1.4.2007 to 31.3.2008, assessee declared income of ₹ 8,54,75,575/-. Subsequently, it seems this was revised to ₹ 8,62,66,240/- by filing a revised return.

During the course of assessment proceedings, assessee was required to produce books of accounts and records relating to its business. As per the A.O., assessee filed details of advertisement, foreign travel, sales promotion and TDS reconciliation, and also cash book for Coimbatore branch and produced purchase vouchers for old jewellery and diamonds. Assessing Officer also noted that assessee had kept separate accounts branch-wise, which was consolidated in its Head Office. As per the A.O., assessee had effected purchase of old gold and diamond jewellery during the course of its business from various parties, and had also purchased bullion from Bank of Novo Scotia.

4. Assessee was manufacturing gold jewellery through one of its sister concerns called Vispark Jewellery Manufacturers P. Ltd. in Coimbatore. Job work charges for such conversion were paid to the said concern. Insofar as purchases of old ornaments effected from its own customers, explanation of the assessee was that such purchases were effected on a condition that they purchased new jewellery from the assessee. As per the assessee, though such purchases were treated as cash purchases in its cash book, there was no payment in cash ever made, but, these were adjusted against sales effected to such parties by the assessee. In other words,

according to assessee, it was only an exchange of new jewellery for old jewellery and differential amount alone was paid by the customers. Assessee also pointed out that in certain cases, the sale of new jewellery would happen on a day later to the purchase of old jewellery since new jewellery would be delivered to customers only after making changes suggested by the customers.

5. Assessing Officer brought to the notice of the assessee that the payments effected in cash through its cash book against a number of purchases exceeded ₹ 20,000/- and therefore, Section 40A(3) of the Act was attracted. Explanation of the assessee was that Rule 6DD(d) saved it from rigours of Section 40A(3), since purchase of old gold and diamonds and sale of new jewellery were from and to the same parties. However, A.O. was not impressed. According to him, argument of the assessee could be accepted only for the purchases and sales effected on the same day, where only net sale amount was received from such customers. But, where such purchases were effected on one day and sale was effected on subsequent day and where payments for such purchases were shown in the cash book as cash payments, Section 40A(3) was necessary to be applied. He, therefore, compiled a list of payments effected by the assessee

where the payments exceeded ₹ 20,000/- for purchase of old gold and diamonds at its various branches and held that Section 40A(3) was attracted on a sum of ₹ 1,44,01,676/-.

6. For some of the purchases effected by the assessee from its customers at Coimbatore branch, Assessing Officer noted that no details or address of the vendors were available in the purchase vouchers. As per the A.O., no sales were also effected to such customers. He, therefore, considered such purchases to be non-genuine and an addition of ₹ 58,62,020/- was made for this also.

7. Assessee moved in appeal against both the above additions. As per the assessee, there was no case that any actual cash outflow was there, on account of purchase of old gold and diamonds. Entries in cash book were passed for the purchase of old gold and diamond from the customers by debiting the purchase account and crediting cash initially. At the end of the day, cash account was debited and concerned parties account was credited as contra. Therefore, as per the assessee, these were all contra entries passed in the cash book for showing credit purchase. There was no outflow of cash at all. Again as per assessee, when sales were effected to such customers, cash account was first debited and credit given to sales account.

Again at the end of the day, parties accounts were debited and cash account was credited as contra. Result was that credit balances in customers accounts for purchases, were effaced through the subsequent sales. There was no actual cash flow but the A.O. misunderstood the transactions.

8. CIT(Appeals) went through the cash book and day book as also stock register. CIT(Appeals) noted that at no point of time there were any cash payments effected by the assessee. Transactions were reflected in the cash book and ledger account for the purchases and sales as contras. CIT(Appeals) also verified two of the items included in the annexure to the assessment order and concluded that the customers referred therein had effected purchase of jewellery from assessee and sale of old ornaments were only exchange transactions. Settled amount was only for the difference. He thus held that there was no outflow of cash and there was no justification for invoking Section 40A(3) of the Act. Nevertheless, he sustained an addition of ₹ 3,54,375/- for old gold purchase and ₹ 8,12,905/- for diamond purchase for a reason that these amounts were not supported by necessary vouchers. Thus except for a sum of ₹ 11,67,280/-, all additions made under Section 40A(3) was deleted.

9. As for the disallowance of ₹ 58,62,020/- made by the A.O. considering some purchases as not genuine, CIT(Appeals) was of the opinion that in the nature of trade of the assessee, customers might not always be willing to give complete address. According to him, assessee had furnished all possible details of the customers who had sold the old jewellery and diamonds to the assessee. All the purchases were recorded in the stock register. Physical stock of such diamonds were taken into account for calculating the closing stock. He was of the opinion that just for a reason that address of certain parties were not available, an addition could not have been made. He thus deleted the disallowance of ₹ 58,62,020/- also.

10. Now before us, learned D.R. strongly assailing the order of CIT(Appeals), submitted that assessee had produced fresh evidence before CIT(Appeals) in the nature of stock register, bills and vouchers which were not made available before the Assessing Officer. As per the learned D.R., where on the same day itself, assessee had adjusted sales with credit purchase, it could be true that there could be no cash transaction for applying Section 40A(3) of the Act. However, in assessee's case, sales were effected in a number of cases on a date subsequent to date of purchase of old gold and

diamonds and assessee also could not establish a one-to-one match between old gold purchase and sale of jewellery at a later date to the same parties. He submitted that assessee had produced fresh evidence before CIT(Appeals) and the matter required a re-visit by the Assessing Officer. Insofar as disallowance for purchase were concerned, learned D.R. submitted that assessee could not give address of the customers from whom it had effected the purchases and therefore, A.O. had no opportunity for verifying the claim of such purchases.

11. Per contra, learned A.R. strongly supported the order of CIT(Appeals).

12. We have perused the orders and heard the rival submissions. What we find from assessment order is that assessee had indeed produced books of accounts before the Assessing Officer. Assessing Officer has clearly noted that the assessee had produced purchase vouchers for old jewellery and diamonds. Assessing Officer also noted that assessee was maintaining branch-wise accounts which were consolidated at its Head Office. It is also noted from the assessment order that assessee had filed details of various expenses incurred including TDS reconciliation. Admittedly, assessee was in

the business of selling jewellery and it was also purchasing old gold and old diamonds from its customers, who wanted to exchange their old jewellery with new jewellery. Contention of the assessee that it was not effecting any cash purchase from its customers, has not been effectively rebutted. Case of the assessee is that it was effecting purchase of old jewellery from customers who were willing to buy new jewellery from the assessee. In some of the cases, when old Jewellery were given, they were taken for manufacturing new jewellery or to make certain customized changes required by customers. We are unable to accept the view of the A.O. that unless and until the sale and purchase were effected on same day, Section 40A(3) was attracted. Clause (d) of Rule 6DD which gives the alleviating circumstances where rigours of Section 40A(3) are not attracted, states as under:-

“where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee.”

13. Thus, where the payments were effected to a customer on account of adjustment resulting out of an exchange of old jewellery with new Jewellery, then it does get covered under the exception clause (d) of Rule 6DD mentioned above. CIT(Appeals) had lucidly

explained method of accounting followed by the assessee which reads as under:-

“Purchase of old diamond jewellery and sale of new jewellery on different dates

In this case, the appellant used to account the purchase of old Jewellery / diamond from the customer as cash purchase for control purpose though actual cash outflow is not made. The following are the scheme of entries followed by the appellant for this scenario.

- a. For purchase of old jewellery / diamond for ₹ 1000/-
- | | | |
|------------------|--------|--------|
| Purchase A/c Dr. | 1000/- | |
| To Cash A/c | | 1000/- |
- (Being old gold purchased from Mr. X)
- b. At the end of the day on which the purchase is made the value of old gold purchased is transferred to the customer account by way of the following entry.
- | | | |
|--------------|--------|--------|
| Cash A/c Dr. | 1000/- | |
| To X A/c | | 1000/- |
- (Being old gold purchased from Mr.X)
- c. At the time of sale of new jewellery to Mr.X on any subsequent date, say the sale value is for ₹ 2,500/-
- | | | |
|--------------|--------|---------|
| Cash A/c Dr. | 2500/- | |
| To Sales A/c | | 2,500/- |
- (Being sales made to Mr.X)
- | | | |
|-------------|--------|--------|
| X A/c Dr. | 1000/- | |
| To Cash A/c | | 1000/- |
- (Being sales made)

From the above scheme of entries followed by the appellant, it is clear that there is no actual outflow of cash at the time of purchase, and these are only day book entries. It is submitted that this scenario is also outside the scope of Section 40A(3) of the Income-tax Act, as the same falls under the clause (d) of Rule 6DD of the Income-tax Act.”

Thus, when in the cash book, assessee showed a purchase of jewellery for cash, the actual scenario was that it was only a credit

purchase since there were contra entries in the cash book itself giving credit to concerned seller. At the time of effecting the sales, the entries were made in a reverse manner for adjusting against the credit. In our opinion, such transactions could not be considered as violative of Section 40A(3) of the Act, just for a reason that contra entries appeared in the cash book. No doubt, assessee might have produced before CIT(Appeals) books of accounts, purchase vouchers and stock register. However, in our opinion, there is no violation of Rule 46A for the reason that Assessing Officer has nowhere mentioned that assessee had failed to produce any records or books called for. Just because assessee could point out to Id. CIT(Appeals), by producing the same cash book as produced before the A.O., that there were no cash purchases whatsoever effected by it from its customers, will not be a reason to say that there was any violation of Rule 46A. There is no case for the Revenue that books produced by the assessee before the CIT(Appeals) were different from the books produced by it before the A.O.

14. Coming to the second disallowance, it is an admitted position that names of each of the seller were given by the assessee to the Assessing Officer, since otherwise he could not have compiled the list giving the details of such disallowance as an Annexure to the

assessment order. In the nature of trade of the assessee, it may not always be possible to get the address of all its customers. Even if customers give their address, there is no means available to the assessee to ensure that such addresses were right. Assessee, in the nature of its trade, cannot insist for an identification process akin to Know Your Customer (KYC) rules applied by banks. There is no such mandatory requirement in the business of jewellery to maintain any records in line with KYC rules of bank. In fact, a prudent businessman might not insist on such rigorous identification process since insistence on such conditions will be to the detriment of his business. Just for the reason that purchases effected from certain parties did not carry full address, in our opinion, a disallowance ought not have been made. Admittedly, such purchases were recorded in the books of accounts of the assessee and also shown in its stock.

15. In the circumstances, we are of the opinion that CIT(Appeals) was justified in deleting the addition made under Section 40A(3) and also deleting the disallowance made against purchases effected by the assessee. No interference is required.

16. Coming to cross-objection raised by the assessee, learned A.R. submitted that he was not pressing such cross-objection.

17. In the result, appeal of the Revenue as well as cross-objection of the assessee are dismissed.

The order was pronounced in the Court on Wednesday, the 5th of September, 2012, at Chennai.

sd/-
(V.Durga Rao)
Judicial Member

sd/-
(Abraham P. George)
Accountant Member

Chennai,
Dated the 5th September, 2012.

Kri.

Copy to: Assessee/Assessing Officer/CIT(A)-I, Coimbatore/
CIT-I, Coimbatore/D.R./Guard file