

(2009) 10 KAR CK 0018

Karnataka High Court (Dharwad Bench)

Case No: Income Tax Appeal No. 5 of 2007

ITO and Another

APPELLANT

Vs

K.N. Pramod

RESPONDENT

Date of Decision: Oct. 29, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 260 A, 40 A, 40 A (3)

Hon'ble Judges: V.G. Sabhahit, J; S.N. Satyanarayana, J

Bench: Division Bench

Advocate: M.V. Seshachala, for the Appellant; Anant N. Bhat and N.P. Vivek Mehta, for the Respondent

Final Decision: Allowed

Judgement

V.G. Sabhahit, J.

This appeal by the revenue is filed being aggrieved by the order passed by the Assistant Commissioner, Bangalore

Bench, Bangalore, in I.T.A. No. 1082/Bang/2005.

2. The Assessee is a wholesale distributor of lottery tickets and was purchasing lottery tickets from Mysore Sales International Limited (MSIL).

Lottery Division, Government of Karnataka organisation. The Assessee had made total sales of lottery tickets to the tune of Rs. 1,02,26,070 and

no profit was declared by the Assessee from the said sales of Rs. 1,02,26,070. The assessing officer found that the Assessee had purchased

lottery tickets from the Government organisation by making payments in cash exceeding Rs. 20,000 amounting to Rs. 45,93,810. The explanation

of the Assessee was called for and the Assessee submitted that the payments were made to Mysore Sales International Ltd., a Government

organisation and since the agents of MSIL were coming for collection of cash regarding the tickets purchased from MSIL, he was forced to pay

the amount in cash. The assessing officer being not satisfied with the explanation offered by the Assessee in accordance with Section 40A(3) 20

per cent, of the total payment of Rs. 45,83,810 comprising payment each in respect of Rs. 20,000 was disallowed as excess and added to the

total income of the Assessee by order dated 31-3-2004. Being aggrieved by the said order passed by the assessing officer, the Assessee

preferred an appeal before the Commissioner (Appeals), Hubli, in I.T.A. No. 117/CLT(A)/HBL/ 2004-05 and the appellate authority by order

dated 30-3-2005, held that the lottery tickets were purchased by the Assessee from Mysore Sales International Ltd. (MSIL) which does not

accept bearer cheque and wherefore, necessarily payment has to be made by way of cash or demand draft. Accordingly, the said payments come

within the purview of Rule 6DD(b) of the income tax Rules, 1962 (hereinafter referred to as "the Rules"), and wherefore the said amount paid to

the Government company could not be added by the assessing officer towards income and accordingly allowed the appeal by order dated 30-3-

2005. Being aggrieved by the said order passed by the appellate authority, the revenue preferred an appeal before the Income Tax Appellate

Tribunal and the Appellate Tribunal by order dated 3-8-2006, confirmed the order passed by the appellate authority holding that Mysore Sales

International Ltd. (Lottery Division) is a Karnataka Government company. The sale of lottery tickets has been vouched by the vouchers given by

the Assessee and the Assessee has to make payment immediately as it is only on receipt of payment, lottery tickets will be given to the distributors.

It was also explained that payment that has to be made depends upon the number of lottery tickets purchased and MSIL does not accept bearer

cheques and wherefore, applying the provisions of Rule 6DD(b) of the Rules, the Tribunal confirmed the order passed by the appellate authority

and being aggrieved by the said order dated 3-8-2006, passed by the Tribunal, the revenue has preferred this appeal.

3. The appeal was admitted on 21-2-2009, for considering the following substantial question of law:

Whether the payment made in cash in excess of Rs. 20,000 contrary to Section 40A towards the purchase of lottery tickets from M/s. Mysore

Sales International Ltd. is entitled for exemption under Rule 6DD(b) of the income tax Rules, 1962?

4. We have heard learned Counsel appearing for the Appellants and the learned Counsel for the Respondent. Learned Counsel appearing for the

Appellants submitted that the finding of the Tribunal confirming the order of the appellate authority that the payment made to MSIL a Government

company would not be covered under Rule 6DD(b) of the income tax Rules, 1962, and wherefore, the concurrent finding is perverse, arbitrary

and baseless and the matter may be remitted for fresh consideration of the said question of fact.

5. The learned Counsel for the Respondent submitted that MSIL is a Government company and the agents of MSIL were coming to the office of

the Assessee for collecting the money even after office hours and, therefore, payment had to be made in cash and there is a concurrent finding that

the payment is exempted under Rule 6DD(b) of the income tax Rules, 1962.

6. We have given our careful consideration to the contention of the learned Counsel appearing for the parties and scrutinised the material on

record. Having regard to the contentions urged, the substantial question of law raised on 21-2-2009, is modified as follows:

Whether the finding of the Tribunal confirming the order of the appellate authority that the payment made to MSIL in cash is exempted under Rule

6DD(b) of the income tax Rules, 1962, is perverse and arbitrary and calls for interference in this appeal?

7. We answer the substantial question of law in favour of the revenue and against the Assessee for the following reasons:

8. The fact that payment in excess of Rs. 20,000 on various occasions have been made by the Assessee in cash to the tune of Rs. 45,93,810 is not

in dispute. However, the Assessee claims exemption under Rule 6DD(b) of the Rules. It is clear on scrutiny of the order passed by the Tribunal

and also the order passed by the appellate authority-Commissioner (Appeals), Hubli, that both the authorities have proceeded on the basis that

payment made to MSIL is payment to the Government in accordance with the Rules framed and considered the question as to whether payment to

a Government company or undertaking would amount to payment to the Government and would be exempted under Rule 6DD(b) of the Rules.

The reasoning of the Tribunal and the Commissioner (Appeals) that MSIL does not accept bearer cheques and wherefore payment had to be

made by cash or demand draft and that lottery tickets would not be given unless amount is paid is perverse and arbitrary as it is the very contention

of the Assessee that the agents of MSIL were coming for collection of money in respect of the lottery tickets purchased contrary to the explanation

submitted. In that view of the matter, we do not wish to express any opinion on the question of fact since this Court cannot go into the question of

fact u/s 260A of the Act and the fact finding authority, the Commissioner (Appeals) and the Tribunal confirming the order of the Commissioner

(Appeals), Hubli, is perverse and arbitrary and wherefore the matter is required to be remitted to the Commissioner (Appeals) for fresh disposal of

the appeal in accordance with law. Accordingly, we pass the following order.

9. The appeal is allowed by answering the substantial question of law in favour of the revenue. The order passed by the Income Tax Appellate

Tribunal, Bangalore Bench A dated 3-8-2006, confirming the order passed by the Commissioner (Appeals) dated 30-3-2005 in I.T.A. No.

117/Commissioner (Appeals)/HBL/2004-05 is set aside and I.T.A. No. 117/Commissioner (Appeals)/HBL/2004-2005 is restored to the file of

the Commissioner (Appeals), Hubli, with a direction to dispose of the appeal afresh in accordance with law.