# Smt. Jyothi Challaram Vs Commissioner of Income Tax

**Court:** Andhra Pradesh High Court

**Date of Decision:** March 11, 1988

**Acts Referred:** Income Tax Act, 1961 â€" Section 256(1), 40A(3)

**Citation:** (1988) 39 TAXMAN 1

**Hon'ble Judges:** Y.V. Anjaneyulu, J; G. Ramanujulu Naidu, J

**Bench:** Division Bench

**Advocate:** S. Parvatha Rao, for the Appellant; M.S.N. Murthy and Krishna Koundinya, for the Respondent

## Judgement

Y.V. Anjaneyulu, J.
This reference relates to the income tax assessment years 1977-78 and 1978-79. The reference is made at the

instance of the assessee by the Tribunal u/s 256(1) of the income tax Act, 1961 ("the Act"). The assessee was the sole distributor of Bush Radios

for the States of Andhra Pradesh and Tamil Nadu. In the income tax returns for the assessment years 1977-78 and 1978-79 the assessee claimed

deduction of certain payments made to constituents at Madras. During the previous year relevant for the assessment year 1977-78 payments were

made to different parties aggregating in all to Rs. 1,48,472. In the previous year relevant for the assessment year 1978-79 payments were made to

third parties aggregating to Rs. 1,82,5.15. These payments represented publicity and advertisement charges and packing charges. During the

course of the examination of the accounts, the ITO called upon the assessee to prove the genuineness of the payments as all these payments were

made in cash. The assessee produced receipts and other available evidence. The ITO investigated into the matter, contacted the parties concerned

and elicited that the payments in question were not genuinely made but were accommodation payments. Without going into further details it may be

mentioned that eventually the ITO disallowed the expenses on two grounds, namely, that the expenses incurred were not proved to be genuine and

that in any event the payments were made in cash in contravention of the provisions contained in section 40A(3) of the Act. The assessee was

aggrieved by the disallowance of the expenses for the two assessment years and filed appeals before the Commissioner (Appeals). Before the

Commissioner (Appeals) the assessee made a two pronged endeavour to secure deduction of the expenses. Firstly, he tried to prove the

genuineness of the payments. The learned Commissioner had gone into the question in great detail and eventually accepted a part of the payments

made to be genuine. Even so, the question still remained for consideration whether, in the absence of payments by crossed cheques as required by

section 40A(3), the payments could be allowed by way of deduction in computing the total income. The assessee explained that in response to an

enquiry made by the ITO on 20-2-1980 he filed a reply on 6-3-1980 setting out the circumstances in which cash payments were made. The

Commissioner referred to the assessee''s explanation that the payments were made due to exceptional or unavoidable circumstances or because

the payment by crossed cheque or crossed demand draft was not practicable or would have caused genuine difficulty to the payee. The learned

Commissioner referred to rule 6DD of the income tax Rules, 1962 (''the Rules'') which prescribed the circumstances in which a payment by cash

could still be allowed as deduction. The assessee was relying on clause (j) of rule 6DD to claim that the payments in question should be allowed

because they were made under exceptional or unavoidable circumstances or payment by crossed cheques or demand drafts was not practicable

and would have caused genuine difficulty. The learned Commissioner after scrutiny of the assessee''s explanation accepted some payments as

falling within clause (j) of rule 6DD; but eventually held that payments to the extent of Rs. 1,01,180 for the assessment year 1977-78 and Rs.

1,12,915 for the assessment year 1978-79 could not be allowed.

2. Aggrieved by the order of the Commissioner, the assessee filed further appeal to the Tribunal and reiterated the plea that, in the facts and

circumstances, the Commissioner should have allowed the remaining payments to the extent of Rs. 1,01,180 and Rs. 1,12,915 respectively for the

assessment years 1977-78 and 1978-79. Before the Tribunal, the question of genuineness had been further gone into and after an elaborate

discussion the Tribunal held that the department was unable to establish that the payments were not genuine. At the same time, however, the

Tribunal upheld the decision of the Commissioner that the payments could not be allowed as deduction in view of the contravention of the

provisions contained in section 40A(3). The assessee applied for and obtained the present reference u/s 256(1). The Tribunal referred the

following question of law for consideration of this Court:

Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in confirming the disallowance of the

publicity charges paid to Pani Publicities and Sell Sign, Madras, amounting to Rs. 59,925 and Rs. 25,325 for the assessment year 1977-78

respectively and to Sell Sign amounting to Rs. 88,700 for the assessment year 1978-79 and to A. Jacquiline towards packing charges amounting

to Rs. 15,930 and Rs. 24,215 respectively for the assessment years 1977-78 and 1978-79 on the ground that they were hit by the provisions of

section 40A(3) of the income tax Act, 1961?

3. The learned counsel for the assessee, Shri S. Parvatha Rao, contends that eventually after the matter was considered by the Tribunal the

genuineness of the payments was accepted and the identity of the parties who received the amounts was also established. The disallowance was

made only on the technical plea that the payments in question were made in cash in contravention of the provisions contained in section 40A(3)

which required that payments in excess of Rs. 2,500 should be made either by crossed cheques or by demand drafts, unless such payments could

be excepted by any of the provisions contained in rule 6DD, While accepting fairly that the amounts in question were paid by bearer cheques, the

learned counsel heavily relied upon clause (j) of rule 6DD which provided that where payments were in cash under exceptional or unavoidable

circumstances or because the payment in the manner required by section 40A(3) was not practicable or would have caused genuine difficulty to

the payee, the payments could be allowed as deduction, especially in view of the fact that the evidence led by the assessee satisfied the authorities

regarding the genuineness of the payments and the identity of the payee. The learned counsel made a grievance that the Tribunal omitted to

consider the explanation given by the assessee in his letter dated 4-3-1980, filed on 6-3-1980. The Tribunal was carried away by the finding

recorded by the Commissioner without applying its mind whether in the facts and circumstances, the assessee was able to make out a case for

purpose of excepting these payments in clause (j). The letter filed on 6-3-1980 which was referred to by the learned Commissioner in his order

was not made part of the record and we required the learned counsel to place that letter before us so that we can see the nature of explanation

offered by the assessee. The learned counsel placed that letter before us. This is what the assessee had stated in the letter:

... In the above cases, the parties have insisted payments in cash. They have also expressed that unless the payment is made in cash, the services

cannot be extended to Jaypee Electronics. Under these exceptional and unavoidable circumstances, Jaypee Electronics made the payments

through bearer cheques. The payments are genuine and the department had identified the parties. Therefore, the case also falls under rule 6DD(j)

(1) and (2) and no disallowance u/s 40A(3) can be made.

Shri S. Parvatha Rao refers to the above explanation and states that the assessee''s explanation that the parties insisted on payment in cash and it

was not possible to finalise the transaction otherwise should have been accepted as there was nothing on the record to show that the position is to

the contrary.

4. Having given our anxious consideration to the matter, we regret we cannot subscribe to the view canvassed by Shri S. Parvatha Rao. The

explanation that the parties had insisted on payment in cash and they expressed unwillingness to render services otherwise was merely a unilateral

statement of the assessee. No evidence to corroborate this explanation had been placed before the tax authorities. It is ascertained from the record

that the payments in question were made by the assessee in, Madras by means of bearer cheques drawn on Madras Bank. It is stated that the

assessee maintained accounts with banks at Madras also for business operations and the recipients were at Madras. If the assessee issued cheques

at Madras in favour of the Madras parties, those cheques will be cleared in a day''s time. There is no corroborative material placed on the record

to show that the parties insisted on cash payments. It is not denied that the recipient parties also have bank accounts at Madras and the bank

transaction would have been far more expedient and convenient in the circumstances. In the absence of any corroborative evidence, it is not

possible to say that the tax authorities were in error in drawing an adverse inference. It should be borne in mind that the object of enacting section

40A(3) is to ensure that payments in respect of which deductions are claimed by the taxpayers are genuinely made and accommodation payments

are not claimed as deductions. In the present case, the payments made are fairly considerable. The assessee is not new either to the business or to

the provisions of the Act. It is not possible to accept that an assessee like the one in the present case accepted the risk and responsibility to make

the payments in cash by contravening the provisions contained in the Act that payments in excess of Rs. 2,500 ought to be made by crossed

cheques or demand drafts. The revenue cannot be found fault with for insisting on the strict compliance of a requirement directed to check tax

evasion. In the circumstances, we feel that even on the basis of the assessee''s explanation filed on 6-3-1980 no case is made out for excepting

these payments in rule 6DD(j). We hold that the tax authorities were justified in disallowing the expenses in computing the income for the

assessment years 1977-78 and 1978-79. Our answer to the question referred is, therefore, in the affirmative, i.e., in favour of the revenue and

against the assessee. There shall be no order as to costs.