



383. Circumstances when Income-tax Officer can relax requirement of making payments in excess of Rs. 2,500 by crossed cheques under clause (j) of rule 6DD

1. Clause (j) of rule 6DD provides that no disallowance under section 40A(3) shall be made where the assessee satisfies the Income-tax Officer that the payment could not be made by way of a crossed cheque drawn on a bank or by a crossed bank draft—

- a. due to exceptional or unavoidable circumstances; or
- b. because payment in the manner aforesaid was not practicable, or would have caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof,

and also furnishes evidence to the satisfaction of the Income-tax Officer as to the genuineness of the payment and the identity of the payee.

2. It would be seen that where payment of a sum exceeding Rs. 2,500 is made, otherwise than by a crossed cheque/draft, the assessee besides furnishing evidence as to the genuineness of the payment and the identity of the payee, is required to satisfy the Income-tax Officer that his case falls under any one of the circumstances mentioned in (a) and (b) above, if he claims that no disallowance should be made under section 40A(3).

3. Various representations have been received by the Board regarding the difficulties that are being experienced by the taxpayers due to lack of uniformity in the interpretation of the provisions of rule 6DD(j) by the Income-tax Officers. The Board have considered these representations and have decided to lay down certain guidelines to ensure uniformity of approach among the Income-tax Officers in this behalf.

4. All the circumstances in which the conditions laid down in rule 6DD(j) would be applicable cannot be spelt out. However, some of them which would seem to meet the requirements of the said rule are :

- a. the purchaser is new to the seller, or
- b. the transactions are made at a place where either the purchaser or the seller does not have a bank account; or
- c. the transactions and payments are made on a bank holiday; or
- d. the seller is refusing to accept the payment by way of crossed cheque/draft and the purchaser's business interest would suffer due to non-availability of goods otherwise than from this particular seller; or
- e. the seller, acting as a commission agent, is required to pay cash in turn to persons from whom he has purchased the goods; or
- f. specific discount is given by the seller for payment to be made by way of cash.

5. It can be said that it would, generally, satisfy the requirements of rule 6DD(j), if a letter to the above effect is produced in respect of each transaction falling within the categories listed above from the seller giving full particulars of his address, sales tax number/permanent account number, if any, for the purposes of proper identification to enable the Income-tax Officer to satisfy himself about the genuineness of the transaction. The Income-tax Officer will, however, record his satisfaction before allowing the benefit of rule 6DD(j).

6. It is further clarified that the above circumstances are not exhaustive but illustrative. There could be cases other than those falling within the above categories which would also meet the requirements of rule 6DD(j).

Circular : No. 220 [F. No. 206/17/76-IT (A-II)], dated 31-5-1977.

JUDICIAL ANALYSIS

EXPLAINED IN - The abovesaid circular was explained in *CIT v. Avtar Singh & Sons* [1992] 194 ITR 80 (Punj. & Har.) with the following observations :

"The said circular was noticed and considered in *Navsari Waste Cotton Products v. CIT* [1987] 163 ITR 378 (Guj.), where it was held that it would appear from clauses (i) to (v) of paragraph 4 of the said circular that if the identity of the seller is known, it would be possible for the Department to cross-check if the payment in question was actually made in cash to the seller from whom goods were purchased and the requirements of rule 6DD(j) would stand satisfied if a letter is produced from the seller in respect of each transaction falling within the categories illustrated in paragraph 4 giving full particulars of his address, sales tax registration number, if any, for the purposes of proper identification to enable the Income-tax Officer to satisfy himself about the genuineness of the transaction. It was further added that the circumstances indicated in paragraph 4 of the circular were merely illustrative and not exhaustive, but the underlying idea was that if the seller's identity can be established, it would be possible for the Income-tax Officer to cross-check whether the transaction had, in fact, taken place as stated and was of a genuine nature.

A similar view is expressed by the High Court of Calcutta in *Girdharilal Goenka v. CIT* [1989] 179 ITR 122, where it was observed that (at p. 128): "The circular of the Board is not exhaustive, it is only illustrative and the Assessing Officer has to take into account the surrounding circumstances, considerations of business expediency and the facts of each particular case in exercising his discretion either in favour or against the assessee". It was also held that the Income-tax Officer should take a practical approach to the problem and strike a balance between the direction of law and hardship to the assessee." (p. 83)

EXPLAINED IN - The above circular was explained in *Navsari Waste Cotton Products v. CIT* [1987] 163 ITR 378 (Guj.) with the following observations :

". . . The cases indicated in paragraph 4 are merely illustrative and not exhaustive but the underlying idea is that if the seller's identity can be established, it would be possible for the Income-tax Officer to cross-check whether the transaction in fact had taken place as stated and was of a genuine nature. Even though this circular came to be issued in May, 1977, the assessee is justified in pressing it into aid as the circular merely indicates the circumstances in which rule 6DD(j) would be attracted." (p. 380)

EXPLAINED IN - The abovesaid circular was commented upon in *Girdharilal Goenka v. CIT* [1989] 179 ITR 122 (Cal.) with the following observations :

". . . The circular of the Board is not exhaustive but only illustrative. The Income-tax Officer has to take a pragmatic view of the matter. The Income-tax Officer should take a practical approach to problems and strike a balance between the direction of law and hardship to the assessee. He should not enmesh himself in technicalities. After all, the object is not to deprive the assessee of the deduction which he is otherwise entitled to claim. Where the amount was paid in cash or received in cash, the Assessing Officer has to find out whether the transaction is genuine or not and if he finds that the transaction is genuine, he should allow the deduction. The circular of the Board is not exhaustive; it is only illustrative and the Assessing Officer has to take into account the surrounding circumstances, considerations of business expediency and the facts of each particular case in exercising his discretion either in favour or against the assessee. There may be an oral agreement between the assessee and the seller for payment in cash. A seller may not be willing to accept cheques; cash payment may be made at the request of the payee who is also an assessee and a certificate to that effect filed; absence of banking facilities in places where cash payments are made. All such cases would come within the purview of exceptional or unavoidable circumstances." (p. 128)

EXPLAINED IN - In *CIT v. Trinity Traders* [1987] 163 ITR 381 (Guj.), the above circular was referred to with the following observations :

"The circular makes it clear that these are merely illustrative instances of cases in which rule 6DD(j) would be applicable. The circular also points out that the requirements of rule 6DD(j) can be satisfied if a letter to the above effect is produced in respect of each transaction falling within the categories listed above from the seller giving full particulars of his address, sales-tax number/permanent account number, if any, for the purposes of proper identification to enable the Income-tax Officer to satisfy himself about the genuineness of the transaction . . ." (p. 384)

EXPLAINED IN - The abovesaid circular was commented upon in *Badrilal Phool Chand Rodawat v. CIT* [1987] 167 ITR 404 (Raj.) with the following observations :

"It is no doubt true that the said circular was not available at the time when the Income-tax Officer passed the assessment order and the Appellate Assistant Commissioner considered the appeal of the assessee. The guidelines contained in the said circular can, in our opinion, be taken into account for the purpose of considering as to whether the payments in question can be regarded as falling within the ambit of rule 6DD(j) of the Rules." (p. 410)

EXPLAINED IN - The above circular was referred to in *Venkata Satyanarayana Timber Depot v. CIT* [1987] 165 ITR 253 (AP) with the following observations :

". . . On the merits, we are satisfied that the assessee is entitled to exemption for the payments in view of rule 6DD(j) read with clause 4(ii) of Circular No. 220, dated May 31, 1977 of the Central Board of Direct Taxes..." (p. 254)

EXPLAINED IN - In *Rajarajeswari Weaving Mills v. ITO* [1978] 113 ITR 405 (Ker.), the above circular was referred to with the following observations :

". . . We do not wish to get enmeshed in the intricacies as to the exact scope and purview of a circular under section 119 of the Income-tax Act, and as to whether, and if so, to what extent, such a circular can fetter the judicial or quasi-judicial discretion of authorities functioning under the Act. In this particular case, the circular that we have noticed earlier is dated May 31, 1977, and the order of the Commissioner with respect to which the question has arisen in these appeals is dated June 21, 1976. It is obvious, therefore, that the circular in question can have no application to these cases. We are not impressed by the argument of the assessee that the circular is only clarificatory or declaratory." (pp. 409-410)

See also *CIT v. Union Agencies* [1987] 166 ITR 529 (Delhi).

RELIED ON IN - The above circular was relied on in *Ingenieurs & Agents v. ITO* [1984] Taxation 72(6A) - II (All. - Trib.), for disallowing the assessee's claim for deduction.

APPLIED IN - The above circular was referred to and applied in *Tatikonda Subba Rao v. ITO* [1987] 28 TJJ (Hyd.) 146, 150.

EXPLAINED IN - The above circular was explained in *S. Venkata Subba Rao v. CIT* [1988] 173 ITR 340 (AP), with the following observations :

"Mr. Y. Ratnakar relied upon a circular issued by the Central Board of Direct Taxes, being Circular No. 220, dated May 31, 1977 ([1997] 108 ITR (St.) 8). We have perused the said circular. It only elaborates and illustrates—though not exhaustively—the circumstances in which it is not practicable to comply with the requirements of section 40A(3). The circular nowhere says that it is not necessary for a person claiming the benefit of rule 6DD(j) to establish the genuineness of the payment and the identity of the payee. On the contrary, the said requirement is repeatedly reiterated. We are, therefore, of the opinion that the said circular cannot in any manner advance the case



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of the assessee." (p. 345)

EXPLAINED IN - The above circular was explained in *Paul Bros. v. CIT* [1990] 186 ITR 356 (Gauhati), with the following observations :

"Pursuant to the provision in sub-section (3) of section 40A, rule 6DD was promulgated and Circular No. 220 was issued by the Central Board of Direct Taxes on May 31, 1977. Section 40A, rule 6DD and the Circular No. 220 recite that after March 31, 1969, any payments on account of expenditure of more than Rs. 2,500 will have to be made by a crossed cheque or by a crossed bank draft unless exempted by the revenue authorities. . . .

The Indian Parliament incorporated the above provisions to check evasion of taxes. Even in genuine cases where payments are shown to have been made in cash, the assessee is put to the necessity to prove that in the area of business, banking facilities are not adequate. Therefore, impelled by genuine difficulty, the assessee had to make payment in cash. The same idea is writ large in the Rules. The assessee will have to show that there was no way left for the assessee except to pay in cash. In the nature of things whether in the statute, rules or circulars, all the contingencies cannot be enumerated exhaustively. Parliament referred to the inadequacy of facilities in section 40A. The rule-making authorities illustrated some of the circumstances in the Rules. The Revenue supplemented the further circumstances when exemption can be claimed and allowed. (pp. 357-358)

APPLIED IN - The above circular was applied in *Dhorajia Construction Co. v. ITO* [1991] 92 CTR (Trib.) (Ahd.) 51, with the following observations :

". . . In the paper book we find that the three sub-contractors appear to have agreed to take up the work from the assessee-firm on the clear understanding that payments to them, as and when needed, shall have to be made in cash as they would be requiring cash for payment to the labourers who were executing the work on site. The site of the work was admittedly at about 12 Km. away from the place where bank facilities were available to the parties. Looking to the nature of the business of the assessee-firm, the insistence of the sub-contractors who received payments in cash in order to enable them to pay cash to the labourers on site, the provisions of r. 6DD(j) read with the Circular of the Board applies for the benefit of the assessee-firm. . . ." (p. 62)

RELIED ON IN - The above circular was relied on in *ITO v. New Card Board Industries* [1992] Tax LR 80 (Cal. - Trib.), and the Tribunal remitted the matter to the Assessing Officer for examining the documents produced for the first time by the assessee before the Tribunal.

RELIED ON IN - The above circular was relied on in *CIT v. Meghdoot Sales* [1993] 200 ITR 490 (Delhi), with the following observations :

"In our opinion, the answer to the said question which has been referred is self-evident. The Income-tax Tribunal has found as a fact that cash payments were made only under exceptional and unavoidable circumstances. This conclusion has been arrived at by the Tribunal after examining the entire material which was placed before it. It has further observed that the genuineness of the transaction was not in dispute. This being so, on the facts found by the Tribunal, the case not only fell within the provisions of rule 6DD(j), but the assessee was also entitled to claim the benefit of Circular No. 220, dated May 31, 1977, issued by the Central Board of Direct Taxes. In the said circular, it is, *inter alia*, stated that, if a seller refuses to accept payment by way of crossed cheque or crossed draft and the purchaser's business interest would suffer due to non-availability of goods otherwise than from the particular seller, then even if the payment is made by cash, the same would be allowable as a deduction." (pp. 492-493)

RELIED ON IN - The above circular was relied on in *Drill Rock Engg. Co. (P.) Ltd. v. ITO* [1993] 45 ITD 149 (Hyd. - Trib.) with the following observations :

". . . Looking into the wording of section 40A(3) as well as rule 6DD(j) and also Board's Circular No. 220 issued in 1977 one of the primary requirements of section 40A(3) is that the identity of the payee should be established before the ITO. The section is specifically enacted in order to curb the transactions in black money. However, the appellant before us failed to comply with the requirements of the above provisions as well as the Board's circular. Hence for these reasons also the amount of secret commission is to be disallowed." (p. 199)

EXPLAINED IN - The above circular was explained in *ITO v. Patidar Ginning & Pressing Co. Ltd.* [1994] 51 ITD 7 (Ahd. - Trib.), with the following observations :

"6.1 In Circular No. 220 dated 31-5-1977, it has been clarified that it would generally satisfy the requirements of rule 6DD(j) if a latter explaining the exceptional and unavoidable circumstances such as mentioned in para 4 of the said circular is produced in respect of each transaction falling within the categories listed in para 4 of the said circular from the seller giving full particulars of his address, sales-tax number, permanent account number, if any, for the purpose of proper identification to enable the ITO to satisfy himself about the genuineness of the transaction. One of the illustration of exceptional circumstance given in para 4 of the said circular is that if the seller is refusing to accept payment by way of crossed cheque/draft and the purchaser's business interest would suffer due to non-availability of goods otherwise than from this particular seller. The other illustration is that the seller, acting as a commission agent, is required to pay cash in turn to persons from whom he had purchased the goods. Few more instances of exceptional circumstances have been given in the said circular. The Hon'ble Gujarat High Court in the case of *Navsari Waste Cotton Products v. CIT* [1987] 163 ITR 378 has held that the said circular merely indicate the circumstances in which rule 6DD(j) would be attracted. The underlying idea is that if the seller's identity can be established, it would be possible for the ITO to cross-check whether the transactions in fact had taken place as stated and was of a genuine nature. The instances given in the said circular are merely illustrative and not exhaustive. . . ." (pp. 13-14)

APPLIED IN - The above circular was referred to and applied in *Avon Sales Corporation v. ITO* 1994 Tax LR 79 (ITAC - Delhi), with the following observations :

". . . The CBDT vide Circular No. 220 have issued instructions that where the payee had insisted for cash payment and a certificate from them is furnished giving the income-tax number and sales-tax numbers, etc., disallowance u/s 40A(3) should not be made. In this case substantial payments to M/s. Avon Sales Corporation had been made by cross-cheques or bank drafts. Only two payments of Rs. 2,600 and Rs. 4,000 had been made by cash on the party having insisted for cash payment. These payments, in our view, are covered under rule 6DD(j) read with Circular No. 220 of CBDT. The disallowance of Rs. 6,600 is accordingly deleted." (p. 90)

EXPLAINED IN - *Janambhumi v. CIT* [1998] 99 Taxman 451/225 ITR 517 (Gau.) with the following observations :

"The circular itself indicates that these are not the only circumstances which can be said to be exceptional and unavoidable. There may be some other exceptional and unavoidable circumstances which may not be put in writing. The Commissioner (Appeals) upheld the order of the ITO on the ground that the assessee failed to establish exceptional and unavoidable circumstances under which payment had to be made in cash exceeding Rs. 2,500. While considering the exceptional circumstances the business exigencies, convenience and security should also be looked into."

EXPLAINED IN - *CIT v. G.S. Auto Industries (P.) Ltd.* [1998] 144 CTR (Punjab & Har.) 464 with the following observations :

"It would appear from the perusal of the Board's circular referred to above that the seller's refusal to accept the payment by crossed cheque or draft may permit the assessee to make payment in cash. But, at the same time, it should also be shown that the assessee's business interest would have suffered due to non-availability of goods otherwise than from that particular seller. Sub-clause (iv) of clause 4 of the circular requires the fulfilment of both the conditions as aforesaid. In this light, the factum of insistence by the recipients may not alone be sufficient to attract clause 4(iv) of the circular."

EXPLAINED IN - *Shri Mahabir Industries v. CIT* [1996] 220 ITR 459 (Gau.) with the following observations :

"Circular No. 220, dated May 31, 1977, specifies some of the circumstances in which rule 6DD(j) of the Income-tax Rules, 1962, would apply. The circular itself indicates that these are not the only circumstances which can be said to be exceptional and unavoidable. Exceptional and unavoidable circumstances may vary depending on the facts of each case. Merely because the parties have bank accounts and there is a long gap between submission of the bill and making payment, the conclusion cannot be arrived at that the assessee failed to show exceptional and unavoidable circumstances. Before coming to a decision regarding failure to establish exceptional and unavoidable circumstances, the authority must give reasons why it came to such conclusions."

EXPLAINED IN - *CIT v. G.S. Auto Industries (P.) Ltd.* [1999] 106 Taxman 473 (Punjab & Har.) in following words :

". . . [According to Circular No. 220, the seller's refusal to accept the payment by crossed cheque or draft] may permit the assessee to make payment in Cash. But, at the same time, it should also be shown that the assessee's business interest would have suffered due to non-availability of goods otherwise than from that particular seller. Sub-clause (iv) of clause 4 of the Circular requires the fulfilment of both the conditions as aforesaid. In this light, the factum of insistence by the recipients may not alone be sufficient to attract clause 4(iv) of the Circular." (pp. 475-476)