
(2011) 04 JH CK 0069
In the Jharkhand High Court
Case No : T.A. No. 37 of 2000

Commissioner of Income Tax

APPELLANT

Vs

Narendra Kumar Butala

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Income Tax Act, 1961 — Section 269SS, 271D, 37, 40A(3)
Income Tax Rules, 1962 — Rule 6DD

Citation : (2011) 04 JH CK 0069

Hon'ble Judges : Prakash Tatia, J; Dhrub Narayan Upadhyay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties.

2. The following substantial question of law arises in this appeal:

whether in the facts and circumstances of the case, the Assessing Officer was justified in disallowing the addition of Rs. 8,84,531/- on account of disallowance u/s 40A(3) of the Income Tax Act, 1961.

3. Learned Counsel for the Appellant drew our attention to the reasons given by the Assessing Officer as well as by the Commissioner of Income Tax (Appeals) Ranchi in the order dated 31.3.1997 and the appellate order passed by the Commissioner of Income Tax dated 15.12.1997 and it has been pointed out that the Assessee was found to have paid amount in cash of Rs. 10,000/- on various occasions as entered in the books of account for the relevant year. The Assessing Officer observed that all those payments have been made to defeat the provision of Section 40A(3) of the Income Tax Act, 1961 and therefore, no deduction was allowable. However, that deduction has been allowed by the Tribunal by interpreting that since there is a specific word used in Section 40A(3) of the Act which reflects that in case Assessee pays more than an amount of Rs. 10,000/- "in a day" then no disallowance will be there. The Tribunal held that the

Assessing Officer and the Appellate Authority have committed error of law in interpreting Section 40A(3) of the Act in mechanical manner and they have denied the benefit to the Assessee.

4. Learned Counsel for the Appellant drew our attention to the fact that in fact the relevant provision of law i.e. Section 40A(3) of the Income Tax Act, 1961 as it was in force in the year 1993-94 contained no such word like "in a day" and therefore, only on this ground alone the order passed by the Tribunal is liable to be set-aside. It is also submitted that the reasons given by the Assessing Officer and the Appellate Authority fully justified the disallowance of such expenditure which has been claimed by the Assessee.

5. Learned Counsel for the Assessee vehemently submitted that in view of Rule 6DD, the Assessing Officer should have given opportunity to Assessee to explain whether his case falls under any of the exceptions given in Rule 6DD and since no notice u/s 40A(3) of the Income Tax Act, 1961 read with Rule 6DD has been given to the Assessee therefore, on this ground the order passed by the Assessing Officer will result into serious consequences against the Assessee resulting into penal affect.

6. Learned Counsel for the Assessee vehemently submitted that the expenditure otherwise was allowable expenditure u/s 37 of the Act, 1961 and because of Section 40A(3) of the Income Tax Act, 1961 only such expenditure has been disallowed which in fact amounts to put a penalty because of the lapse or inadvertence on the part of the Assessee and he could have explained the facts if it would have been brought to the notice of the Assessee.

7. Learned Counsel for the Assessee further submitted that a Division Bench of this Court while interpreting Section 271D and 269SS of the Income Tax Act, 1961 dealt with issue of levy of penalty and while doing so, object for making such provision has been considered. According to the learned Counsel for the Appellant, since nature of the disallowance is in the form of penalty, therefore, the same principle can be applied in the present case and the impugned order passed by the Tribunal be set aside and the matter can be remanded to the authority below so that Assessee gets opportunity to satisfy the Assessing officer or the Appellate Authority to whom the matter is remanded that there was just and proper reason for cash payment to the certain person referred to in the impugned order.

8. We have considered the submission of the learned Counsel for the parties and the facts of the case. It is not in dispute that the Assessment order dated 31.3.1997 was passed after giving full opportunity of hearing to the Assessee. In the course of hearing certain facts came into the notice of the Assessing Officer and thereafter by giving full details in the assessment order of the cash payment in large number or huge quantity of money, the Assessing Officer reached to a conclusion that the payment which have been made by the Assessee were made to persons in short intervals just to defeat the provision of Section 40A(3) of the

Income Tax Act, 1961. However, it appears that the Tribunal was under impression that if any payment is paid to a person "in a day" exceeding Rs. 10,000/- (as it was at relevant time) then only it is disallowable u/s 40A(3) whereas at relevant time, as pointed out by the learned Counsel for the Appellant Section 40A(3) simply provided that where the Assessee pays a sum exceeding Rs. 10000/- otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction. It nowhere says that the amount, if paid, in cash exceeding Rs. 10,000/- "in a day" then this will be expenditure for which deduction shall not be allowed.

9. Looking into details of large number of entries of cash payment and that too of a particular sum of Rs. 10,000/- on several occasions to some persons which are given in the order of Assessment, we are of the opinion that the Assessee has shown cash payment to the persons in large number and that is in violation to Sub-Section 3 of Section 40A.

10. The further contention of the learned Counsel for the Respondent is that Assessing Officer should have given an opportunity and pointed out to the Assessee that under Rule 6DD, he may have defence and that has not been pointed out by the Assessing Officer, therefore, the Assessing Officer also committed error because of the reason that disallowance of this expenditure is penal in nature as stated above cannot be without examining the reasons behind such cash payments.

11. We are not convinced by the argument advanced by the Assessee in as much as, it is not the duty of the Assessing Officer to draw attention of the Assessee towards each and every component of statutory provision and to ask him whether his defence is available in any of the clause of statute. It is settled law that if a party wants to take defence, it is his choice and if he wants to do so, he should take defence at appropriate stage and it is not sufficient to take defence but it is his duty to produce evidence in support of his contention. Therefore, we are of the view that there was no violation of the provision of law by the Appellate Authority or Assessing Officer.

12. We have considered the judgment relied upon by the learned Counsel for the Appellant which was delivered in the case of Omec Engineers, Ranchi v. Commissioner of Income Tax, Ranchi (Supra). The said judgment has no application in the facts of this case because of the simple reason that Section 271D has specific provision for imposing penalty which contains penal Section within it and a specific provision was made by Section 273B and it was inserted by Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 which provides that no penalty shall be imposed if there was a reasonable cause for said failure. Obviously, it has a penal consequence u/s 271D. Here in this case, the language of section is clear, which only says that the benefit is available to the Assessee under specific provision of law shall not be available and it cannot be considered as penalty merely because one has to incur some loss due to the imposition of tax that will not make that loss as penal in nature. Penalty cannot

be equated with disallowance of tax by statutory provision.

13. In view of the above reasons, we are of the considered view that the Tribunal has committed error of law in reversing the order passed by the Assessing Officer and Appellate Authority. Therefore, the appeal is liable to be allowed and the order passed by the Tribunal is hereby set aside. The order passed by the Appellate Authority and Assessing Officer are therefore, confirmed.