(1984) 07 PAT CK 0020

In the Patna High Court

Case No : Taxation Case No. 122 of 1975

Narayan Bijoy Kumar APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 40A(3)
Income Tax Rules, 1962 — Rule 6DD(j)

Citation : (1987) 163 ITR 695 : (1987) 30 TAXMAN 357

Hon'ble Judges : S.K. Jha, J;Nazir Ahmed, J

Bench : Division Bench

Advocate : K.N. Jain, for the Appellant; N.P. Agrawal and S.K. Sharan, for the Respondent

Judgement

1. A statement of the case has been submitted by the Income Tax Appellate Tribunal, ''A'' Bench, Patna, u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), and the following question of law has been referred for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the addition of Rs. 10,000, u/s 40A(3) of the Income Tax Act, 1961, is legal and proper ?"

2. The assessee is a firm. The assessment year in question is 1971-72 corres ponding to the accounting year ended on October 9, 1970. In the course of the examination of the books of account of the assessee, the Income Tax Officer noticed that the assessee made cash payments of over Rs. 2,500 in three cases aggregating Rs. 10,053.90 for which no satisfactory explanation could be produced. He, therefore, added this amount as income of the assessee u/s 40A(3) of the Act. A copy of the order of the Income Tax Officer is made annexure-A and forms part of the statement of the case.

3. On appeal, the Appellate Assistant Commissioner held, rejecting the submissions made on behalf of the assessee, that the payments were made to

the Patna Trading Company, Darbhanga, which was a genuine business concern and was assessed to Income Tax too. The further submission which was rejected was that it was in order to maintain the business relation and it was obligatory on the part of the assessee to maintain the tradition of payment in cash to the messenger who used to come to collect cash from the assessee. The legal submission, namely, that Rule 6DD(j) read with Section 40A(3) was of avail to the assessee was, therefore, rejected. A copy of the appellate order of the Appellate Assistant Commissioner has been marked annxure-B.

4. On further appeal to the Tribunal, the rival submissions made before the Appellate Assistant Commissioner on behalf of the assessee as well as the Revenue were repeated. The Tribunal, however, found that excepting the production of a certificate showing an understanding between the assessee and the Patna Trading Company, the assessee could not produce any satisfactory evidence to show that it was prevented by sufficient cause from non-payment of purchase price through a bank. The Tribunal, therefore, held that the Revenue was justified in adding back Rs. 10,000 u/s 40A(3) of the Act. A copy of the order of the Appellate Tribunal is marked as annexure -C.

5. On a consideration of the assessment order (Annexure-A), the first appellate order (Annexure-B) and the second appellate order of the Tribunal (Annexure-C), we find that the matter has been decided on the evidence and materials on the record and the legal points raised on behalf of the assessee were rejected on an appreciation of all the materials on the record. Mr. K. N. Jain, learned counsel for the assessee, was unable to satisfy us that there was any perversity in the appellate order of the Tribunal, In the circumstances, we find that the Tribunal has rightly come to the conclusion that the Revenue was justified in adding back Rs. 10,000 u/s 40A(3) of the Act in the context of Rule 6DD(j) of the Income Tax Rules.

6. We accordingly answer the question referred to this court in the affirmative, against the assessee and in favour of the Commissioner. In view of the fair attitude of learned counsel for the assessee, we make no order as to costs.

