(1996) 07 PAT CK 0019

In the Patna High Court

Case No : Tax Case No. 21 of 1990

Rajendra Prasad APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-07-1996

Acts Referred:

Citation : (1996) 222 ITR 84

Hon'ble Judges : D.P. Wadhwa, C.J;Aftab Alam, J

Bench : Division Bench

Advocate : Suraj Prasad Sinha, for the Appellant; L.N. Rastogi and S.K. Sharan, for the Respondent

Judgement

1. At the instance of the assessee, the Income Tax Appellate Tribunal, Patna Bench, Patna, referred to this court u/s 256(2) of the Income Tax Act, 1961, the following questions of law for its opinion. The question relates to the assessment year 1981-82 :

"1. Whether, on the facts and in the circumstances of the case, when the identity of the creditor is not in dispute the Tribunal was justified in holding that Rs. 46,000 represented the income of the assessee from undisclosed sources though the creditor was not summoned and examined u/s 151 of the Income Tax Act, 1961 ?

2, Whether the finding of the Tribunal in respect of the addition of Rs. 46,000 alleged to be the income of the assessee from undisclosed sources is in the teeth of law laid down by this court in the cases of Sarogi Credit Corporation Vs. Commissioner of Income Tax, and Additional Commissioner of Income Tax Vs. Hanuman Agarwal,

2. The assessee is a contractor. For the assessment year in question, he did not maintain any books of account. During the course of the assessment proceedings, the Income Tax Officer, working backwards from the peak amount of the bills received by the assessee for the contract work done, came to the

conclusion that the investment to the extent of Rs. 46,000 in the assessee''s business stood unexplained. The explanation of the assessee was that he had taken a loan from one, Shri Sheo Shankar Prasad, who also happened to be a contractor. Shri Sheo Shankar Prasad confirmed the assessee''s statement and in support showed that he had withdrawn from his bank account a total sum of Rs. 45,620. The case of the assessee further was that this loan amount had since been repaid by him by drawing a cheque for a sum of Rs. 46,000 in favour of self. The stand taken by the assessee did not find favour and the Income Tax Officer having not been satisfied with the explanation furnished by the assessee treated the entire amount of Rs. 46,000 as income from undisclosed sources. The assessee filed an appeal before the Appellate Assistant Commissioner which was also dismissed. The Appellate Assistant Commissioner was also of the view that the letter of confirmation given by Mr. S.S. Prasad was too vague in material respects to be accepted. The Appellate Assistant Commissioner was intrigued by the fact as to why the assessee did not issue a cheque straightaway in favour of Mr. S.S. Prasad and instead, issued a self cheque. The assessee then filed an appeal before the Appellate Tribunal which was also dismissed. The Appellate Tribunal held as under :

"It is well-settled that it is for the assessee to prove the genuineness of the loan taken by him. In this case, the assessee cannot be said to have discharged the onus cast on him. The case put forward by the assessee and corroborated by Shri S.S. Prasad is clearly an afterthought. First, neither the assessee nor Shri Sheo Shankar Prasad have given the exact date and the exact amount of loan. Secondly, there is a time interval between the various withdrawals and the giving of the loan to the assessee. What happened to the monies withdrawn by Shri S.S. Prasad during the said interval is not explained. Thirdly, it passes one''s comprehension as to why Shri Sheo Shankar Prasad did not straightaway issue a cheque in favour of the assessee. Fourthly, it is equally incomprehensible as to why the assessee chose to repay the loan by issuing a self-cheque. If the transaction was genuine and above board, one would have expected both the assessee and Shri Sheo Shankar Prasad to have put through the transaction by cheques."

3. Mr. Sinha, learned counsel for the assessee, relied upon the two decisions of this court as mentioned in the second question referred to us. We have examined those judgments and we find that they are not relevant to the facts and circumstances of the present case. It appears that it is pure finding of fact given by the Tribunal that the amount of Rs. 46,000 was income from undisclosed sources.

4. We do not think any question of law arises from the finding of the Appellate Tribunal. Since, a reference has been called for, we answer both the questions in the affirmative, in favour of the Revenue and against the assessee. There shall be no order as to costs.

