

(1977) 03 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 394 of 1976

RATAN UDYOG

APPELLANT

Vs

INCOME TAX OFFICER.

RESPONDENT

Date of Decision : 24-03-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 184, 185, 256, 28, 37

Citation : (1977) 6 CTR 134(1)

Hon'ble Judges : D. M. Chandrashekhar, J

Bench : Division Bench

Judgement

D. M. Chandrashekhar, J. - In this petition under Article 226 of the Constitution, the petitioner has prayed for issue of a writ in the nature of certiorari to quash certain proceedings of the Income Tax Officer. The petitioner had also prayed for a declaration that Rule 6-DD of the Income Tax Rules are void and unconstitutional, but Shri R. C. Sharma, learned counsel for the petitioner, gave up this part of the prayer of the petitioner.

2. The petitioner is a partnership firm constituted under a deed of partnership dated 1-5-1971. A minor had been admitted to the benefits of the partnership. The petitioner had made an application under S. 184 of the Income Tax Act, 1961, (hereinafter referred to as the Act) for registration of the firm the assessment year 1973-74. Following the decision of this Court in Commissioner of Income Tax, Kanpur vs. Uttam Kumar Pramod Kumar, Auriya, the Income Tax Officer, Circle I(I), Kanpur, refused to grant registration of the firm under S. 185 of the Act on the ground that the deed of partnership had not been signed by the guardian of the minor admitted to the benefits of partnership.

3. Against the order of the Income Tax Officer, the petitioner had filed an appeal before the Appellate Assistant Commissioner, Income Tax, who dismissed the appeal and affirmed the order of the Income Tax Officer. The petitioner has filed a further appeal to the Income Tax Appellate Tribunal (hereinafter referred to as

the Tribunal) and that appeal is still pending.

4. The assessment of the petitioners income for the year 1947-75 is pending before the same Income Tax Officer. The petitioner appears to have apprehended that the Income Tax Officer would refuse to grant registration of the firm for that assessment year also.

5. In the come of the assessment for the year 1974-75, the Income Tax Officer called upon the petitioner to explain why payments of Rs. 47,864; Rs. 21,287; Rs. 57,436 and 32,160 stated to have been made in cash by the petitioner to certain persons, should not be disallowed and added back to the petitioners income. In this petition, the petitioner has challenged the proposal of the Income Tax Officer to add back the aforesaid payments to its income.

6. The learned Senior Standing Counsel for the Income Tax Department has raised a preliminary objection as to the maintainability of this petition. He contended that as the petitioner has an alternative remedy, this petition had abated under S. 58 of the Constitution (Forty-Second Amendment) Act, 1976. Elaborating the preliminary objection, he submitted that the Income Tax Officer has not yet passed any order regarding registration of the firm for the assessment yea 1974-75 and that in case such registration is refused, the petitioner can file an appeal against such order to the Appellate Assistant Commissioner. Regarding the proposal of the Income Tax Officer to disallow certain cash payment made by the petitioner and to add back the amount of such payments to its income, the learned Standing Counsel submitted that it is open to the petitioner to show cause against such proposal and if the Income Tax Officer should disallow such payments, the petitioner can have recourse to the remedy by way of appeal to the Appellate Assistant Commissioner and further appeal to the Tribunal and ultimately a reference to this court under S. 256 of the Act.

7. In answer to the preliminary objection raised by the learned Standing Counsel, Shri Sharma Submitted that in view of the ruling of this court in Uttam Kumars case, it is certain that the Income Tax Officer would refuse registration of the firm for the assessment year 1974-75 also and that successive appeals to the Appellate Assistant Commissioner and the Tribunal would be rutile as all these authorities are bound to follow the ruling of this Court. Shri Sharma further submitted that the correctness of the ruling of this Court in Uttam Kumars case has been doubted by several Division Benches of this court which have admitted several writ petitions involving the same question and have passed appropriate interim orders.

8. Later, the learned Standing Counsel submitted that the higher Income Tax Authorities have issued instructions to Income Tax Officers to afford opportunity to assessee who have applied for registration of their firms under S. 185 of the Act, to remove the defect in their respective deeds of partnership, if such deeds have not been signed by the respective guardians of minors admitted to the

benefits of Partnership. In view of this statement made by the learned Standing Counsel, the petitioners apprehension that registration of the firm would be refused for the assessment year 1974-75, does not survive.

9. As regards the proposal of the Income Tax Officer to disallow the aforesaid four cash payments, Shri Sharma submitted that the Income Tax Officer, the Appellate Assistant Commissioner and the Tribunal would naturally follow the ruling of this Court in *M/s. U.P. Hardware Store vs. The Commissioner of Income Tax U.P.* and disallow those cash payments. He maintained that the decision of this Court in *U.P. Hardware Stores* case requires reconsideration, that such reconsideration can be done in this petition itself and that the petitioner should not be driven to the necessity of going through the tortuous process of successive appeals to the Appellate Assistant Commissioner and the Tribunal and a reference to this court under S. 256 of the Act.

10. We shall now briefly advert to the ruling of this court in *U.P. Hardware Stores* case. There, the assessee had made certain payments in cash, each exceeding Rs. 2,500, for some of its purchases of stock-in trade. The income Tax Officer held that in view of the provisions of Sub-S. (3) of S. 40A of the Act, read with R. 6-DD of the Income Tax Rules, 1962, no deduction could be allowed for such payments. The correctness of this view came up ultimately for consideration before this court on a reference under S. 256 of the Act. The Division Bench of this court (consisting of H. S. Gulati and C. S. P. Singh, JJ.), answered this question in favour of the Revenue. Their Lordships observed thus :

"But, we see no justification for accepting the plea the word expenditure used in S. 40-A(3) should be restricted to overhead expenses enumerated in S. 30 to 43-A, including the depreciation allowance etc. The word expenditure is of wide import. It will also cover the expenses to be taken into account while determining the gross profit. The gross profit is determined by the difference between the opening stock and the purchases on the one side and the closing stock and the sales in the other. The payments made for purchases would also be covered by the word expenditure and such payment can be disallowed if they are made in cash in sum exceeding Rs. 2,500/-. Such disallowance will increase the gross profit and would necessarily increase the net profit.

The learned counsel then urged that money spent on purchases of stock-in-trade etc. represents circulating capital and cannot be included in the term expenditure which means money spent away. It cannot be disputed that the money invested in the purchases of stock-in trade and raw material represents circulating capital and such payments are not covered by any of the provisions contained in S. 30 to 43-A. But the value of the Stock-in-trade has to be taken into account while determining the gross profits under S. 28 itself on principles of commercial accounting.

It is no doubt true that the provisions contained in S. 30 to 43-A some time may cause undue hardship to an assessee inasmuch as he might have to make

purchases from a place where no banking facility is available or from a person who does not maintain a bank account or he might have to make payments to certain institution we do not maintain records like books etc. which can easily be verified. In order to mitigate such hardship the Central Board of Direct Taxes had framed R. 6-DD which provides for cases and circumstances in which payments exceeding the sum of Rs. 2,500/- may be made otherwise than by a crossed cheque bank draft."

11. Shri Sharma argued that the view taken by the aforesaid Division Bench that the term expenditure would include trade of raw material, is opposed to the notion of expenditure in commercial sense and that hence the decision requires reconsideration.

12. A Division Bench of the Orissa High Court has also taken the same view in *Sajiwanlal Jaiswal vs. Commissioner of Income Tax*. There, their lordships observed thus at pages 709 and 710 :

"Expenditure has no definition in the statute. All out-going could broadly come under this head. In fact the Chambers Twentieth Century Dictionary gives the following meaning to the words :

"act of expending or laying out; that which is expended; the process of using up; money spent.

If this be the meaning of the word according to common parlance, and in the absence of a statutory definition, the word would take its colour according to its common parlance use, payment for purchase of goods would certainly be an expenditure. Deduction need not also be confined to S. 37. In sub-S. (3) that word has been used in its widest amplitude and the provisions of R. 6-DD throw considerable light on to what exactly is meant to be the scope of Sub-S. (3).

The expenditure referred to in S. 40A(3) of the Income Tax Act is not confined to expenditure that could be claimed as a deduction under S. 37 and refers to any payment made by the assessee and taken into account in computing the total income under the provision of the Act."

13. The learned Standing Counsel maintained that the view taken by this Court in *U.P. Hardware Store* case and by the Orissa High Court in *Sajiwanlal Jaiswal* case is in consonance with the observations of the Supreme Court in *Indian Molasses Co. (Private) Ltd. vs. Commissioner of Income Tax*. Our attention was drawn to the following observations of Hidayatullah, J. (as he then was), who delivered the judgment of the Court, at page 78 :

"Expenditure is equal to expense and expense is money laid out by calculation and intention though in many uses of the word this element may not be present, as when we speak of a joke at another's expense. But the idea of spending in the sense of paying out of way money is the primary meaning and it is with that meaning that we are concerned. Expenditure is thus what is paid out or away and is something which is gone irretrievably."

14. Having regard to the wider meaning of the word expenditure so as to embrace whatever is paid out or away, there is no reason why payments made for the purchases of stock-in-trade or raw materials, should not be regarded as expenditure for the purposes of S. 40-A(3) of the Act. We are in respectful agreement with the view taken by this court in U.P. hardware Stores case and by this Orissa High Court in Sajiwanlal Jaiswals case Shri Sharma has not been able to persuade us to accept his contention that the decision of this court in U.P. Hardware Stores case requires reconsideration.

15. Hence neither of the two grounds on which Shri Sharma contended that the petitioner should be permitted to by-pass the remedies available under the Act and to approach this court directly by means of a writ petition, has any substance.

16. In the result, we dismiss this petition. The interim order made by this court is vacated.

17. In the circumstances of the case we direct the parties to bear their own costs.