
(1984) 03 PAT CK 0042

In the Patna High Court

Case No : Taxation Case No. 122 of 1975

SRI NARAYAN BIJOY KUMAR

APPELLANT

Vs

COMMISSIONER OF INCOME TAX.

RESPONDENT

Date of Decision : 25-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 40A(3)

Citation : (1986) 55 CTR 178

Judgement

By the Court - A Statement of the Case has been submitted by the Income Tax Appellate Tribunal, A Bench, Patna, under s. 256(1) of the IT 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, under s. 40A(3) of the IT Act, 1961 is legal and proper ?"

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

3. On appeal the AAC held, rejecting the submissions made on behalf of the assessee, that the payments were made to Patna Trading Company, Darbhanga, which was a genuine business concern and was assessed to Income Tax too. The further submission which was rejected was 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 r. 6 DD(j) read with s. 40A(3) was of avail to the assessee was, therefore, rejected. A copy of the

appellate order of the AAC has been marked Annexure-B.

4. On further appeal to the Tribunal the rival submission made before the AAC on behalf of the assessee as well as the revenue were repeated. The Tribunal, however, found that expecting 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 for sufficient cause for non-payment of purchase price to Bank. The Tribunal, therefore, held that the revenue was justified in adding back Rs. 10,000 under 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 was rejected on an appreciation of all the materials on the record. Mr. K. N. Jain Id. 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 under s. 40A(3) of the Act in the context of r. 6 DD(j) of the IT Rules.

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