(1983) 01 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 107 of 1981

Synpro Industries APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-01-1983

Acts Referred:

Income Tax Act, 1961 — Section 40A(2)

Citation : (1984) 40 CTR 106 : (1984) 146 ITR 176 : (1983) 13 TAXMAN 58

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; R.C. Mukati, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961 (hereinafter referred to as "the Act"), the Income Tax Appellate Tribunal, Indore Bench, Indore, has referred the following question of law to this court for its opinion :

"Whether, under the facts and circumstances of the case, the Tribunal was justified in disallowing Rs. 12,000, being commission paid to Shri J.M. Nadkarni, u/s 40A(2) of the Income Tax Act, 1961 ? "

The material facts giving rise to this reference, briefly, are as follows :

The assessee is a registered firm. While framing the assessment for the assessment year 1975-76, the ITO found that a payment of Rs. 12,000 was shown to have been made by the assessee, by way of commission, to Shri J.M. Nadkarni, the works manager of the assessee-firm and husband of a partner of the assessee-firm. The assessee was thereupon asked to justify the payment of commission of Rs. 12,000 made to Shri J.M. Nadkarni. After taking into consideration the explanation furnished by the assessee-firm, the ITO disallowed the claim of Rs. 12,000 holding that no material was furnished by the assessee to show that any extra work was done by Shri Nadkarni to warrant payment of commission of Rs. 12,000. On appeal, the AAC affirmed the disallowance made by the ITO. On further appeal, the Tribunal held that there was no evidence that, at the material time, there had been any agreement entered into by the assessee-firm with Shri J.M. Nadkarni to pay any commission to him in addition to his salary of Rs. 24,000 per annum and that a copy of the agreement produced by the assessee in support of payment of commission to Shri J.M. Nadkarni was entered into on 1st September, 1975, long after the close of the accounting year in question. The Tribunal also noted that only recently the salary of J.M. Nadkarni was increased by Rs. 500 per month. Taking into consideration the circumstances of the case, the Tribunal dismissed the appeal. Hence, at the instance of the assessee, the Tribunal has referred the aforesaid question of law to this court for its opinion.

Having heard learned counsel for the parties, we have come to the conclusion that the question has to be answered against the assessee and. in favour of the Revenue. In view of the fact that Shri J.M. Nadkarni, to whom commission of Rs. 12,000 was paid in the relevant year, is the husband of one of the partners of the assessee-firm, the provisions of Sub- Section (2) of Section 40A of the Act are attracted. The Tribunal, after taking into consideration the fact that there was no agreement at the relevant time to pay commission to Shri J.M. Nadkarni, has upheld the order of the ITO holding that the sum of Rs. 12,000 paid to Shri Nadkarni, by way of commission, was excessive and was not allowable. The finding of the Tribunal is based on the material on record. Under these circumstances, the Tribunal, in our opinion, was justified in disallowing Rs. 12,000, being the commission paid to Shri J.M. Nadkarni.

2. Our answer to the question referred to this court is, therefore, in the affirmative and against the assessee. In the circumstances of the case, parties shall bear their own costs of this reference.

