

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.30 of 2012

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A.C.I.T. Circle 6, Patna

.... Appellant

Versus

Shri Sunil Kumar , D. No. 2H-110, Bahadurpur Housing Colony, Bhoothnath Road,
Patna.

.... Respondent

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Appearance :

For the Appellant : Mr. Rishi Raj Sinha, Senior Standing Counsel
Mrs. Archana Prasad, Junior Standing Counsel

For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 17-02-2016

Heard learned Senior Standing Counsel for the appellant
Income-tax Department.

The appeal has been filed against the order dated 11.08.2011
passed by the Income-tax Appellate Tribunal, Patna Bench, Patna, by
which the appeal of the Revenue was dismissed on all counts.

The Assessing Officer had, by his order dated 30.12.2009,
being assessment order under Section 143 (3) of the Income-tax Act,
for the assessment year 2007-08, made a large number of additions
disallowing various expenditures on different counts. Aggrieved by
the same, the assessee filed an appeal before the Commissioner of
Income-tax (Appeals) who, by his order dated 26.05.2010 allowed the
appeal and all the additions made by the Assessing Officer were

deleted. Aggrieved by the same, the Revenue went in appeal before the Income-tax Appellate Tribunal, Patna Bench, Patna which, by the impugned order dated 11.08.2011, has dismissed the appeal.

As many as eight purported substantial questions of law are sought to be raised before us by learned counsel for the Department. However, after hearing learned counsel for the appellant and going through the order of the Tribunal, we find that barring one all the rest relate to concurrent findings of fact arrived at by the Tribunal and the C.I.T. (Appeals) and no substantial questions of law arise out of them as the said findings are based upon the facts and materials on the record and it was open to the Tribunal to have accepted the documents and the books of accounts which had been impounded including the entire vouchers produced by the assessee. The Tribunal being the last forum of facts and the conclusions not being based on no material or shown to be contrary to the material on the record, no question of law can flow from the said finding.

The only question of law raised before us by learned Senior Standing Counsel for the Income-tax Department is with regard to the applicability of the provisions of Section 40 A (3) of the Income Tax Act, 1961 and it is submitted that the Tribunal and C.I.T. (Appeals) have wrongly set aside the addition made by the Assessing Officer on that count to the extent of Rs. 47, 73,775/- as the aggregate payment

made on a single day by several vouchers to a person exceeded Rs.20,000/- and thus the same would come under the provision of the said Section.

The said submission of learned counsel for the Revenue suffers from a fallacy as it does not take into account the fact that the assessment involved in the present matter is for the year 2007-08, whereas sub-section (3) of Section 40A of the Act has undergone an amendment with effect from 01.04.2009, i.e., for the assessment year 2009-10 onwards, under which it is now provided that no deduction shall be allowed in respect of an expenditure incurred by the assessee in which aggregate payment made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds Rs.20,000/-. Prior to that the provision in existence merely provided for expenditure in respect of which payment exceeding Rs.20,000/- was made and there was no provision regarding aggregate of payments to a person in a day. It is not in dispute that in the present matter not a single payment has been made through any voucher exceeding Rs.20,000/-. Thus, it was not open to the Assessing Officer to have aggregated the said payment.

Moreover, the extant provision for the said assessment year also had a proviso by which even if the payment in cash exceeded Rs.20,000/-, then in such cases and under such circumstances as may



have been prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors, the disallowance may not have been made. In the present matter, the Tribunal and the CIT (Appeals) have also considered the further explanation made by the assessee with regard to multiple payments to the same person, including the fact that subsequent payment in most of the cases was made after mid night of the day but wrongly recorded by the employees of the assessee as the same day since in the course of working day after mid night the lorry has to be loaded and the Tribunal and CIT (Appeals) have accepted the said explanations also.

Learned counsel for the appellant has sought to rely upon a decision of a Division Bench of this Court in the case of Commissioner of Income-tax vs. Standard Mercantile Co.: (1986) 157 ITR 139 for the purpose of rejection of books of account.

From a perusal of the said decision, we find that the ratio of the said decision was related to the question of cancellation of registration under certain circumstances and as to under what circumstances it would be mandatory or it would be discretionary. The same does not have any relevance in the present matter.

Thus, this Court sees no reason to take a different view from what has been taken by the Tribunal. The said substantial question of

law also, therefore, does not arise in the present matter regarding the period prior to the assessment year 2009-10.

In view of one aforesaid conclusion, the appeal is dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

V.P.Sinha/-

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