

AO couldn't ask assessee to furnish 'source of source' to assess income under sec. 68: HC

Summary – The Jharkhand ITAT in a recent case of Prayag Tendu Leaves Processing Co., (the Assessee) held that Under section 68, Assessing Officer while assessing a Partnership Firm, can ask for source of income of partnership firm, 'source of source' cannot be shown by assessee

Facts

- The assessee was a partnership firm and the partners thereof, namely, RJ, and AJ, brought certain amounts to the partnership firm as capital by cheques and bank drafts. The said amount was at Rs. 9.46 lakh and at Rs. 9.52 lakh respectively.
- The assessment was made by the Assessing Officer.
- The Commissioner disbelieved the sources of the fund. The assessment was taken up in revision by the Commissioner under section 263 by exercising revisional power and order was passed.
- On appeal, the Tribunal allowed the same.

Held

- The amounts received by the assessee were by cheques or bank drafts.
- In view of the fact the amount received from its partners RJ and AJ by account payee cheques or by bank drafts by the assessee firm, the department cannot ask the assessee-partnership firm about the source of income of RJ and AJ. The assessee firm can show the source of income of the partnership firm, but 'the source of source' cannot be shown by the assessee-firm. This aspect of the matter has been properly appreciated by the Tribunal, while allowing the appeal preferred by the assessee-firm.
- It appears that department has given a notice to assessee-firm giving details as to how RJ and AJ got cash and from whom. This is an error apparent on the face of the record, the assessee-firm cannot explain 'the source of', source of income of the partnership firm. If the department wants to reopen the assessment of RJ and AJ, it is always permissible in eye of law subject to the restriction imposed by the Income-tax Act of limitation etc.
- It is an admitted fact that this assessee-firm has received the amount from RJ and AJ by account payee cheques or by Bank drafts. Thus, source of income of the assessee-firm is absolutely a legal one. This aspect of the matter was properly been appreciated by the Tribunal by allowing the appeal preferred by the assessee-firm.
- Where the assessee has given supporting material evidencing the gift or the amount received from the particular person with necessary documents, such as, copies of demand drafts and cheques etc., no addition could have been made by the Commissioner in respect of the amount received by the assessee. Under section 68, the Assessing Officer while assessing a Partnership Firm, can go behind

the source of income of the partnership firm, but he cannot go to 'source of source'. The aforesaid aspect of the matter has been properly appreciated by the Tribunal by allowing the appeal preferred by the assessee-firm and no error has been committed by the Tribunal.

- The Tribunal has committed no error in quashing and setting aside the order passed by the Commissioner under section 263.