

## **Assessee can't escape liability u/s 69A by merely stating that unexplained money was received by his agent**

**Summary – The High Court of Patna in a recent case of Mahesh Kumar Agarwal, (the Assessee) held that Assessee could not escape liability under section 69A by merely pleading that amount in question was not received by him rather it was received by his agent**

**Where in pursuance of contract given by State Government to assessee to lift Bitumens from oil companies and supply it to consignees, assessee introduced 'P' carrier as its agent, in view of fact that contracted quantity of Bitumen was not delivered to consignees, mere fact that payments had been received in name of 'P' Carrier, assessee could not be allowed to avoid liability arising out of short supply of Bitumen to consignees and, thus, impugned addition made to his income under section 69A, was to be confirmed**

### **Facts**

- The assessee was an individual who derived income from transportation business running in the name of 'B' and salary income.
- 'B' was one of the panel transporters out of 14 panel transporters of Road Construction Department, Government of Bihar and was a contractor authorized to lift the Bitumen from oil companies by way of entering into a contract with them.
- Information with regard to delivery was collected from all over Bihar and it was found that the contracted quantity of Bitumen was not delivered to consignees, whereas all the oil companies confirmed lifting the Bitumen. In such circumstances, a notice was issued to the assessee to explain as to why the cost of short supply of Bitumen should not be added to his total income under section 69A.
- The assessee in his reply stated that he had not lifted any Bitumen and produced the photocopy of delivery challan showing that consignment was lifted by 'P' carrier. The assessee submitted that he had not received any payment for carriage charges.
- The Assessing Officer noticed that the assessee failed to produce anyone from 'P' Carrier. He arrived at a conclusion that the assessee was involved in instant case. The contract was not fully executed and part quantity of Bitumen was not delivered to various consignees and the same was misappropriated in collusion with 'P' Carrier for its own benefit. Accordingly, the estimated cost of the Bitumen were added to the total income of the assessee.
- The Tribunal upheld the order passed by Assessing Officer.
- On appeal:

### **Held**

- The Assessing Officer, the Commissioner (Appeals) and the Tribunal which is ultimate fact finding body all have concluded on facts holding that 'P' Carrier was acting on the basis of authorization

given by assessee to execute the contract on his behalf. The assessee was called upon to produce the proprietor of said 'P' Carrier but he failed to produce him and pleaded that 'P' Carrier is a rival business entity and therefore cannot be produced for examination. The Tribunal has taken note of the facts appearing from the record that 'P' Carrier had lifted the Bitumen while executing the contract according to direction of assessee.

- Law of agency in this regard is well settled. If the assessee introduced 'P' Carrier as its agent and by virtue of his authorization given in favour of 'P' Carrier, if the oil companies allowed 'P' Carrier to lift the Bitumen and then 'P' Carrier being an agent of assessee did some unauthorized act, the assessee could not escape the liability arising out of such unauthorized act of his agent.
- Keeping in mind the aforementioned facts and circumstances, it is concluded that :—
  - (i) In the facts of the present case, it is concurrent finding of all the authorities that 'P' Carrier was acting on the basis of an authorization granted in their favour to execute the contract on behalf of the assessee and therefore all the acts done by 'P' Carrier will be binding upon the assessee and merely because payments had been received in the name of 'P' Carrier, the assessee cannot derive any benefit out of that and, the assessee cannot be allowed to avoid the liability arising out of non-supply of Bitumen to the consignees.
  - (ii) 'P' Carrier has been held to be an agent of the assessee, the assessee would be liable for the shortfall in the quantity of Bitumen delivered by 'P' Carrier. Since the assessee has been found to be the person, who ultimately held to be responsible for the act of its agent, the assessing authority, for the reasons recorded in the impugned order, would be justified in making addition of cost of the said shortfall as income in the hands of assessee and, the Tribunal has committed no error in sustaining such addition.
  - (iii) Payment of the carriage contract amount in question to 'P' Carrier cannot be a conclusive proof of fact that the assessee had no interest in the work in question and/or the contract awarded to the assessee stood terminated only because 'P' Carrier was authorized to execute the contract on behalf of the assessee. The amount received by 'P' Carrier was on the basis of the authorization of the assessee as an agent of the assessee, therefore the Assessing Officer and the appellate authority as also the Tribunal has rightly taken a view based on the materials available on the record.
  - (iv) The assessee was given opportunity to bring the proprietor of 'P' Carrier and when he failed to bring the proprietor of 'P' Carrier before the Assessing Officer, a notice was sent to 'P' Carrier on which a reply was received that they had executed the work on behalf of the assessee, therefore no grave error leading to miscarriage of justice has been committed by the Assessing Officer.
  - (v) In the facts and circumstances of the case no fault is found with the order of assessment and the appellate orders sustaining it.
- In result, the appeal is dismissed.