

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.245 of 2008

=====

Dharmraj Prasad Bibhuti, son of Late Rambrichh Sah, resident of Machuatoli,
P.S. Kadamkuan, Distt. Patna.

... .. Appellant/s

Versus

1. Income Tax Appellate Tribunal Patna, Bench, Patna.
2. The Commissioner of Income Tax (Appeals) Patna.
3. Dy. Commissioner of Income Tax, Central Circle 1, Patna.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.D.V. Pathy, Advocate Ms. Manju Jha, Advocate
For the Respondent/s	:	Ms. Archana Sinha, Sr. SC Mr. Sanjeev Kumar, Jr. SC

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 08-08-2019

Heard Mr. D.V. Pathy, learned counsel assisted by Smt.
Manju Jha, learned Advocate for the appellant and Smt. Archana
Sinha, learned Sr. Standing Counsel appearing for the Income
Tax Department, Bihar assisted by Shri Sanjeev Kumar, Junior
Standing Counsel.

The appellant has preferred this appeal against the order
dated 14.12. 2007 passed in IT (ss) A. No. 106/Pat/05 passed by
the Patna Bench of the Income Tax Appellate Tribunal.

The facts in brief are that pursuant to search and seizure
operation carried out on the residential premises of the father-in-
law of the appellant namely, Deo Lal Sah, notice under section



158BC of the Income Tax Act, 1961 (hereinafter referred to as 'the IT Act') was issued to the assessee i.e. the appellant herein. The assessment order dated 28.01.2004 (Annexure 3 to the writ application) was passed by the Assistant Commissioner of Income Tax holding that the undisclosed income for the block period is assessed under section 158BC read with section 144 of IT Act to be Rs. 14,79, 897/- and tax on the total undisclosed income to be Rs. 8, 87,938/-. It is against this order dated 28.01.2004, that the appellant herein preferred an appeal before the Commissioner of Income Tax (Appeals) – 1, Patna which was registered as Appeal no. 264/A-I/03-04. By order dated 03.02.2005 (Annexure 4 to the writ application), the Commissioner of Income Tax (Appeals)-1, Patna was pleased to hold that the parents-in-law of the appellant had substantial rental income and possession being evidence of ownership and this presumption being strongest in case of cash found, the addition of Rs. 6,18,850/- was deleted. The respondent no. 3 preferred an appeal against the order dated 03.02.2005 passed by the Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal, Patna Bench. The Appellate Tribunal was pleased to set aside the order impugned, restored the order of the Assessing Officer and held that the learned Commissioner



of the Income Tax appeals was not justified in deleting the above addition as Section 292C had been introduced by the Finance Act, 2007 with retrospective effect from 01.10.1975 and the presumption under section 292C had not been disclosed by the assessee. It is against this order dated 14.12.2007 of the Appellate Tribunal that the instant appeal has been preferred by the assessee - appellant.

As per the case of the appellant a search was conducted on 29.01.2002 in the residential premises of his father-in-law Deo Lal Sah situated at East Lohanipur, Patna. Besides papers and documents, cash to the tune of Rs. 6,18,850/- was found out of which a sum of Rs. 6 lacs was seized and the balance released. An inventory was prepared which is at Annexure 2 to the application which categorically states that the same has been found in the case of Deo Lal Sah (Father-in-law of the appellant) at East Lohanipur, Patna. At the same time, a search was also conducted at Machua Toli, the other premises of Deo Lal Sah, where the appellant, was residing and the Panchanama of which is Annexure 1 to the application. A cursory glance of the Panchnama at Annexure-1 would transpire that no cash or jewellery etc., was found in the said search at the house where the appellant was residing. Pursuant to the search, notices under



section 158BC of the IT Act was issued directing the appellant to file return of the undisclosed income. The appellant filed the return on 09.07.2002. He also filed explanations to substantiate his return. The assessment was completed ex-parte by order dated 28.01.2004 of the Assessing Officer who made various additions and dis-allowances and also made addition in respect of the cash found to the tune of Rs. 6,18,850/- in the residential premises of Deo Lal Sah at East Lohanipur. It was further submitted that appellant had given a statement on oath to the authorized officer conducting search on 29.01.2002. The said statement on oath of the appellant is at Annexure 8 to the writ application. In his statement the appellant had categorically stated that the said premises where he was living belongs to his mother-in-law and father-in-law. Besides this, written submissions were also filed on behalf of the appellant.

A return of income for block assessment was filed on behalf of Deo Lal Sah for the period from 01.04.1995 to 29.01.2002 i.e. for assessment year from A.Y 1996-97 to 2002-03. Along with the return of income dated 25.03.2004 (Annexure 10 to the application), a cash flow statement was enclosed. It was explained by Deo Lal Sah in reference to his cash flow statement as to how he had accumulated the sum of Rs.



6,13,000/- from his rental income. The Assessing Officer was pleased to pass assessment order dated 28.01.2004 in case of the appellant for the assessment year from A.Y 1996-97 to 2002-03.

From perusal of the order dated 28.01.2004 of the Assessing Officer it would transpire that with respect to the cash so found, the appellant in his submission dated 09.05.2003 had asserted that the cash to the tune of Rs. 6,18,850/- had been found at the East Lohanipur residence of his father-in-law Deo Lal Sah; that the seized money belonged to Deo Lal Sah and that the assessee-appellant was not residing with his father-in-law at Lohanipur. It was further stated that the appellant's father-in-law in his submission dated 09.10.2003 had also informed regarding the source of his cash flow to the tune of Rs. 6,18,850/-. However, for the reasons stated in paragraph 10.5 of the order dated 28.01.2004, the contention of the appellant with respect to the ownership of the cash being that of Deo Lal Sah was rejected inter alia on grounds that, the assessee's father-in-law never appeared in response to the two summons issued under section 131 of the IT Act; that his father-in-law never filed his return of income; that he failed to furnish a balance sheet or the cash flow statement for any assessment year falling in the block period and that it could not be expected that a 76 years old person would



keep his entire life saving of Rs. 6,18,850/- in cash in view of the poor law and order condition. It was further stated that though the assessee was not the owner of the residential houses, his mother-in-law owned the house at Machuatoli where the assessee resided and father-in-law owned the house at Lohanipur where the parents-in-law resided and the cash was found. It was observed that the assessee used to live with his father-in-law and mother-in-law at Lohanipur and that when the cash was seized, the wife of the assessee was present in the house at Lohanipur.

In view of the above facts, the total undisclosed income, after adding the unexplained cash to the tune of Rs. 6,18,850/- was assessed as Rs. 14,79,879/- and tax on total undisclosed income for the block period at the rate of 60 % was assessed as Rs. 8,87,938/-. The appellant herein preferred an appeal which was registered as Appeal No. 264/A-I/03-04 before the Commissioner of Income Tax (Appeals) -1, Patna. With respect to the addition of Rs. 6,18,850/- which was the cash found at the residential premises of the appellant's father-in-law, the Commissioner of Income Tax (Appeals), Patna in his order dated 03.02.2005 held as here under :-

“Regarding the addition of Rs. 6,18,850/- in respect of cash found at the residential premises of the appellant's father-in-law, I find that the parents-in-



law of the appellant were having only the appellant's wife as the only issue and at the same time they had substantial rental income which is evident from the commercial location of the building at Main Road, Lohanipur, Patna. Moreover, possession is evidence of ownership and this presumption is strongest in the case of the cash found. For this view the reliance placed on Ashok Kumar v CIT 160 ITR 497(MP), CIT v. K.T.M.S. Mahmood 228 ITR 130 (Mad), Kantilal Chandulal & Company v CIT 130 ITR 898 (Kol) and Chuhamal v. CIT 172 ITR 250 (SC).

In view of the above judgments, it cannot be said that the assessee was merely in possession without background proof of ownership potential. The rental income from the immovable property and the fact that the appellant's parents-in-law never opened any bank a/c in their life time go to show that the appellants parents-in-law had the potential to accumulate cash out of their income earned not only during the Block Period but also before the Block Period. In view of this position of facts and circumstances, the addition of Rs. 6,18,850/- is deleted. ...”

The respondent no. 3 feeling aggrieved by the order dated 03.02.2005 of the C.I.T (A), Patna preferred an appeal before the Income Tax Appellate Tribunal, Patna Bench. A cross objection was also filed on behalf of the assessee. Both the appeals of the revenue and cross objections filed by the assessee were partly allowed by order dated 14.12.2007 passed by the Income Tax Appellate Tribunal. However, with respect to the cash seized from the residential premises of the father-in-law



of the appellant at Lohanipur, the learned Appellate Tribunal in paragraph 15 of its order dated 14.12.2007 was pleased to hold as here under :-

“15. We find that the facts narrated by the AO have not been disproved by the assessee by producing any cogent evidence. It is also to be noted that section 292 C has been introduced by the Finance Act, 2007 with retrospective effect from 01.10.1975. Thus, the presumption of ownership is attracted. We have also gone through the assessment order in the case of Shri Deo Lal Sah. Considering the facts and circumstances of the case and also the assessment order of Shri Deo Lal Sah, we are of the considered view that the presumption u/s 292C has not been disclosed by the assessee. We, therefore, hold that the learned CIT (A) was not justified in deleting the above addition. We, therefore, set aside the order of the learned CIT(A) and restore that of the AO on this issue. This ground of the revenue is allowed”.

It was submitted by learned counsel for the appellant that



admittedly both the houses at Lohanipur as also Machuatoli were owned by the appellant's parents-in-law. While his father-in-law was residing in the house at Lohanipur and the cash of Rs. 6,18,850/- was also seized from the said residential premises at Lohanipur, the appellant was residing in the house of his mother-in-law situated at Machuatoli, Patna. Admittedly, from the Panchnama dated 29.01.2002 which is signed both by the authorities of the Income Tax as also the appellant and which has been brought on record as Annexure 1 to the application, no cash was seized from the residence at Machuatoli where the appellant was residing.

Referring to the submissions made by the appellant's father-in-law and which has been recorded in paragraph no. 10 of the assessment order dated 28.01.2004, it is submitted that the appellant's father-in-law had filed his written submissions on 22.12.2003. Even earlier in response to the notice under section 131 of IT Act dated 27.08.2003 his father-in-law had in his submissions dated 09.10. 2003 already informed regarding the source of cash of Rs. 6,18,850/-. The cash of Rs. 6,18,850 was further dealt with in detail in grounds 7 on page 13 of the order dated 03.02.2005 of the CIT(A), Patna. However, not taking the material fact into consideration that the recovery of cash to the



tune of Rs. 6,18,850/- had taken place from the house of the appellant's father-in-law at Lohanipur where admittedly the appellant was not residing and that the appellant's father-in-law had filed the return of income for the block period explaining the said cash by a cash flow statement showing the same to have been accumulated from the rental income, nevertheless the Income Tax Appellate Tribunal committed an error in holding that pursuant to the introduction of section 292C of the IT Act, the presumption of ownership was attracted and that the appellant not having disclosed the same the C.I.T (A) was not justified in deleting the above addition of the recovered cash to the tune of Rs. 6 lacs.

On the other hand, Ms. Archana Sinha, learned Sr. Standing Counsel for the Income Tax Department contended that the wife of the appellant happens to be the only child of her parents. Although on the search and seizure, the cash to the tune of Rs. 6,18,850/- of which Rs. 6 lacs was seized is said to have been recovered from the residential premises at East Lohanipur, Patna, but the appellant herein had in his statement on oath on 29.01.2002, which has been brought on record as Annexure 8 to the application admitted that he was "Ghar-jamai" and that besides his wife, his father-in-law has no other legal heir. Further



the appellant's wife was present at her parent's place when the seizure of Rs. 6,18,850/- in cash took place from the house at East Lohanipur. It was further submitted that the assessment order had been rightly passed and there was no illegality in the same. The Commissioner of Income Tax (Appeals) in the appellate order dated 03.02.2005 had committed an error in relying upon the unsupported affidavit of the appellant.

It was further submitted on behalf of the respondents that for good reasons as narrated in the assessment order, the cash found was held to be the amount belonging to the assessee - appellant and not of his father-in-law. Thus, this being unexplained money under section 69A of the IT Act, as the same had neither been explained by the appellant nor his father-in-law, it was correctly deemed to be the income of the assessee - appellant for such financial year. It was further submitted that according to section 132(4A) of the IT Act where any books of account, other documents money etc., are found in possession or control of any person in course of search, it may be presumed that the same belongs to such person and as such it was correctly presumed in the instant case that the seized cash belonged to the appellant. It was further submitted that as per section 158BB(3) of the IT Act, the burden of proving that any undisclosed income



had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition shall be on the assessee himself. This burden, not having been discharged by the assessee, the recovered cash to the tune of Rs. 6,18,850/- had rightly been added to the income of the assessee for the concerned block period.

The learned Sr. Standing Counsel for the Income Tax Department, in support of her submissions had relied on the judgments rendered in the case of *Daya Chand v. Commissioner of Income Tax* reported in 250 ITR 327; *Sukh Ram v. Assistant Commissioner of Income Tax* reported in 285 ITR 256 and *Chuharmal v. Commissioner of Income Tax, MP* reported in 172 ITR 250 (SC).

In his reply Mr. D.V. Pathy learned counsel appearing for the appellant submitted that Chapter 14-B deals with the special procedure for assessment in search cases. Section 158B defines block period to mean the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted. Further, section 158B(b) defines undisclosed income to include any money which has not been or would not have been disclosed for the purposes of this Act or any expense, deduction or allowance claimed under this



Act which is found to be false. The learned counsel also relied on the judgments in the case of Chuharmal v. Commissioner of Income Tax, MP reported in 172 ITR 25 and Commissioner of Income Tax v. Ravikant Jain reported in 250 ITR 141. It was further submitted that although the father-in-law of the appellant could not appear before the A.O. for reasons already explained, nevertheless he had filed his written submissions through his advocate. Concluding it is submitted that even for the sake of argument if the charge made is accepted, section 113 of the IT Act provides that the total undisclosed income of the block period, determined under section 158B(C) shall be chargeable to tax at the rate of 60 %.

It is after having heard learned counsel for the parties, that this court by order dated 04.12.2014 condoned the delay in filing of instant appeal and by order dated 26.02.2015, the appeal was admitted for hearing on the following substantial questions of law:

“(i) Whether in view of ownership and possession of all immovable properties by Deo Lal Sah, cash found and seized in course of search at his residence are attributable to him alone particularly, in absence of any material or evidence having been found in course of search indicating derivation or ownership thereof by the appellant ?



(ii) Whether the presumption by the respondent no. 1 under Section 292C of the Act that the cash found and seized belongs to the appellant stand rebutted by acceptance of ownership of such money as undisclosed income by Deo Lal Sah coupled with the ownership of all the immovable properties by him ?

(iii) Whether in view of Section 292C of the Act cash found in the residence owned by Deo Lal Sah is necessarily presumed to be his undisclosed income ?

(iv) Whether in view of the offer made by Deo Lal Sah to tax the entire cash found in course of search as his undisclosed income, the refusal to do so in absence of any material to the contrary is illegal ?”

The relevant facts for the purposes of the instant appeal are that admittedly the two houses, one at East Lohanipur, Patna and the other at Machuatoli, Patna are owned by Deo Lal Sah and his wife who are the parents-in-law of the appellant. Search and seizure took place at the residential premises at both places on 29.01.2002. From perusal of the Panchnama which was prepared in-triplicate and is signed by the authorized officer of the Income Tax Department as also the appellant herein, it transpires that the appellant was residing in the said house at Machuatoli, Patna and that admittedly no cash etc., was found in course of the search which is also confirmed from paragraph 5 of the said Panchnama. Further, from paragraph 8 thereof, it would



transpire that the search commenced at 8.30 AM on 25.01.2002 and closed after eight hours at 4.30 PM on the same day. Further, from perusal of the inventory of cash found/seized in case of Deo Lal Sah, father-in-law of the appellant at his residential premises at East Lohanipur, Patna, dated 29.1.2002, copy of which has been brought on record as Annexure 2 to the writ application, it would transpire that a total sum of Rs. 6,18,850/- in cash was found out of which Rs. 6 lacs in cash was seized and the balance sum of Rs. 18,850/- was released.

It would also be relevant to state that Deo Lal Sah, in response to summons issued under section 131 of the IT Act filed his written submissions categorically stating that the cash found at his Lohanipur residence belonged to him. The written submissions so filed, while admitting ownership of the cash of Rs. 6,18,850/-, also explained the same with reference to cash flow statement.

It would be relevant to take note of the fact that admittedly both the houses, at East Lohanipur as also at Machuatoli belonged to Deo Lal Sah and he had rental income from the same. The undisputed facts which emerge in this case are:

- (a) the house at Lohanipur belonged to Deo Lal Sah;
- (b) Deo Lal Sah was residing in the said house at



Lohanipur;

(c) the recovery of Rs. 6,18,850/- was made from the house at Lohanipur;

(d) Deo Lal Sah admitted that the seized cash belonged to him and also filed a tax return for block assessment along with the cash flow statement explaining the recovered cash (Annexure 10 to the application).

All these facts go to show that the recovered cash in no case could be added to the total income of the appellant since not only it was recovered from a house which belonged to the appellant's father-in-law Deo Lal Sah, the father-in-law of the appellant also laid claim to it and there is no other evidence on record to attach the cash recovered, with the appellant. In such circumstances, it was Deo Lal Sah alone who would be chargeable to tax at the rate of 60 % as provided under section 113 of the IT Act after determination of the same under section 158 BC of the IT Act.

A lot of stress has been laid by learned Sr. Standing Counsel appearing for the Income Tax Department on the fact that the father-in-law of the appellant Deo Lal Sah had no source of income which could explain the large-sum of Rs. 6,18,850/- in cash being recovered from his residential premises.



It was also contended that the daughter of Deo Lal Sah i.e. the wife of the appellant was present when the cash was recovered from the house at Lohanipur and that the appellant had in his statement on oath (Annexure 8 to the writ application) made on 29.01.2002 had accepted that besides his wife who was the only child of her parents, there were no other legal heir and that he was a “Ghar-jamai”.

By stressing on these facts, learned Sr. Standing Counsel has tried to convince the Court that even though the recovery has taken place from Lohanipur where Deo Lal Sah was residing and not from Machuatoli where the appellant was residing, nevertheless it was the appellant who was accumulating the amount seized and the cash found at the residence of Deo Lal Sah belonged to the appellant.

The submissions made by the learned Sr. Standing Counsel for the Income Tax Department in justification of the impugned orders fails to persuade us. Besides that the reasons narrated above are merely conjectural, it is admitted that the wife of the appellant was the only child of her parents and the distance between the two houses at Lohanipur and Machuatoli, both in the town of Patna is not much. In such circumstances it cannot be a matter of surprise if the daughter was present at her



parent's place when the search and seizure by the I.T. Department took place. It is not the case of the department that the house where the appellant and his family is residing does not belong to the appellant's mother-in-law. As such, where the appellant admittedly is living in the house belonging to his mother-in-law, it was natural for him to make the statement on oath on 29.01.2002 that he was a "Ghar-jamai" meaning thereby, that the appellant was living in a property/residential premises in Machuatoli which belonged to his parent's-in-law. In our opinion nothing more can be drawn/deduced from the said statement of the appellant.

In view of the above as also in view of the substantial question of law framed, it would be relevant to quote section 292C herein below for ready reference :-

“Presumption as to assets, books of account, etc.’

292C. [(1)] Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed-

- (i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
- (ii) that the contents of such books of account and other documents are true; and
- (iii) that the signature and every other part of such books of account and other documents



which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A, had been found in the possession or control of that person in the course of a search under section 132.”

Submissions of learned Sr Standing Counsel for the Income Tax Department is that the seized cash was unexplained money in terms of section 69A of the IT Act and the same had not been explained either by the appellant or his father-in-law. It was further submitted that in terms of section 158BB(3) of the IT Act, the burden of proving to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search was on the assessee.

These two objections are answered in the written submission filed by Deo Lal Sah before the Assessing Officer in which, not only he accepted that the cash recovered in the search



on 29.01.2002 at his residential premises in Lohanipur belonged to him but also filed his return of income for block assessment in form 2(b) (Annexure 10), showing the aforesaid seized amount and enclosing with his return, the cash flow statement explaining the seized cash. Thus, in so far as Section 69A of the IT Act is concerned, in view of the facts explained, it was not a case where the assessee offered no explanation, in stead Deo Lal Sah, from whose house the said cash was seized, accepted the same to be his cash and the assessee who is the appellant herein also categorically stated that the said cash was of his father-in-law Deo Lal Sah.

In so far as section 158BB(3) is concerned, the undisclosed income had already been disclosed in the return of income filed by Deo Lal Sah who also accepted it in his written submissions. In our opinion thus, this section 158BB(3) has no applicability in the present case.

Section 132 (4A) of the I.T. Act provides that where any books of Accounts, other documents, money etc. is found in possession or control of any person in course of search, it may be presumed that the same belongs to such person. It is apparent from the facts of the present case that not only has the seized cash been found from the house of Deo Lal Sah, father-in-law of



the appellant, the said Deo Lal Sah in his written statement has also claimed ownership of the said cash. Thus, even in law as per section 132 (4A) of the I.T. Act the cash seized at the Lohanipur residence would be presumed to belong to Deo Lal Sah and not the appellant.

The judgments cited by the respondents are being dealt with herein below :-

(1) Daya Chand v. Commissioner of Income Tax (supra) :-

In this case the cash credit were found in the books of account seized under section 132. It was held that the requirement of section 68 has to be fulfilled by the assessee, even where cash credit are found in the books seized under section 132 (4A). The facts of the said case and the case in hand being absolutely different and distinguishable, the ratio of the said judgment has no applicability here.

(2) Sukh Ram v. Assistant Commissioner of Income Tax

(supra) : In this case large amount of cash was recovered from the residential premises of the assessee. The tribunal noted that the books of account did not show any connection with the cash recovered from the assessee. The tribunal held that the assessee had not been able to rebut the presumption under section 132 (4A) of the I.T. Act and held that the addition made under



section 69A of the Act was justified. It was held that when an assessee is found in possession of currency, it is for him to prove that he is not the owner of the currency and it is not for the revenue to prove that the assessee is the owner of the currency found in his possession.

In our opinion, the position settled in case of Sukh Ram (supra), in fact supports the case of the appellant because in the present case it is Deo Lal Sah, from whose residential premises the cash was seized who is also claiming to be the owner of the said seized cash but is not being believed by the Revenue.

(3). Chuharmal v. Commissioner of Income Tax, MP (supra) : This case was cited with reference to pages 254 and 255 by the learned Sr. Standing Counsel for the Income Tax Department dealing with the section 110 of the Evidence Act. From perusal of the relevant pages it would transpire that section 110 of the Evidence Act stipulates that when the question is whether any person is owner of anything of which he is shown to be in possession, onus of proving that he is not the owner is on the person who affirms that he is not the owner. It was observed that it is well settled principles of law, unless contrary is established, that title always follows possession.

In our opinion this judgment also is of no assistance to the



respondents as the seizure of the cash has taken place in the house of Deo Lal Sah, who happens to be the father-in-law of the appellant and resides at Lohanipur, whereas the appellant resides at Machuatoli. Thus, even with the assistance of the said section 110 of the Evidence Act, the seized cash cannot be presumed to be that of the appellant as he was not in possession thereof, and as such the onus of proving that he is not the owner would also not be on the appellant.

Having considered the submissions made on behalf of the appellant and the respondents and on going through the materials available on the record of the case, we, in absence of any evidence present connecting the money seized with the appellant, come to the following conclusions :

- (i) The cash found and seized in course of search on 29.01.2002 at the East Lohanipur residential premises of Deo Lal Sah (father-in-law of the appellant) belongs to Deo Lal Sah alone and not the appellant.
- (ii) The respondent authorities in drawing presumption in terms of section 292C of the IT Act that the cash found and seized belongs to the appellant, have committed serious error in law as



section 292C provides that if money is found in possession of any person in course of search under section 132, it may in any proceeding under the Act be presumed that such money belongs to such person and thus in the instant case since the money/seized cash was found in possession of Deo Lal Sah, it could not have been presumed to belong to the appellant.

(iii) The cash was found at the residence where not only Deo Lal Sah was residing but he also claimed the said cash and thus it will necessarily have to be presumed to be his undisclosed income in terms of section 292C of the IT Act.

(iv) In view of the fact that Deo Lal Sah filed return of income for block assessment along with the cash flow statement explaining the seized cash, there remains no doubt that the refusal of the respondents to not accept the entire cash found in course of search to be the undisclosed income of Deo Lal Sah, in absence of any material to the contrary, is illegal.

The substantial questions of law so framed, are answered



accordingly.

In view of the facts and circumstances stated herein above, we find merit in the instant appeal and in view of the findings arrived at in the preceding paragraphs, we allow this appeal to quash the order dated 14.12.2007 of the Income Tax Tribunal in so far as it restores the order of the Assessing Officer to hold the case of Rs. 6,18,850/- seized from the house of Deo Lal Sah as undisclosed income of the appellant, to add to his total income.

However, in the facts of the case there shall be no order as to costs.

(Jyoti Saran, J)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.08.2019
Transmission Date	NA

