

**(2011) 06 JH CK 0020**

**Jharkhand High Court**

**Case No:** C.WJ.C. No. 588 of 1998 (R)

Mrs. Nisha Jain and Others

APPELLANT

Vs

Union of India (UOI), The  
Commissioner of Income Tax,  
The Additional Commissioner of  
Income Tax and The Income Tax  
Officer

RESPONDENT

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**Date of Decision:** June 14, 2011

**Acts Referred:**

- Income Tax Act, 1961 - Section 131, 143(3), 69

**Hon'ble Judges:** Prakash Tatia, Acting C.J.; Jaya Roy, J

**Bench:** Division Bench

**Advocate:** Ajit Kumar, for the Appellant; Deepak Roshan, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. The Petitioner (now deceased) claimed refund of Rs. 10,99,273/- along with interest in view of the order dated 22.08.1997 passed in I.T.A. No. 48(Pat)/1995 on the ground that the Income Tax Appellate Tribunal held that addition of the income of Rs. 10,99,273/-, which has been explained by the Petitioner, was not taxable income as undisclosed income and therefore natural consequence should have been to refund the amount of Rs. 10,99,273/- to the writ Petitioner and since the amount has not been refunded to the Petitioner the Revenue be directed to pay the said amount with interest. The writ Petitioner died during pendency of this petition and writ is pursued by his legal representatives. For convenience, deceased has been described as Petitioner hereunder.

2. The facts which are not in dispute are that, according to the Petitioner himself, he was acting as an Agent of the Modern Chemicals, Meerut and while acting as agent

of the Modern Chemicals, he purchased the demand drafts of Rs. 17,76,840/- on 31.05.1990. Those drafts were seized during the search and seizure operation taken place in the office and premises of the Central Coalfields Limited, Ranchi on 30.07.1990. The Assessing Officer called upon the Petitioner u/s 131 of the Income Tax Act and examined the Petitioner wherein Petitioner stated that he purchased the bank drafts of Rs. 17,76,840/ in favour of M/s. Central Coalfields Limited for lifting the coal on behalf of M/s. Modern Chemicals, Meerut and money for the purchase of aforesaid bank drafts was provided by North Eastern Transport Agency, Guwahati in which Petitioner himself is a partner along with one Anil Kumar Jain, The Assessing Officer was not satisfied with the explanation of the Petitioner and he added the aforesaid amount of Rs. 17,76,840/- in the total income of the Petitioner as unexplained investment in terms of the provisions of Section 69 of the Income Tax Act vide order dated 30.03.1994 made u/s 143(3) of the Act of 1961. The Petitioner challenged the said order dated 30.03.1994 in appeal and the Commissioner of Income Tax (Appeal), Ranchi vide order dated 24.10.1994 dismissed the Petitioner's appeal. However, the I.T.A.T. accepted the Petitioner's contention and allowed the Petitioner's appeal vide order dated 22.08.1997. However, the amount of Rs. 6,77,567/- was initially adjusted against Petitioner's another income tax liability but upon setting aside said liability refunded to the Petitioner. According to Petitioner the balance amount of Rs. 10,99,273/- has not been refunded.

3. Learned Counsel for the Petitioner submitted that in view of the finding of fact recorded by the I.T.A.T. which attained finality, the Petitioner is entitled to refund of the balance amount of Rs. 10,99,273/-. Learned Counsel for the Petitioner further submitted that the said amount belongs to the Petitioner gets further proved from the fact that the Modern Chemical also was proceeded departmentally by the Revenue and in Modern Chemicals matter the Commissioner of Income Tax vide order dated 16.11.1993 (Annexure-A) took note of the fact that Petitioner claims the amount as his own Modern Chemicals is not claiming said amount and therefore, deleted the addition of the said amount from the income of the Modern Chemicals. This also supports the Petitioner's contention that the Petitioner was entitled to the refund of the total amount of Rs. 17,76,840/, out of which, an amount of Rs. 6,77,567/- has been refunded and this refund of amount also supports the contention of the Petitioner that he alone was entitled for refund of amount whereas the Revenue's stand is that the balance amount of Rs. 10,99,273/- has been adjusted against the liability of the Modern Chemicals and such contradictory stand of the Revenue cannot be justified by treating the same amount for two different parties in the facts of the case.

4 We have considered the submissions of the learned Counsel for the parties and perused the reasons given in the orders referred above. We go by the stand of the Petitioner himself first to find out whether the Petitioner was entitled for the refund of amount in question. The Petitioner's own contention is that he was acting as an agent of the Modern Chemicals, Meerut and in such capacity he purchased the

demand drafts of Rs. 17,76,840/-. The Petitioner's further admitted case is that this money was provided by North Eastern Transport Agency, Guwahati (wrongly mentioned in the writ petition as North Eastern Coal Company, Guwahati). In the order passed by I.T.A.T. in Petitioner's appeal, it has been found that the Petitioner proved that the amount was received by the Petitioner from North Eastern Transport Agency in which Petitioner himself was partner along with one Anil Kumar Jain. Then admittedly the drafts in question were recovered in the search and seizure operation conducted in the premises of the Central Coalfields Limited meaning thereby that total transaction can be summarized in the manner that the Petitioner was working as agent of the Modern Chemicals and obtained (in whatever term) Rs. 17,76,840/- from his own firm i.e. North Eastern Transport Agency, Guwahati and while working as agent of the Modern Chemicals obtained the demand draft of Rs. 17,76,840/- and those drafts were in fact handed over to the Central Coalfields Limited for and on behalf of Modern Chemicals, therefore, the Petitioner in entire transaction was only an agent of the Modern Chemicals and admittedly he had no personal interest in obtaining the drafts in the name of Central Coalfields Limited nor he himself in his individual capacity had obtained the money and had not given these drafts to the Central Coalfields Limited for his benefit in whose name the drafts were obtained obviously as per the instruction of Petitioner's principal i.e. Modern Chemicals, Meerut. This transaction has been projected as though the amount of Rs. 17,76,840/- became Petitioner's own property without there being any basis. In view of the above stand taken by the Petitioner specifically and everywhere and which has been accepted by the I.T.A.T. in the Petitioner's own case the Petitioner is not entitled to refund of said money.

5. So, far as finding recorded in the Modern Chemicals case in the order dated 16.11.1993 deleting the addition against the income of the Modern Chemicals are concerned, that was based on order passed by the C.I.T. (Appeals) in the case of Petitioner's assessment which was subsequently reversed by the I.T.A.T. Not only this so far as the finding recorded in the order dated 16.11.1993 about the deletion of the income from the accounts of the Modern Chemicals is concerned, the Modern Chemicals is not before us and mere disowning of said money by Modern Chemicals cannot make this disputed money of Petitioner. Claim of the Petitioner that from his own investment he purchased the demand drafts is factually wrong and against Petitioner's own admissions referred above in which he admitted that in entire transaction of purchasing the drafts in question he acted as agent of Modern Chemicals and got the money from North Eastern Transport Agency in which he was one of partner only and was not the sole proprietor, therefore he received the money from said N.E.T.A. as agent of Modern Chemicals and soon as he purchased the drafts in the Central Coalfields Limited and handed over the said drafts to Central Coalfields Limited, he completed the work of agent to the extent of taking money for his principal and handing over it to third party on behalf of his principal. Therefore, Petitioner obtained the money from the firm North Eastern Transport

Agency which is his own firm but while obtaining the amount from North Eastern Transport Agency, he did not act as partner of the North Eastern Transport Agency but acted as agent of Modern Chemicals and received the amount on behalf of the Modern Chemicals to be given to the Central Coalfields Limited which he did. These basic facts destroy the claim of the Petitioner's totally and merely the Respondent department has initially adjusted Rs. 6,77,567/- against the tax liability of the Petitioner and when that liability was set aside, the amount was refunded to the Petitioner will not improve the case of the Petitioner nor can change the Petitioner's status as agent of the Modern Chemicals in entire transaction.

6. This is not a case of the Petitioner that, for his own benefit he Look the loan from North Eastern Transport Agency in which he himself was partner without which the amount could not have become the property of the Petitioner for purchase of the drafts in the name of Central Coalfields Limited. At the cost of repetition we may observe that handing over of the drafts to the Central Coalfields Limited by the Petitioner was on behalf of the Modern Chemicals and therefore the Petitioner's claim appears to be based on non-existent ground and by misrepresenting the proved facts recorded in the above orders.

7. In view of the above reasons, we do not find any merit in this writ Petitioner. The writ petition is accordingly dismissed.