IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.811 of 2009

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1. Commissioner Of Income Tax (Central), Patna
2. Deputy Commissioner Of Income Tax, C.C.2

.... Appellant/s

Versus

1. Shri Shashi Kumar Singh 31, Anand Apartment, Opp. Golf Club, Bailey Road, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rishi Roy Sinha, Sr. S.C.
Mrs. Archana Prasad, J.C. to S.C.

For the Respondent/s : Mr. Krishna Nandan Prasad
Mr Kishun Chand Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

10 07-04-2015 Heard learned counsel for the appellants and learned counsel for the respondent.

This appeal has been filed by the Revenue against the order dated 24.07.2009 passed by the Income Tax Appellate Tribunal, Patna Bench in IT No. 202(PAT)/2008 for the Assessment Year 1997-98 by which the appeal of the Revenue has been dismissed.

In the present matter, certain seizures had taken place and the block assessment was made for the period from 1986-87 to 1996-97 up to 27.09.1996. In the block assessment years certain investments in the name of the respondent and others were treated as undisclosed income of the assessee by the

Assessing Officer which additions were challenged by the assessee before the Commissioner of Income Tax (Appeal). Against the block assessment, the assessee filed an appeal before the Income Tax Appellate Tribunal in which the aforesaid additions were directed to be deleted by order dated 30.12.2005 of the Tribunal. The assessee had also filed return for another assessment year 1997-98 showing an income of Rs.1,57,100/-. The Assessing Officer enhanced the same to the total taxable income of Rs.14,85,440/- for the Assessment Year 1997-98 after making additions under various counts which were those very additions which had been made in the block assessment years. Aggrieved by the same, the assessee filed appeal before the Commissioner of Income Tax (Appeal) on the basis of the order of the Tribunal, when the order of the Assessing Officer was set aside, aggrieved by it the Revenue filed appeal before the Tribunal which was dismissed by the aforesaid impugned order.

Learned Senior Standing Counsel for the Income Tax Department has sought to assail the order of the Tribunal on the ground that the Assessing Officer had the authority to make regular assessment even after the block assessment had been made. For the block assessment having been made including the income for the assessment year 1997-98 upto 27.09.1996 and, thus, there was nothing wrong in the Assessing Officer to have made the said additions on the basis of the materials on record as he has done and according to him the Commissioner of Income Tax (Appeals) ought not to have set aside the said additions only on the ground of the decision of the Tribunal. With regard to the same, learned Senior Standing Counsel cited the decision of Gujarat High Court in the case of N.R. Paper and Board Limited and others Vs. Deputy Commissioner of Income Tax; (1998) 234 ITR 733 (Guj).

The aforesaid decision of the Gujarat High Court is an authority only for the proposition that apart from block assessment, for a particular assessment year regular assessment can also be done but in the said case, there was no such issue as to whether the same investments and income which had been already assessed for the block assessment years and subsequently set aside by the appellate order could have again been included in the course of regular assessment.

In our view, the same could not have been done and the Commissioner of Income Tax has rightly held against the Revenue. The matter could be looked into from a different angle which would clarify the position. Let us assume that in the present matter the block assessment made by the Assessing Officer for the period 1986-87 till 1996-97 upto the period 27.09.1996 had not been interfered with in the appeal by the C.I.T. Appeal or by the Appellate Tribunal; could it have been open to the Assessing Officer, in course of regular assessment for the assessment year 1997-98 to have included in the assessment those very amounts. The answer would have been clearly no. In the said situation when those very assessment once made having been set aside by the appellate authority, there can be no question for the Assessing Officer to again assess the same in regular assessment. Any other income of the assessee which had not been assessed in the block assessment year could alone have been the subject matter of regular assessment. The Assessing Officer has clearly failed to understand the same and has acted in a most cavalier manner and the same income has been assessed in both the assessments. The C.I.T. (Appeal) has rightly set aside those additions and his order has rightly been upheld by the Appellate Tribunal in the order which has been challenged before us.

For the aforesaid reason; we find no merit in this appeal. It is accordingly dismissed.

(Ramesh Kumar Datta, J)

Amin/-

(Anjana Mishra, J)

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