IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.147 of 2009

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The Commissioner of Income Tax Central, Patna

.... Appellant

Versus

Inter Pharmaceuticals(I) Pvt. Ltd., Ashok Cinema Building, Patna.

.... Respondent

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Appearance :

For the Appellant : Mrs. Archana Sinha, Sr.S.C.
Mr. Suman Kumar Mishra, Jr.S.C.

For the Respondent : None

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 24-03-2015

Heard learned counsel for the appellant.

The appeal has been filed against the order dated 29.08.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No.64/Pat/05 with respect to the assessment year 1996-97 by which the Tribunal has upheld the order dated 15.10.2004 passed by the Commissioner of Income Tax (Appeals), Jamshedpur.

The assessee was supplier of medicines and chemicals to various parties including the Animal

Husbandry Department (AHD) of the Government of Bihar. Pursuant to a notice under Section 148 of the Income Tax Act for the aforesaid assessment year, the assessee filed his return of income for the said assessment year on 30.11.1996 showing the total income of Rs. 3,26,565/-. In the audited profit and loss account of the assessee, the total sale figure was shown to the extent of Rs. 3,30,75,704/-. The Assessing Officer came to the conclusion that out of the aforesaid amount, supplies of Rs. 2,62,10,979/- made to the A.H.D. ought to be treated as 100% as income of the assessee and so also with regard to the remaining supplies of Rs. 68,64,725/- made to other parties the Assessing Officer came to the conclusion that neither purchases nor closing stock nor any papers relating to such transaction could be verified because of non-production of any evidence in the matter, hence the balance amount is also taken as income in the hands of the assessee.

Aggrieved by the same, the appellant approached the CIT (Appeals) by filing the appeal. The CIT (Appeals) upon consideration of the relevant materials came to the conclusion that the income of the assessee could be bifurcated as income from supplies to private parties i.e., non-AHD parties, income from supply to AH Department to the extent of Rs.1,65,13,065/- and income from receipt against non-supply to AHD to the extent of Rs. 96,97,914/-. The total receipt from AH Department was coming to Rs.2,62,10,979/- and accordingly he held the entire income from receipt against non-supply to AH Department as the income of the assessee, whereas the income from admitted supply to AH Department was to be treated as 10 per cent of the supply made.

Similarly, with regard to income from supply to the private (i.e. non- AHD) parties CIT (Appeals) came to the conclusion that while it is understandable that the appellant, in connivance with some government servants, has fraudulently earned income from a government department thus putting the general public at loss, there is no reason why private parties would also volunteer to suffer loss and make payments to the appellant without commensurate returns and, therefore, even if the appellant is unable to prove expenses against receipts from the private parties, it would stand to reason to presume that reasonable supplies were made to the concerned private parties and they have made the payments against these supplies.

For the said reason, the CIT (Appeals) held that on a reasonable estimate 10% of the supplies of Rs.68, 64,725/- has to be treated as income of the assessee for the said assessment year.

Aggrieved by the aforesaid order, the Department filed an appeal before the Income Tax Appellate Tribunal, which has upheld the order of the CIT (Appeals) as reasonable and in conformity with the views expressed by the Tribunal with respect to the earlier assessment years.

Before us learned counsel for the Revenue has sought to assail the order of the Tribunal stating that since the assessee had failed to give names of the parties and the supplies made to them could not be verified, hence the order of the Assessing Officer that the entire receipts were to be treated as income of the assessee could not have been interfered with by the CIT (Appeals) and the Tribunal.

We are unable to accept the said submission of the learned counsel for the Income Tax Department. So far as the figures of supplies are concerned, the same are derived from the audited accounts and the figures of the CBI by the Assessing Officer as well as the Appellate Authorities and the same are not in dispute. Once it is accepted that the assessee had earlier made supplies to private parties, the reasons adopted by the CIT (Appeals) and Tribunal appear to be unassailable.

In the aforesaid view of the matter, we do not find that any substantial question of law arises in the present appeal. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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