IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.701 of 2010

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Jcit Range-3, Darbhanga

.... Appellant/s

Versus

M/S Chandan Talkies Rosera, Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Archna Sinha

For the Respondent/s : Mr.

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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)

2 20-04-2015 Heard learned counsel for the appellant Income Tax Department.

The appeal has been filed against the order dated 09.04.2010 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in I.T.A. No. 177/Pat/09 relating to assessment year 2001-02 .

The facts of the case lie in a very narrow compass. The assessee had admittedly received bank draft from two parties which he had failed to show that they were crossed as account payee but on the basis of evidence produced by the assessee it was found that the drafts were deposited in his bank account and the transaction have been made through the banking channels. On the said finding penalty had been imposed upon the assessee for contravention of Section 269SS of the Income Tax Act by the Assessing Officer under Section 271D of the Act which was upheld by the C.I.T. (Appeal). The respondent filed the aforesaid appeal before the Tribunal which was allowed holding that failure of the assessee to cross the bank draft and write "account payee" was at the most technical default, relying upon the decision of the Apex Court in the case of Hindustan Steel Ltd vs. State of Orissa (1972) 83 ITR 26 (SC).

Learned Sr. Counsel for the Income Tax Department has assailed the aforesaid order of the Tribunal holding that in the present matter the ingredients of section 269SS of the Act have not been made out and the Tribunal was not justified in interfering with the order of penalty passed by the Joint Commissioner and upheld by the C.I.T. (Appeal).

We are unable to agree with the aforesaid submissions of learned counsel for the Revenue. In the case of Hindustan Steel Ltd (supra) it was held by the Apex Court as follows :-

> " ……… An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in

> refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute."

It is evident from the aforesaid decision of the Apex Court that mere technical breach of the statutory provision would not make a person liable to be imposed penalty.

In the present matter, the action of the assessee was clearly what was intended by the provision of Section 269SS of the Act which was to ensure that loans deposited exceeding Rs. 20,000/- are routed through banking channels which the assessee has successfully shown in the present matter, although, technically the bank draft in question ought to have been crossed and marked account payee.

In the aforesaid view of the matter, we do not find any substantial question of law arise in the present matter as the order of the Tribunal appears to be justified in view of the law laid down by the Apex Court.

The appeal is, accordingly dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

Saif/-Jagdish

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