IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1 of 2006

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The Dy.Commissioner of Income Tax, Central Circle-2, Patna
.... Assessing Officer/Appellant
Versus
Sri A.C.Ranjan, Fisheries campus, Ranchi
.... Assessee/Respondent

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Appearance :
For the Appellant/s : Mr. Rishi Raj Sinha, Sr.S.C. with
Ms. Archana Prasad, Jr.S.C.
For the Respondent/s : Mr. Krishna Nandan Pd, Advocate
Mr. K.C.K. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

20 09-11-2015 Heard learned counsel for the appellant-Revenue and learned counsel for the respondent.

Learned counsel for the respondent does not press I.A.No. 9241 of 2014 and it is, accordingly, dismissed as not pressed.

At the outset, learned counsel for the respondent submits that the present appeal has been filed against the impugned order dated 8.8.2005 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna not in an Appeal but in a Miscellaneous Application filed under Section 254(2) of the Income Tax Act and thus the appeal itself is not maintainable before the High Court under Section 260A of the Act since Section 260A(1) clearly states that an appeal shall lie before this Court only against an order passed in an appeal by the Tribunal. An order under Section 254(2) not being an order passed in an appeal, hence no appeal would lie before this Court and there is no question at all of considering any substantial question of law, arising out of the said order, the appeal itself being not maintainable before this Court.

In support of the aforesaid proposition, learned counsel relies upon a decision of this Court dated 30.3.2015 in Miscellaneous Appeal No. 509 of 2007 (Commissioner of Income Tax-1, Patna & Anr. vs. Sri Chandra Mohan Prasad) in which the aforesaid proposition has been laid down.

In the aforesaid circumstances, we are of the view that the present appeal itself is not maintainable before this Court against an order passed by the Tribunal under Section 254(2) of the Act and thus there is no question of considering any substantial question of law which may or may not arise therein.

The appeal is, accordingly, dismissed as not maintainable.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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