# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Miscellaneous Appeal No.509 of 2007**

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1. Commissioner of Income Tax -1, Patna
2. Asstt. Commissioner of Income Tax, Central Circle-1, Patna

.... .... Assessing Officer/Appellants

Versus

Sri Chandra Mohan Prasad, son of C.N.Prasad, IAS Colony, Bailey Road, West of canal, Danapur, Patna

.... .... Assessee/Respondent

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**Appearance :**

For the Appellant/s : Ms. Archana Sinha, Sr.S.C. with Mr. Suman Kumar Mishra, Jr. S.C.

For the Respondent/s : Mr. D.V.Pathy with Mrs. Manju Jha, Advocates

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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)**



7 30-03-2015 Heard learned counsel for the appellant-Income Tax Department and learned counsel for the private respondent.

The appeal has been filed against the order dated 11.5.2007 passed by the Income Tax Appellate Tribunal, Patna in MA No. 63/Pat/06 arising out of IT(SS) No. 14/Pat/04 with regard to Block period 1991-92 to 2000-01 and up to 23.11.2000. By the aforesaid order the Tribunal has dismissed the Miscellaneous Application after holding that the Tribunal has passed the order in appeal on merit in respect of both the issues disputed by the Department but the Department has not pointed out any mistake apparent on the record and on the other hand the Department wants review of the order of the Tribunal which is not permissible under Section 254(2) of the Act and further that there is no mistake in the order dated 30.12.2005 of the Tribunal.

Learned counsel for the respondent raises a preliminary objection to the maintainability of the appeal and submits that under the provisions of Section 260A of the Act an appeal lies to the High Court from an order passed by the Appellate Tribunal in appeal, whereas the present impugned order has been passed not in an appeal but in a Miscellaneous Application under Section 254(2) of the Act.

It is further submitted by learned counsel that no substantial question of law arises from the said order dated 11.5.2007 and for this reason also the appeal is not fit to be considered.

Learned counsel for the appellants is unable to meet the aforesaid contentions but submits that the substantial questions of law in the present appeal had been framed on the basis of the order dated 30.12.2005 in the appeal by the Tribunal and inadvertently the said order has not been challenged before this Court.

In our view, there is substance in the submission of learned counsel for the respondent. Sub-Section (1) of Section 260A of the Income Tax Act clearly provides that an appeal shall lie to the High Court from any order passed by the Appellate Tribunal if the High Court is satisfied that the case involves substantial question of law. Although sub-Section (2) states that if any one is aggrieved by any order passed by the Appellate Tribunal he may file an appeal before the High Court and such appeal under this sub-Section has to be filed within 120 days from the date of the order in the form of a memorandum of appeal besides stating the substantial question of law involved but the use of the words ‘any order’ under sub-Section (2) is not really meant to expand the scope of the appeal to be filed before the High Court under sub-Section (1) from any order passed in appeal by the Appellate Tribunal. There does appear to be some ambiguity in the manner in which sub-Section (2) of Section 260A has been framed but overall it appears that it essentially elaborates how the appeal under sub-Section (1) is to be filed, within what time and by whom.

The appeal before us has not been filed against an order passed by the Tribunal in appeal, rather against an order passed in a Miscellaneous Application filed before the Tribunal under Section 254(2) of the Act.

Even otherwise it is evident that refusal to rectify any mistake apparent from the record under Section 254(2) does not touch the original order which remains intact and if at all the Department was aggrieved by the original order it could have preferred an appeal against the same which it has not chosen to do.

The appeal is, accordingly, dismissed.

**(Ramesh Kumar Datta, J)**

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**(Anjana Mishra, J)**

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