IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.362 of 2011

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Assistant Commissioner of Income Tax Circle-4, Patna
.... Appellant/s
Versus
M/S Chandan Automobiles, Old Bypass Road, Kankarbagh, Patna-20
.... Respondent/s

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Appearance :
For the Appellant/s : Mrs. Archana Sinha @ Archana Shahi
Mr. Vijaya Laxmi Srivastava

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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)

2 18-08-2015 Heard learned counsel for the appellant.

The appeal has been filed against the order dated 10.12.2010 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No. 138/Pat/2009 for the assessment year 2005-06.

By the aforesaid order the appeal filed by the assessee was partly allowed by the Tribunal. The assessee is an authorized dealer of Hero Honda and a registered dealer of motor cycle, etc. The Hero Honda company had floated a scheme which was valid for the period 14.1.2005 to 31.3.2005 under which the customers were given special discount/ rebate of Rs. 1001/- on making advance payment for purchase of motorcycle manufactured by the company. In the account of the assessee advance from customers/SSP was to the extent of Rs.

36,51,240/- which was treated by the Assessing Officer as bogus liability claimed by the assessee on the ground that out of notices issued to 30 customers from the large list supplied by the assessee only 9 parties had turned up and out of them 6 had not confirmed regarding giving advance to the assessee. The order of the Assessing Officer was upheld by the CIT (Appeals) to the extent of Rs. 32,85,968. Thereafter the Tribunal by its impugned order has set aside the order of the CIT (Appeals) and the Assessing Officer on the point.

While arriving at its conclusion the Tribunal found that the scheme announced by the Company itself was not under question and the only reasons for the addition by the Assessing Officer and being upheld by the CIT (Appeals) was the fact that the parties who complied to the notices issued by the Assessing Officer under Section 133(6) of the Contract Act did not admit regarding payment made by them on or before 31.3.2005. By examining the confirmations, copies of which were on the record of the Tribunal, it was found that in all the confirmations it had been stated by the respective parties that they did not make payment on 31.3.2005 and thus the Tribunal was of the view that the findings recorded by the CIT(Appeals) was not correct. The Tribunal further noted that accepting advance in respect of certain scheme by the Automobile Dealers is a usual feature of the business activity carried on by them. The registration of vehicle requires identity and exact address of the person to whom it has been sold and since the list had been given to the Assessing Officer by the assessee giving the names of the parties to whom the motorcycles were sold along with the proper addresses, the existence of those persons could have been traced from the D.T.O. In the said circumstances the Tribunal was of the view that the advance was received from the customers to whom delivery had been made by the assessee immediately after close of the financial year since it was not possible to make so much deliveries on one date.

Learned counsel for the appellant is unable to show before us as to how the aforesaid line of reasoning adopted by the Tribunal on the basis of material before it, gives rise to any substantial question of law in the matter.

Reliance by learned counsel upon Section 68 of the Income Tax Act appears to be wholly misconceived in the facts of the present matter as the same was not a loan borrowed by the assessee from any other party in the course of business rather it was payment received by a dealer of motorcycle in the course of business under a scheme. There is nothing in the order of the Assessing Officer or the CIT (Appeals) to show that pursuant to the receipt of the said amounts the deliveries had not been affected and motorcycles not actually sold.

In the absence of such findings we find no reason to disagree with the view taken by the Tribunal. The appeal is devoid of merit raising no question of law, much less substantial question of law.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

S.Pandey/-

(Sudhir Singh, J)

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