# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Miscellaneous Appeal No.649 of 2010**

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Assistant Commissioner of Income Tax Central Circle-4, Patna

.... .... Appellant/s

Versus

M/S Kiran Prakashan, Naya Tola, Patna

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. RISHI RAJ SINHA, Sr. S.C. IT

For the Respondent/s : Mr. Ajay Kumar Rastogi, Advocate

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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: 17-04-2015**

Heard learned counsel for the appellant and learned counsel for the respondent.

The appeal has been filed against the order dated 31.3.2010 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in I.T.(S.S.) No. 118/Pat./2005 for the block period 1991-92 to 7.6.2000.

The relevant facts of the case are that aggrieved by the order of the Assessing Officer for the block period 1991-92 to 7.6.2000 the assessee and the Revenue filed their respective appeals before the Tribunal which was disposed of by the common impugned order dated 31.3.2010. The assessee for the first time raised an issue before the Tribunal that no notice under Section 143(2) of the Income Tax Act was issued before completing the block assessment in terms of the decision of the Supreme Court in the case of Assistant Commissioner, Income Tax & another Vs. Hotel Blue Moon & Ors: 321 ITR 362. The Tribunal however, was of the view that there has been no finding of fact or evidence on the record regarding non-service of notice or otherwise under

Section 143(2) of the Act within the period of limitation and thus remanded the matter back to the CIT (Appeal) for adjudication of the same in view of the aforesaid decision. It was further held that the issue goes to the root of the cause. The other ground of the assessee was also restored back to the file of the CIT (Appeal) with the directions that in case the assessee's objection with regard to service of notice under section 143(2) is found to be incorrect, decision of the CIT(A) with respect to issues involved in other grounds will stand and the assessee will be free to come before the Tribunal, if so advised, for adjudication of the case. For the same reason the issues involved in Revenue appeal were also sent back to the file of the CIT (Appeal) with the direction that in case the assessee's objection with regard to the service of notice under Section 143(2) is found to be incorrect, the decision of the CIT (A) with respect to issues involved in other grounds will stand and the revenue will be free to come before the Tribunal, if so advised, for adjudication of the case.

Learned Standing Counsel for the Income Tax Department has sought to assail the aforesaid order of the Tribunal on the ground that no such issue had been raised before the CIT (Appeal), therefore, the issues ought not to have been permitted to be raised before the Tribunal for the first time.

In our view, the decision of the Tribunal to remand the matter on the limited issue of giving findings of fact appears to be unassailable considering that a pure question of law recently settled by the Supreme Court has been raised by the assessee before the Tribunal but there being no finding of fact on the question of valid service of notice under Section 143(2) within the period of limitation provided under the Act, the said pure question of law could not have been decided in the absence of first there being finding of fact regarding the service or non-service of notice under Section 143(2) of the Act.

We thus do not find any ground to interfere with the order of the Tribunal. The appeal is, accordingly, dismissed.



**(Ramesh Kumar Datta, J)**

S.Pandey/-

**(Anjana Mishra, J)**



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