IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.681 of 2010

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I.T.O. Ward-1, Ara

.... Appellant/s

Versus

M/S Parwati Devi, Club Rd. Ara (Bhojpur)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ARCHANA SINHA, Sr. SC, Income Tax
Mr. Suman Kumar Mishra, Jr. SC, Income Tax

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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 Senior Standing Counsel for the Income Tax Department.

The appeal has been filed against the order dated 26.3.2010 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No. 208/Pat./2009 relating to the assessment year 2006-07.

The short facts of the case are that a pre-assessment order passed by the Income Tax Officer, Ward No. 1, Ara under Section 144 of the Income Tax Act was challenged by the respondent-assessee before the Commissioner, Income Tax (Appeals), Dhanbad, Camp Office, Patna in which the CIT(A) recorded the finding that there was no valid service of notice under Section 143(2) before the last date of initiating the proceedings under Section 143(3) of the Act and the assessment order passed pursuant to such notice cannot be upheld and it was, accordingly, quashed.

Aggrieved by the same the Department filed its appeal before the ITAT, Patna Bench which after quoting the findings and observations of the

CIT (A) held that the facts recorded by the CIT(Appeal) have not been rebutted by the Department and therefore, the order passed by the CIT(Appeal) was confirmed and the appeal filed by the Department was dismissed.

Before us, learned counsel for the appellant Revenue has sought to come back to the issue of service of notice. According to us, the findings given thereon by the CIT (Appeal) are pure findings of fact which were not even rebutted by the Department in appeal before the Tribunal which is the last Court of facts and has, accordingly, confirmed the order passed by the CIT (Appeal).

In the aforesaid view of the matter the legal consequences flowing from non-service of a valid notice under Section 143(2) would automatically follow and the only consequence would be that the assessment order passed pursuant to the same would have to be quashed.

We find no reason 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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