IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.383 of 2009

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Income Tax officer Spl.Inv.Ward-1, Patna

.... Appellant/s

Versus

M/S Inter Pharmaceuticals India Pvt.Ltd., Ashok Cinema Building, Budh Marg, Patna.

.... Respondent/s

==

with

Miscellaneous Appeal No.386 of 2009

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Income Tax officer Spl.Inv.Ward-1, Patna

.... Appellant/s

Versus

M/S Inter Pharmaceuticals India Pvt. Ltd. Ashok Cinema Building, Patna.

.... Respondent/s

Appearance:-
For the appellant: Mrs. Archana Sinha
(In both Appeals: Mr. Suman Kumar Mishra
For the Respondent:

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

18 26-03-2015 Heard learned counsel for the appellant.

Both the appeals have been filed against the common order dated 30.1.2009 passed by the Income Tax Tribunal, Patna Bench, Patna relating the assessment years 1993-94 and 1994-95.

The appeal before the Tribunal was filed by the Revenue against the order of the C.I.T. (Appeals) setting aside the order of the Assessing Officer and restoring the matter to the file of A.O. for complying with the requirement of Section 148 of the Income Tax Act by recording the reasons and also for necessary examination of relevant evidence after affording adequate and effective opportunity to the assessee. In the appeal before the Tribunal on a difference of opinion, the matter was referred to a Third Member, who formulated the following question:-

> "Whether non-communication of reasons recorded for initiation of re-assessment proceedings and determination of total income without complete enquiry and opportunity to the assessee are irregularities justifying the first appellate authority's action to set aside the matter back to the file of A.O."

Both on the point of notice under Section 148 of the Income Tax Act as also the redetermination of total income, the aforesaid question framed by the Third Member was answered in affirmative, i.e., in favour of the assessee. Pursuant to the same, the order dated 30.1.2009 impugned before us has been filed.

Learned counsel for the appellant has before us sought to argue that the Tribunal has not correctly applied the decision of the Apex Court in the case of GKN Driveshafts (India) Ltd. vs. Income Tax Officer & others: 259 ITR 19 (SC) submitting that under the said decision when a notice under Section 148 of the Income Tax Act, 1961 is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices, upon which the A.O. is bound to furnish reasons within a reasonable time and on receipt of reasons, the noticee is entitled to file objections to issuance of notice and the A.O. is bound to dispose of the same by passing a speaking order.

It is submitted by learned counsel for the appellant that no reason was sought and, therefore, the same was not given by the Assessing Officer.

The aforesaid submission appears to be contrary to the findings clearly recorded by the C.I.T. (Appeal) that the reasons were asked for by the assessee at the first stage verbally but the same was not communicated by the Assessing Officer.

In view of the aforesaid clear findings, we do not find any merit in the submission of learned counsel for the appellant. Thus, no substantial question of law arises out of the aforesaid findings of the Tribunal.

Both the appeals are, accordingly, dismissed.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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