IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.70 of 2009

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Assistant Commissioner of Income Tax, Circle – 4, Patna

.... Appellant/s

Versus

M/S Nirman Cement Ltd., 8, Narmada Apartment, Exhibition Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Archana Sinha, Jr. S.C.

For the Respondent/s : None.

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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)

8 23-03-2015 Heard learned counsel for the appellant.

This appeal has been filed against the order dated 29.08.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna, by which the appeal filed by the Income Tax, Department in I.T.A. No. 141/Pat/06 for the assessment year 1999-2000 has been dismissed.

The only issue before the Tribunal, which is assailed here before us, is with regard to deleting the addition of Rs. 59,81,000/- made by the Commissioner of Income Tax (Appeals), from the order of the Assessing Officer, which has been upheld in appeal by the Tribunal.

The aforesaid amounts were, admittedly, on account of forfeiture of equity shares and debentures due to non-payment of allotment money.

It is not in dispute that the said forfeiture was in accordance with the provisions of the Companies Act and not permissible under the Income Tax Act. The forfeiture related to amounts which formed part of the capital of the Company and thus the said amounts on forfeiture cannot be considered to be revenue receipts and the CIT (Appeal) and the Tribunal accordingly held against the Revenue. While doing so the Tribunal has relied upon two decisions of Special Bench of the Income Tax Appellate Tribunal in the case of **Prism Cement Limited Vs. JCIT (2006) 285 I.T.R. (AT) 43 ITAT (MUM.)** and in the case of **Deepak Fertilizers and Petrochemical Corporation Ltd. Vs. DCIT: (2008) 304 I.T.R. (AT) 167 (Mumbai).**

Learned counsel for the appellant is unable to show as to how such deleted amounts can be considered as revenue receipts.

In the aforesaid circumstances, we are unable to disagree with the finding of the Tribunal. No substantial questions of law arise in the present matter. The appeal is accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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