IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.916 of 2011

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ITO Ward- 2, Biharsharif, Nalanda

.... Respondent/Appellant

Versus

Shri Shailendra Kumar, Prop. M/s. Neha Petroleum, Gandhi Tola, Rajgir, Nalanda

.... Appellant/Respondent

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Appearance :

For the Appellant/s : Mrs. Archana Sinha, Sr.S.C. with M/S Vijaya Laxmi Srivastava, Alok Kumar, Advocates

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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)

5 02-09-2015 Heard learned counsel for the appellant.

The appeal has been filed assailing the order dated 9.8.2011 passed by the Income-tax Appellate Tribunal, Patna Bench, Patna in ITA No. 148/PAT/2009 relating to assessment year 2002-03.

The Assessing Officer by his order dated 26.12.2007 had rejected the books of account of the assessee under Section 145(3), wrongly mentioned as 145(2) by the Assessing Officer in his assessment order. Further the Assessing Officer has added back an amount of Rs.48,60,550/- which the assessee has himself admitted to have received for making supplies of petroleum products to one Jitendra Kumar and four other persons. The money has been admittedly received in the account of the assessee through cheque drawn by the said Jitendra Kumar and four other persons who are stated to be related to the said Jitendra Kumar. In appeal the Commissioner of Income-tax (Appeals) upheld the assessment order and dismissed the appeal. In further appeal, the Income-tax Appellate Tribunal, Patna Bench, Patna set aside the orders of the Assessing Officer and CIT appeal on facts.

Learned Sr. Standing Counsel for the Revenue has sought to argue that in the given facts and circumstances, since the assessee had failed to produce complete sale/purchase invoices of petroleum products in the entire assessment year hence the Assessing Officer was justified in rejecting the books of account of the assessee and proceeding for initiation of penalty. It is also submitted by learned counsel that the addition of Rs.48,60,450/- made by the Assessing Officer and upheld by the CIT appeal was clearly justified, as enquiries were made with regard to the said Jitendra Kumar on the basis of his assessment order in which it was found that the assessee has drawn Rs.26,62,721/- through cheque from Jitendra Kumar and not as advance for petroleum products and it was further observed in the said Assessment Order of the said Jitendra Kumar for the Assessment Year 2002-03 that he did not have any dealing with the petroleum products and the repayment of Rs.26,62,721/- was made in cash by the respondent assessee Shailendra Kumar to the said Jitendra Kumar during the same Financial Year 2001-02. It is thus submitted by learned counsel that the Assessing Officer on the basis of the materials on record added the sum of Rs.48,60,550/- to the total income of the assessee as unexplained.

On the other hand, it is evident from the order of CIT appeal that the case of the assessee was that, firstly, he had received the amounts from the said Jitendra Kumar and his family members and associates by cheque as advance from time to time for supplying petroleum products and the proximity of the receipt of cheques from Jitendra Kumar for the supplies made on the basis of the invoices, etc. was explained before the ITAT.

It was also the case of the assessee that the books of accounts of the assessee are audited and moreover the Sales Tax Department had accepted the sales made by the assessee to the said Jitendra Kumar and not disputed the same.

Moreover, it was pointed out that the said Jitendra Kumar had in course of assessment changed his stand stating that cash deposit was for refund of loan by the assessee.

On the basis of the aforesaid facts the Tribunal came to the conclusion that simply on account of the changeable stand made by the said Jitendra Kumar in his assessment order it cannot be held that the assessee has made wrong statement. Thus the findings of the Tribunal are pure findings of fact based upon factual materials on the record.

In the aforesaid view of the matter, we do not find any substantial question of law arises in the present matter which needs to be considered by this Court.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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