IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.301 of 2007

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1. Commissioner of Income Tax (Central), Patna
2. Asstt. Commissioner of Income Tax, Circle – 1, Patna

.... Appellant/s

Versus

Sri Sandeep Mallik, C/o- Sri Vijay Kumar Malik 1/158, Gali Bagichi Wali, Punja Sharif, Kashmere Gate, Delhi – 110006.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rishi Raj Sinha, Sr. S.C
		Mrs. Archana Prasad, Jr. S.C.
For the Respondent/s	:	Mr. D.V. Pathy, Advocate
		Mr. Abhi Shankar, Advocate
		Mrs. Manju Jha, Advocate

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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)

10 26-02-2015 Heard learned counsel for the appellants and learned counsel for the respondents.

The appeal has been filed against the order dated 08.02.2007 passed by Income Tax Appellate Tribunal, Patna in ITA No. 268/Pat/2005 with respect to assessment year 1991-1992.

The relevant facts of this case, as briefly stated are that at a stage when no assessment or re-assessment proceedings were pending, the Income Tax Officer made a reference to the Valuation Officer on 24/27.10.1997. On the basis of the valuation report received, notices were issued under Section 148 and re-assessment proceeding initiated. The Tribunal has held that when no proceedings were pending under the Income Tax Act on the day the reference was made to the Valuation Officer, the Assessing Officer had no jurisdiction to make such reference.

Learned counsel for the Revenue submits that in view of the amendment brought about by Finance Act, 2004 retrospectively, with effect from 15.11.1972, by inserting Section 142A, the action of the Assessing Officer gets validated and it cannot be held that it was beyond jurisdiction.

It is difficult to accept the aforesaid submission of learned counsel for the appellants. Even Section 142A speaks of the Assessing Officer making a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him for the purpose of assessment or re-assessment. Thus, the requirement of such reference being made during the course of assessment or re-assessment proceeding is not given up in the new Section 142A brought on the statute book with retrospective effect. Hence, despite Section 142A, the action of the Assessing Officer continues to be without jurisdiction, there being admittedly no assessment or re-assessment proceeding pending on the day he made the reference to the Valuation Officer.

We find no error in the order of the learned Tribunal nor any substantial question of law arising in the present appeal. The appeal is accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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