IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.686 of 2014

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1 TO Ward-3, Gaya

.... Respondent/ Appellant

Versus

Ram Janam Singh, Prop. M/S. Unique Auto Services, Arwal Road, Jahanabad.

.... Appellant/Respondent

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Appearance :

For the Appellant/s	:	Mrs. Archana Sinha @ Archana Shahi Sr. Standing Counsel Mr. Alok Kumar Ms.Shalini Bihari
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

5 17-03-2016 The challenge in the present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as `the Act') is to an order passed by the Income Tax Appellate Tribunal, Patna Bench, Patna, in ITA No. 65/Pat/2012, on 9th July, 2014, relating to assessment year 2002-03.

2. The assessee has filed his return on 29th October, 2002 showing a total income of Rs.1,22,040/-. A notice under Section 148 of the Act was issued on 21st January, 2009. The assessee submitted that the return already filed on 29th October, 2002 be treated as return under Section 148 of the Act. Thereafter, the learned Assessing Officer found that the assessee has claimed

huge depreciation of Rs.7,56,582/- and expenses @80% without maintaining books. Thus, he framed an opinion that he has reasons to believe that income to the tune of Rs.7,56,582/- has escaped assessment by way of excess depreciation within the meaning of Section 147, Explanation 2 (iii) and (iv) of the Act.

3. The Commissioner of Income Tax (Appeals) upheld the order passed by the Assessing Officer whereas the Tribunal allowed the appeal of the assessee relying upon the judgment of the Supreme Court in the case of **ACIT vs. Rajesh Javeri Stock Brokers Pvt. Ltd. [299 ITR 500 (SC)]** that the Assessing Officer is not justified in invoking the jurisdiction under Section 147 of the Act.

4. We find that the Assessing Officer proceeded to grant reassessment only under Section 147 of the Act on the basis of change of opinion, but even otherwise we find that the appeal is not maintainable in terms of the Circular of the Government of India, Ministry of Finance, Department of Revenue, Central Board Direct Taxes, New Delhi, dated 10.12.2015, whereby appeals having tax effect of less than Rupees Twenty lacs are not to be filed before the High Court.

5. Since the tax effect on account of deletion of addition of amount of Rs.7,56,582/- would be less than Rupees

Twenty lacs, therefore, in view of the Circular mentioned above, this appeal cannot be maintained by the revenue before this Court.

6. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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