IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.570 of 2008

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M/S Taran Developers Pvt. Ltd., 1st Floor, Basudham, Rajendra Path, Kadamkuan, Patna through Rajan Singh, Manager, aged about 54 years, son of Late Sia Saran Singh, presently resident of J/2, Kanti Sadan, Vijay Nagar, Opposite Manas Mandir, Hanuman Nagar, Kankarbagh, Patna – 800 020, P.O. Lohianagar & P.S. Kankarbagh

.... Assessee / Appellant / Respondent / Appellant

Versus

1. The Commissioner of Income Tax, Bihar, Patna
2. The Deputy Commissioner of Income Tax, Circle-II, Patna.

.... Assessing Officer / Respondent / Appellant / Respondents.

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Appearance:

For the Appellant: Mr. Ajay Kumar Rastogi and Mr. Parijat Saurav, Advocates.

For the Respondents: (Income Tax Dept.) Mr. Rishi Raj Sinha, Sr.S.C. Ms. Archana Prasad, Jr.S.C.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 17-03-2016

The assessee is in appeal under Section 260A of the Income-tax Act, 1961 against an order passed by the Income Tax Appellate Tribunal, Patna on 16.05.2008, arising out of ITA 433/Pat/2007 relating to Assessment Year 2003-2004.

2. The assessee is a Private Limited Company. The assessee filed its return of income for the Assessment Year 2003-2004 on 30.11.2003 showing total income of Rs. 4,49,130/-. The return was processed under Section 143(1) of the Income-tax Act, 1961 on 22.03.2004 and refund was granted to the assessee. Thereafter, notices under Section 143(2) and 142(1) of the Income-tax Act, 1961 were issued to the assessee. The assessee produced the books of account and also submitted reply of the questionnaire. However, original bills / vouchers / invoices regarding the expenses were not produced. The Assessing Officer directed the assessee to produce original bills / vouchers / invoices regarding the expenses, names and addresses of all suppliers, sundry creditors and sundry debtors. Ultimately, the assessee produced books of account, salary

and wages register, stock register, etc.

3. The Assessing Officer rejected the books of account and proceeded to assess income on the basis of best judgment. The reasoning given by the Assessing Officer was that notices were issued to six suppliers from the list of eight suppliers furnished by the assessee on 16.01.2006 whereas complete addresses of the two suppliers were not given, therefore, notices were not issued to them. The Assessing Officer was of the opinion that on the basis of independent verification by the Department, the purported transactions with the above persons are sham transactions and that the expenses shown by the assessee are not verifiable and in view of the said fact, rejected the books of account and framed "best judgment" assessment by applying net profit rate of 8% on the gross receipts.

4. In appeal, the Commissioner of Income-tax (Appeals) found that the order of the Assessing Officer is contradictory as at one stage, the Assessing Officer has recorded that the books of account were produced by the appellant, whereas at other, the Assessing Officer is recording the finding that the books of account were not furnished. The learned Commissioner, Income-tax observed that there is no finding of the Assessing Officer in the assessment order that the expenditure claimed was either excessive or bogus as books of account duly audited under Section 44AD of the Income-tax Act, 1961 along with the auditor's report were submitted along with the return and the books of account were produced and examined by the Assessing Officer on several occasions during the assessment proceedings. Thus, the Commissioner of Income-tax (Appeals) rejected the assessment made by the Assessing Officer by applying net profit rate of 8% on the gross receipts as without basis and thus allowed the appeal.

5. However, in further appeal before the Tribunal, the assessee produced papers relating to Asharfy Roy but the same was not taken into consideration for the reason that the assessee has not certified that the same were filed before the lower authorities. Therefore, such papers were not taken as part of the record.

6. Learned counsel for the appellant vehemently argued that the Assessing Officer has recorded the finding that the books of account were produced which included ledger account of the suppliers including Anil Kumar Singh and Asharfy Roy, the two suppliers whose complete address was not furnished by the assessee. A perusal of the ledger account would show that it was not the case of cash payments only, but also payments through cheque as well and tax at source is said to have been deducted. Therefore, the account entries in the ledgers were available before the Assessing Officer. Therefore, the order of the Tribunal of not examining the ledger account for the reason of factually incorrect records before the assessing officer is not sustainable.

7. We find that the Tribunal has erred in law in not taking into consideration the papers relating to Asharfy Roy for the reasons that they were not certified. The fact remains that the papers produced are the ledger account which, according to the assessee, is the part of the books of account produced before the Assessing Officer. Since material document has not been taken into consideration by the Income Tax Appellant Tribunal. Therefore, we deem it appropriate to set aside the order dated 16.05.2008 passed by the Tribunal and remit the matter to the Tribunal to examine the books of account produced by the appellant to verify the genuineness of the entries in the account books; particularly in view of the fact that most of the transactions were the payments made through cheque which could be verified from other sources as well.

8. In view of the said facts, the order dated 16.05.2008 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No. 433/Pat/2007 is set aside and the matter is remitted back to the Tribunal for fresh decision in accordance with law.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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