IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.644 of 2007

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M/S Bihar Police Building Construction (P)Ltd., B.M. P.-5 Campus, B. V. College, District-Patna through Sri Anand, Chairman-cum-Managing Director.

.... Assessee- Appellant

Versus

1. Commissioner of Income Tax –I, Patna
2. Dy. Commissioner of Income Tax, Circle-2, Patna.

.... Assessing Officer -Respondents

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Appearance :

For the Appellant : Mr. Ajay Kumar Rastogi, Advocate

For the Respondents : Mrs. Archana Sinha, Senior Standing Counsel
Mr. Alok Kumar, Advocate
Ms. Shalini Bihari, Advocate

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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: 11-03-2016

The assessee is in appeal under Section 260A of the Income-tax Act, 1961 (for short, 'the Act') against an order passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (for short, 'the Tribunal') in I.T.A. No.407 (Pat) of 2005 pertaining to assessment year 2002-2003.

The learned Tribunal disallowed the amount of 28,40,821/- under Section 43B and Section 36(1) (iv) of the Act in view of the earlier order of the Tribunal dated 13th of April, 2007. The assessee has claimed the following substantial questions of law for consideration in this appeal:-

1. Whether on the facts and in the circumstances of the case the Tribunal has erred in confirming disallowance of Rs.28,40,821/- made under Section 43B read with 36(1)(iv) of the Income Tax Act?
2. Whether on the facts and in the circumstances of the case the Tribunal is justified in holding that employee/employer contribution is not covered by Section 43B and is covered by Section 43B read with 36(1) (iv) of the Income Tax Act?
3. Whether on the facts and in the circumstances of the case the Tribunal is justified in holding that omission of the second proviso to Section 43B is not retrospective in nature?
4. Whether on the facts and in the circumstances of the case the Tribunal is required to follow its earlier order on identical issue in order to maintain judicial discipline and in order to adhere to the law of precedence?
5. Whether on the facts and in the circumstances of the case the Tribunal is required to refer the matter/issue to larger/special bench in cases where there is departure/disagreement from its earlier order?

Learned counsel for the appellant contends that question No.1 as raised in the present appeal was question No.(2) in

Miscellaneous Appeal No.401 of 2008. The same was decided in favour of the assessee on 31st of March, 2015. In view of the said decision, the question No.(1) is covered by the aforesaid order and is required to be decided accordingly.

Learned counsel for the Revenue fairly concedes that the issues raised in the present appeal are covered by the decision referred to by the learned counsel for the appellant.

In view of the said fact, first question of law is answered in favour of the assessee and against the Revenue and it is held that the Tribunal was not justified in confirming the disallowance against delayed payment of employer’s contribution under Section 43B of the Act.

The appeal stands disposed of accordingly.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

Sunil/-

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