IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.537 of 2007

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Vijay Kumar Chaudhary, son of Late Ram Krishna Prasad Chaudhary, resident of Gurhatta, Patna City, Rustam Pir Ki Gali, Padri Haveli, District- Patna

.... Appellant

Versus

1. Income Tax Appellate Tribunal, Patna Bench, Patna
2. Commissioner of Income Tax-II, Patna
3. Commissioner of Income Tax (Appeals)-I, Central Revenue Building, Beerchand Patel Path, Patna
4. Assistant Commissioner of Income Tax, Central Circle-2, Patna

.... Respondents

with

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Miscellaneous Appeal No. 538 of 2007

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Ram Babu Roy, Son of Late Shivnandan Lal, resident of Singhi Dalan Lane, Khajekalan, Patna City, District- Patna

.... Appellant

Versus

1 Income Tax Appellate Tribunal, Patna Bench, Patna
2 Commissioner of Income Tax-II, Patna
3 Commissioner of Income Tax (Appeals)-I, Central Revenue Building, Beerchand Patel Path, Patna
4 Assistant Commissioner of Income Tax, Central Circle-2, Patna

.... Respondents

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Appearance :
(In both cases)

For the Appellants : Mr. D.V.PATHY, Advocate
Mrs. Manju Jha, Advocate
For the Respondents: Mrs. Archana Sinha, Advocate
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: 14-03-2016

Since common issue is involved in both these appeals, they are being heard together and are being disposed of by this common judgement.

The assessees are in appeal under section 260A of the Income Tax Act arising out of orders passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (for short the Tribunal) on 27.07.2007 and 12.02.2007 in respect of Income Tax (SS) Appeal No. 83/Pat/06 and Income Tax (SS) Appeal No. 131/Pat/05 for the block assessment year 01.04.1996 to 29.10.2002.

This court formulated following substantial question of law arising out from the order of the Tribunal:-

> "Whether the Tribunal was in error in holding that charge of interest under Section 158 BFA (1) of the Income Tax Act, 1961 were automatic and the same were leviable from the date of service of the first notice without an effective and proper communication of the order under Section 127 of the Act transferring jurisdiction from one Officer to the another."

The facts which are not in dispute are that notice under section 158BC of the Income Tax Act was issued on 24.12.2002 which was received by assessees on 04.01.2003. However, the assessees filed their return on 16.07.2004. The assessing officer calculated interest for the period starting from December, 2002 till the date of filing of the return.

The argument of the appellants is that order under Section

127 of the Income Tax Act was served on 11.09.2003 and 09.09.2003 and, therefore, the charge of interest should commence from date of service of such notice.

It is not disputed that the notice dated 23/ 24.12.2002 was issued by the transferee officer. It is only the order under Section 127 of the Act which was served on the appellants in September, 2003. The appellants were bound to comply with the notice and file their return and failure to file the return would attract interest under Section 158 BFA.

In view of above, the question of law is answered in affirmative in favour of the revenue and against the assessees.

Both the appeals are dismissed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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