IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17071 of 2015

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M/s Kiran Prakashan, Naya Tola, Patna, through its Partner Kiran Devi, Wife of Ganpat Prasad Sah, Resident of Mohalla - Naya Tola, Post Office - Bankipore, Police Station - Kadamkuan, Dist-Patna

.... Petitioner/s

Versus

1. The Department of Income Tax, Patna, Bihar
2. The Commissioner of Income Tax (Appeals)-III, Patna, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Rastogi, Advocate
Ms. Shilpi Keshri, Advocate

For the Respondent/s : Mr. Archana Sinha @ Archana Shahi, Sr.S.C., Income Tax
Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 15-12-2016

Heard learned counsel for the parties.

2. The challenge in the present writ application is to an order passed by Commissioner, Income Tax (Appeals)-III, Patna on 9th of September, 2015 whereby, in case of block assessment, a finding was returned that notice under Section-143(2) of Income Tax Act was not issued, and that the judgment of the Supreme Court in ACIT vs. Hotel Blue Moon, reported in (2010) 321 ITR 362 is *per incuriam* in view of the judgment reported in (2005) 3 SCC

212 (Govt. of A.P. And Another Vs. J.B. Educational Society And Another) and (1976) 1 SCC 719 (State of Punjab & Anr. Vs. Shamlal Murari & Anr.).

3. In Hotel Blue Moon (supra), it is categorically held that the block assessment cannot be framed until notice under Section-143(2) has been served upon the assessee. Since the Commissioner of Income Tax (Appeals) has recorded a finding that notice was not served, therefore, in view of the judgment in Hotel Blue Moon's case (supra), an order of assessment could not have been passed.

4. The reasoning given by the learned Commissioner that the judgment is *per incuriam* is based upon two Supreme Court judgments. The said finding is not tenable. Neither of the judgments refers/deals with the case of block assessment and of not serving a notice under Section-143(2) which issue was raised and decided in Hotel Blue Moon's case (supra).

5. In view of the judgment in Hotel Blue Moon's case (supra), learned Commissioner, Income Tax (Appeals) has committed grave illegality in holding that such judgment is *per incuriam*.

6. Consequently the writ petition is allowed. The order passed by the learned Commissioner, Income Tax (Appeals) is set aside.

(Hemant Gupta, ACJ)

(Arvind Srivastava, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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