IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.564 of 2008

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Ajay Kumar Singh, son of Late Ram Suyash Singh, 303, Jag Kailash Place, New Patliputra Colony, Patna

.... Appellant

Versus

1. Commissioner of Income Tax- II, Patna
2. Asstt. Commissioner of Income Tax, Circle-4, Patna

.... Respondents

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Appearance :

For the Appellant/s : Mr. Krishna Mohan Mishra, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, Sr.S.C. Income-tax Dept. with Ms. Archana Prasad, Jr. S.C.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 07-04-2016

Heard learned counsel for the appellant and learned Sr.Standing Counsel for the Income-tax Department.

2. The appeal has been filed impugning the order dated 16.5.2008 passed by the Income-tax Appellate Tribunal in ITA No. 546/Pat/2007 with respect to assessment year 2004-05 by which the appeal filed by the assessee has been dismissed.

3. The assessee has filed his return of income on 1.11.2004 showing total income of Rs.20,72,410/- which income was derived from civil contract work. The return was duly processed under Section 143(1) of the Income-tax Act on 16.11.2005 resulting in a refund of Rs.79,773/- but subsequently it was taken up for compulsory scrutiny in accordance with CBDT instructions and notices under Section

143(2) were issued and served upon the assessee. In the course of assessment it was found that the books of accounts were not maintained by the assessee on regular basis in regular course of business in accordance with Section 145(1) of the Income-tax Act and by order-sheet entry dated 8.12.2006 the assessee was requested to explain as to why the books of accounts should not be rejected under section 145(3) of the Act and his income from contract receipts be estimated at 8% of gross contract receipts in consonance with the intent and spirit of Section 44AD of the Act. Upon no reply being filed by the assessee it was presumed by the Assessing Officer that the assessee had no explanation to offer. Thereafter the Assessing Officer estimated the income on the basis of gross receipts of the assessee being Rs.4,60,53,550/- at 8% of the same as private contract as Rs.36,84,284/- and made certain other additions which are not in issue before us.

4. Aggrieved by the aforesaid order the assessee filed an appeal before the Commissioner of Income-tax (Appeal) but did not raise the issue of objection to the books of accounts. The Tribunal noted that in ITA No. 255/Pat/2007 in assessee's own case for the assessment year 2003-04 the Tribunal by its order dated 12.12.2007 had upheld the net profit rate at 8% and thus did not find any merit in the grounds raised by the assessee and rejected the same. Aggrieved

by the said rejection the appellant has approached this Court.

5. While admitting the appeal it was directed to be heard on the following substantial question of law :-

> "Whether the Appellate Tribunal ought to have separately allowed deduction of Rs.21,95,646.19 since the same had been claimed by the appellant ?"

6. It may be clarified that similar deduction was also claimed by the assessee on account of depreciation with regard to the assessment year 2003-04, to which reference has been made by the Tribunal in its impugned order, and by order dated 12.12.2007 passed in ITA No. 255/Pat/2007 the Tribunal had upheld the net profit rate of 8%, against which the assessee had filed Miscellaneous Appeal No. 225 of 2008 in which the following substantial question of law had been framed :-

> "(i) Whether the Appellate Tribunal ought to have separately allowed deduction of Rs.25,72,528/- since the same had been claimed by the appellant ?"

7. This Court by order dated 15.3.2016 in M.A. No. 225 of 2008 has answered the said question of law in the negative against the assessee and in favour of the Revenue.

8. The same factual background applies to the present matter as neither before the A.O. nor before the Commissioner of Income-tax (Appeal) nor before the Tribunal the appellant-assessee had raised the plea that he should have been allowed depreciation after applying net profit rate. Thus we see no reason to take a different view in the matter. The question of law is thus answered in the negative against the assessee and in favour of the Revenue.

9. In view of the aforesaid finding, we find no merit in the appeal. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

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