IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.667 of 2014

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Deputy Commissioner of Income Tax Central Circle-2, Patna.

.... Appellant

Versus

M/S Nirman Re- Rolling Mills Pvt. Ltd. 701, VII Floor, Ashiana Chamber, Exhibition Road, Patna.

.... Respondent

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Appearance :

For the Appellant : Ms. Archana Sinha @ Archana Shahi, Sr. Standing Counsel

For the Respondent : Mr. A. K. Rastogi, 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 present appeal under Section 260 A of the Income-tax Act, 1961 is directed against the order passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (for short, 'the Tribunal') on 09th of July, 2014 in respect of block period 1998-99 and 1999-2000.

The Revenue has claimed following substantial questions of law.

1. Whether on the facts and circumstances of the case, the Hon'ble ITAT, Patna was correct in law by reversing the order of AO and upholding the order of the CIT (A).
2. Whether on the facts and circumstances of the case, the Hon'ble ITAT, Patna was justified in relying upon the judgment of the Apex Court reported in 329 ITR 362 when the assessee has not filed his return on prescribed time as per IT Act.

3. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT, Patna was correct in law by accepting the plea of the assessee based on Blue Moon judgment and not considered the fact that the return was filed beyond the statutory period and hence was *non-est*.

We have heard learned counsel for the parties. We do not find any substantial question of law arises for consideration as it is a finding of fact recorded by the Tribunal that no notice under Section 143(2) of the Act was issued to the assessee. Such finding was recorded after the Commissioner of the Income-tax (Appeals) remanded the matter to the Assessing Officer to confirm whether notice under Section 143(2) was issued. In the absence of any notice under Section 143(2) of the Act, the block assessment could not have been completed as laid by the Hon'ble Supreme court in the case of *ACIT Vs. Hotel Blue Moon* reported in *321 ITR 362*.

Since the issue stands decided by the Hon'ble Supreme Court, we do not find any substantial question of law arises for consideration in this appeal. The appeal thus stands dismissed.

(Hemant Gupta, J)

(Ramesh Kumar Datta, J)

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