IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.392 of 2008

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Asstt. Commissioner of Income

.... Appellant/s

Versus

Dipesh Chandak & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. ARCHANA SINHA
Mrs. Shalini Bihari

For the Respondent/s : Mr. D.V. Pathy

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-07-2017

This appeal under section 260A of the Income-tax Act has been filed questioning the validity of the order dated 29.2.2008, passed by the Income-tax Appellate Tribunal, Patna Bench, Patna.

The only question is with regard to permitting transaction of Rs. 87,70,000/- which was rejected by the Assessing Officer and affirmed by the Appellate Tribunal. The said amount was withdrawn from assessee's bank account held in Oriental Bank of Commerce, Park Street, Kolkata on 19.04.1994, 27.8.1994, 23.11.1994 and 7.12.1994. The total amount of Rs. 87,70,000/- is detailed in paragraph-3 of the impugned order passed by the Tribunal. The Assessing Officer found that the assessee failed to prove deposit of those amount, by producing relevant books of account and therefore, added this to be income of the assessee on account of the fact that this is unclosed income. Further when the matter was examined by the learned Tribunal in paragraph-3 the learned Tribunal recorded the following reasons:-

> **"Before the C.I.T.(A), the assessee explained with reference to the cash book for the relevant period that withdrawal from AHD were found fraudulent and were ultimately to be divided amongst the various co-conspirators. For that purpose, funds were withdrawn from the bank account of the assessee. However, when the cash withdrawn from the bank could not be divided amongst those co-conspirators for any reason, the unutilized cash was re-deposited in the bank account for safety reason. Considering the assessee's explanation and evidence available with him, the C.I.T. (A) came to the conclusion that the deposits were out of withdrawals from the same account in which receipts from AHD were deposited. The assessee received a sum of Rs. 27,64,65,030/- from AHD and, therefore, the deposits of Rs. 87,70,000/-. According to the C.I.T.(A) these were no doubts out of the withdrawals. He, therefore, held the A.O.'s action to treat the deposits of Rs. 87,70,000/- as undisclosed income u/s 69 of the Act unjustified and deleted the same".**

It is clear from the aforesaid order of the Tribunal that no evidence was adduced with regard to amount in question and the Tribunal only being satisfied with regard to the genuineness of the transaction has allowed the same. This is finding of fact arrived at by the Tribunal. We do not find that any substantial of question of law is involved in this case warranting consideration in the proceeding under section 260A of the Income-tax Act. Therefore, this appeal stands dismissed. That apart, if the Commissioner has permitted for additional evidence to be recorded at the appellate stage without permitting the same for enhancement to the Assessing Officer, we see no ground warranting reconsideration after more than nine years.

Accordingly, this appeal is dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
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