IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.310 of 2015

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M/s Madhup Kumar Singh son of Shri S.P. Singh, R/o Adhuri Niwas, P.O.& P.S. Rajopatti, Dumra Road, Sitamarhi, Dist.- Sitamarhi. At present Mai Asthan, Damuchak, Muzaffarpur

.... Appellant

Versus

Addl. Commissioner of Income Tax, Range-1,Muzaffarpur.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Rastogi
Mr. Parijat Saurav

For the Respondent/s : Mr. Rishi Raj Sinha
Mr. Shilpi Keshri

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 09-02-2018

This is an appeal by the assessee, challenging the order dated 24.04.2015, passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in I.T.A. No.54/PAT/2010.

Primarily, after taking note of the contract receipt of the appellant and gross profit, the net profit ratio has been assessed at 8% and the assessment concluded and while doing do, reliance has been placed on two judgments rendered by the Tribunal itself. One in the case of Prasad Construction Co. (In I.T.A. No.09/Pat/2008 decided on 17.11.2009) and another in the case of Shyam Bihari Vs. CIT [2012] 345 ITR 283 (Pat) by the Patna Bench of the Tribunal. In para-4.2 and thereafter in para-4.3, the learned Tribunal for estimating the net profit at 8% has placed heavy reliance on the interpretation given and the assistance taken with regard to the presumptive value and rate to be arrived at under Section 44AD read with the Departmental Circular and the law laid down by the Tribunal in the case of Shyam Bihari (Supra) and Prasad Construction Company. However, today during course of hearing, we are informed that the judgments rendered by the Tribunal in the case of Prasad Construction Co. (Supra) has been interfered with and explained in the case of Prasad Construction & Company Vs. Commissioner of Income Tax (2016) 388, ITR 579 (Pat), wherein the issue has been remanded back to the Tribunal for reconsideration and similarly in the case of Shyam Bihari (Supra) [2012] 345 ITR 283 (Pat) also the question of applicability of Section 44AD on gross contract receipt above 40 lac has been considered and issued deed in favour of the assessee. It has been held that in cases, when the gross profit is above 40 lacks, the provisions of Section 44AD will not apply. In this case also, the Tribunal has applied the provisions of Section 44AD in arriving at net profit at 8%. The grievance of the appellant is that the law laid down now by the High Court, in the case of Shyam Bihari has not properly been considered.

Taking note of the totality of the circumstances, we are of the considered view, as both the judgments rendered by the Tribunal in the case of Prasad Constructions and Shyam Bihari have been upset and interfered with a Division Bench of this Court, it is fit case, where the matter should be remanded back to the Appellate Tribunal for reconsideration of the entire issue, in the light of the judgments rendered by the Division Bench, both in the case of Shyam Bihari (Supra) and Prasad Constructions (Supra), as indicated hereinabove.

Accordingly, we allow this appeal in part, quash the order passed by the Tribunal and remanded the matter back to the Tribunal for reconsideration, in the light of observations made hereinabove.

The appeal stands allow and disposed of in the aforesaid terms.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Amit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-02-2018
Transmission Date	NA