IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.175 of 2015

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Ramashish Pandey @ Ramasish Pandey son of Late Swaminath Pandey Resident of Pathak House, Brahmapura Chowk, Muzaffarpur

... ... Appellant/s

Versus

ACIT, Central Circle, Muzaffarpur

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Dr. Kamal Deo Sharma, Adv.
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Adv.

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-01-2018

This is an appeal by the assessee under Section 260A of the Income Tax Act calling in question tenability of an order dated 19.7.2001 passed by the Income Tax Appellate Tribunal, Patna wherein while deciding the following 3 substantial questions of law, the order is said to have been committed giving rise to the questions of law as detailed in the Memo. of Appeal.

Having considered learned counsel for the parties, we find that as far as addition of Rs.6,06,953/- on account of unexplained deposit in the Bank is concerned, the issue has been remanded back to the Appellate Authority for consideration and as the issue is still open to be considered by the Appellate Authority, it is not necessary for us to go into this issue in this proceedings under Section 260A of the Income Tax Act. As far as the second question is concerned, the amount of Rs.20,000/- allowed as expenses for marriage has been deleted by the Appellate Authority and while doing so in para 6 the Appellate Authority has held that based on loose bills and other vouchers, the expenses could not be allowed. In our considered view, the subjective satisfaction arrived at by the Appellate Tribunal in doing so is based on appreciation of documentary evidence and in para 6 finding the receipts and vouchers to be on loose papers, without proper evidence of the expenses having been actually met with, the discretion has been exercised for disallowing the expenses of Rs.20,000/-. This is nothing but a finding of fact based on due appreciation of material that came on record and, therefore, in our considered view, with regard to this issue, no substantial question of law arises for consideration. As far as the third ground with regard to charging of interest under Section 158B FA 1 of the Act is concerned, in the case of petitioner's own son Bishwajit Pandey in M.A. No.535 of 2007 and 555 of 2007, a Co-ordinate Bench of this Court on 30th of March, 2017 dealt with identical issue in para 11 of the order in the following manner:

> "11. The last and the final ground or the substantial question of law would be as to whether the Tribunal was right in directing for payment of interest under section 158BFA (1)when the CIT (Appeals) had disallowed the interest

on cogent reasons. While directing for payment of interest, the Assessing Officer came to the conclusion that there being delay in filing of the return, interest under Section 158BFA(1) is liable to be charged. However, the learned appellate authority, namely the CIT (Appeals), found that the seized material was allowed and taken into custody on 17.06.2003 and they were not made available to the assessee and, therefore, he could not file the return in time. The CIT (Appeals) recorded the following finding to disallow the interest;-

> " After careful perusal of the facts and circumstances referring to this ground of appeal, I find that the contention of the appellant is correct in as much as the last photo copy of seized material was allowed to be taken on 17.6.2003. Until and unless the copy of the seized paper is made available to the appellant, he could not be expected to file the return. Therefore, there was no such delay as could be a ground for charging of interest u/s 158BFA (1). The interest charged is cancelled."

12. This is a reasonable finding and while considering ground no.5 of the revenue and allowing it, the Tribunal has simply recorded a finding that there is delay in filing of the return which is attributable to the assessee and, therefore, interest was rightly assessed. However, while doing so, the Tribunal did not take note of the finding recorded by the learned Appellate Authorithy, as indicated hereinabove, wherein the delay is attributed to the Department in the matter of submitting photo copies of the seized documents which resulted in delay of filing of the return and if that be so, charging of interest under Section 158BFA (1) was not permissible.

13. Accordingly, this question is answered in favour of the assessee by holding that the delay in filing of the return is not attributable to assessee and, therefore, interest under Section 158BFA (1) was not chargeable. To that effect also the order passed by the Tribunal is quashed."

and answered the question in favour of the assessee. To that extent, the appellant in this appeal is also entitled to the similar treatment.

Accordingly, we allow this appeal in part. As far as the grounds of challenge on ground Nos.1 and 2 indicated hereinabove are concerned, the same fails. Ground No.3 is allowed for the reasons indicated in para Nos.11 to 13 of the order passed in the order passed in M.A. No.535 of 2017 and other cases.

To that extent, the appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
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