IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.352 of 2010

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Satyanarayan Prasad, S/o Late Karu Sah, C/o M/s Kiran Prakashan, P.O. Bankipur, P.S Kadamkaun, Naya Tola in the District of Patna.

... ... Appellant/s

Versus

1. Commissioner of Income Tax, Central, Patna.
2. Assistant Commissioner of Income-tax, Central Circle-2, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Rostagi, Advocate
For the Respondent/s	:	Smt. Archan Sahi, Sr. Standing Counsel
	:	Mr. Alok Kumar, Advocate
	:	Mr. Sanjeev Kumar, Advocate
	:	Miss. Shalini Bihari, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-04-2018

This appeal by the assessee calls in question tenability of orders passed by the Appellate Tribunal on 30th of October, 2009, the order of the Appellate Authority dated 13.11.2006 and the assessment order based on search conducted in the premises of the appellant on 25.07.2000 for the assessment year 1991-92. While admitting the appeal on 17.04.2015 the following questions have been formulated:-

> "I. "Whether on the facts and in the circumstances of the appellant's case the tribunal is correct in holding that the statement of the appellant recorded in course of survey under Section 133A is an evidence/relevant material gathered "as a result of search"?
>
> II. Whether on the facts and in the circumstances of the appellant's case, in absence of notice under Section 143(2), the entire assessment proceeding is void ab initio?"

As far as Question No. II is concerned, the issue has been very well settled by a judgment of the Supreme Court in the case of **Assistant Commissioner of Income-Tax and another Vs. Hotel Blue Moon- [2010] 321 ITR 362 (SC)**, wherein it has been clearly held that in cases of block assessment issuance of notice under Section 143(2) of the Income Tax Act is a mandatory requirement and block assessment done without such a notice is unsustainable. In this case, there is no material to indicate as to whether before conducting the block assessment in question notice, as required under Section 143(2), has been issued or not. In fact, this legal question is raised for the first time in this appeal and as the orders impugned do not indicate that before proceeding with the assessment the notice under Section 143(2) was ever issued, even the order of assessment is silent on this question, we remand the matter back to the Appellate Authority, namely, the Appellate Tribunal for considering this question.

As far as question No. I is concerned, we find that the assessment order only speaks about the statement recorded in the course of survey conducted under Section 133A. The assessment order does not refer to any other evidence or relevant material collected during the survey or search which co-relates to and is corroborative of the statement made by the appellant under Section 133A.

As we are remanding the matter back for considering the second question formulated, we direct the Appellate Authority namely the Appellate Tribunal to examine the question as to whether the assessment order was based solely on the statement of the assessee under Section 133A recorded at the time of survey or the same was supported by any other evidence or relevant material gathered during the process of search. This issue may also be considered by the Appellate

Authority, namely, the Appellate Tribunal while considering the question on remand made by this Court.

Accordingly, the appeal stands allowed to the extent indicated hereinabove and the matter remanded back to the Appellate Tribunal for reconsideration.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	02.05.2018
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