IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.662 of 2014

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1. The Commissioner Of Income Tax-11 Patna .
2. Assistant Commissioner of Income Tax, Circle-5, Patna.

... ... Assistant/Appellant/s

Versus

Nagendra Prasad S/O Sri Suraj Prasad, Suraj Bhawan, Main Road, Buxar.

... ... Respondent/Respondent/s

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Appearance :
For the Appellant/s : Mrs. Archana Sinha, Advocate
For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-08-2023

1. The appeal is filed against the order of the Tribunal setting aside an order under Section 143(3)/147 of the Income Tax Act, 1961.

2. The assessee had initially moved the High Court relying on the decision of the Hon'ble Supreme Court in **Assistant Commissioner of Income-Tax v. Hotel Blue Moon [(2010) 321 ITR 362 (SC)]** which writ petition was dismissed refusing invocation of the extraordinary remedy and relegating the assessee to the statutory remedy.

3. The Tribunal found, relying on the decision in **Hotel Blue Moon** (supra) that the proceedings are liable to

be struck down. It was held that the return was filed by the assessee in response to the notice under Section 148 though delayed and in such circumstance, there should have been a notice issued under Section 143(2) as has been held in **Hotel Blue Moon** (supra).

4. The only question of law arising in the facts and circumstances of the case is whether notice should have been issued under Section 143(2) of the Income Tax Act?

5. Admittedly, the notice was issued by the Assessing Officer under Section 148 of the Act on 14.07.2008 requiring the assessee to file a return within thirty days. A return was filed much later on 31.03.2009, after eight and a half months.

6. On identical facts, in **M.A. No.239 of 2011** titled as **Chand Bihari Agrawal v. Commissioner Of Income Tax, Central, Patna** decided on 25.07.2023, this Court considered the issue and held against the revenue.

7. We find that the question of law has to be answered in favour of the assesee and against the revenue. **Hotel Blue Moon** (supra) governs the issue which has been followed in **Chand Bihari Agrawal** (supra).

8. The Miscellaneous Appeal stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

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