IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.6 of 2021
In
Civil Writ Jurisdiction Case No.12043 of 2011

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1. Magadh Stock Exchange Association, 9th Floor, Ashiana Plaza, Bud Marg, P.O. GPO, P.S. Kotwali in the town and District of Patna, Bihar through its Director, Laxman Prasad, aged about 64 years, Male, Son of Late Bishwanath Prasad, resident of 102, SLD Apartment, Kankarbagh Road, Patna, P.O. Lohia Nagar, P.S. Kankarbagh, District Patna, Pin - 800020, Bihar.
2. MAGADH STOCK EXCHANGE ASSOCIATION ARYA KUMAR ROAD

... ... Petitioner/s

Versus

1. The Commissioner of Income Tax-1, Central Revenue Building, Beer Chand Patel Path, Patna.
2. The Assistant/Deputy Commissioner of Income Tax, Circle-1, 3rd Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Ajay Kumar Rastogi, Sr. Advocate
: Ms. Smriti Singh, Advocate
For the Opposite Party/s : Mr. Archana Sinha @ Archana Shahi, Sr. SC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 11-10-2023

The present civil review petition is filed for reviewing the order dated 02.09.2020 passed in CWJC No. 12043 of 2011.

2. Learned counsel for the review petitioner submitted that in the absence of pleading this Court has proceeded to pass order as if the petitioner has questioned the validity of Section 43B of Income Tax Act, 1961 in CWJC No. 12043 of 2011. This issue has not been disputed by the respondents. Therefore, whatever the

observation in the order dated 02.09.2020 insofar as finding in respect of challenge to Section 43B of the Income Tax Act, 1961 is concerned, the same would not be a hurdle for the petitioner. Further, whatever the finding given by this Court in respect of challenge to Section 43B of Income Tax Act, 1961 stands recalled.

3. Insofar as interference with the finding on the impugned revision order dated 20.01.2011 for A.Y. 2006-2007 passed under Section 264 of Income Tax Act, 1961 by the Commissioner of Income Tax-I, Patna, respondent no. 1 herein. It is necessary to extract Para 15 of the order dated 02.09.2020, which reads as under:-

> *"15. Hence on both counts, we see no reason to accept the contentions of the petitioner- (a) Constitutional validity of the Act already stands affirmed by the Hon'ble Apex Court in Exide Industries Limited (supra). (b) On the second submission, undisputedly, petitioner had not deposited the amount deducted as STT with the authorities, and it is not his case that the same stood paid back/returned to the person from whom it stood deducted. It is the admitted case of the petitioner that since the petitioner was adopting the mercantile system of accounting; he was not supposed to take any action. Even on this count, given law discussed above, more so Exide Industries Limited (supra). (supra) and Mcdowell (supra), the orders cannot be said to be perverse and illegal warranting interference by this Court."*

Later portion of the order in Para 15, i.e., (b) insofar as challenge to the revision order dated 20.01.2011, the same has been decided on factual aspects read with judicial pronouncements. We find no infirmity or error apparent on the face of the record. Therefore, we dismiss the civil review petition, since there is no error insofar as finding given by this Court in the order dated 02.09.2020. Further scope of review petition is limited as held by the Apex Court in the following decisions.

(a) **S. Murali Sundaram Vs. Jothibai Kannan and Ors.** reported in **(2023) SCC Online SC 185.**

(b) **Arun Dev Upadhyaya Vs. Integrated Sales Services Ltd. and Anr., 2023 Livelaw (SC) 506.** (Para 14 to 17).

4. Accordingly, the present Civil Review petition stands allowed in part.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Jyoti/abhishek

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA