IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.197 of 2019

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Commissioner of Income Tax Central, Patna.

... ... Appellant/s

Versus

M/s Madhya Bihar Gramin Bank C/o Nirmal and associates, Chartered Accountant, Nepali Kothi, Opposite Gasoline Petrol Pump, Boring Road, Patna-800001

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mrs.Archana Sinha @ Archana Shahi, Sr. SC
For the Respondent/s	:	Mr.Suresh Pd Singh No.1, Advocate
		Mr. D.V.Pathy, Advocate
		Mr. Sadashiv Tiwari, Advocate
		Ms. Prachi Pallavi, Advocate
		Mr. Hiresh Karan, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 28-11-2024

The order of the Tribunal interfering with the order issued by the Commissioner under Section 263 of the Income Tax Act, 1961 (for brevity 'Act') revolves on a narrow compass and we frame the following question of law:-

> *Whether the learned Tribunal erred in confusing the addition of a provision for leave encashment to the computation of total income; with its allowance for deduction under Section 37 of the Act, while interfering with the order under Section 263 and in that circumstance, the order of the Tribunal is a perversity?*

2. The respondent-assessee had made a provision for

leave encashment to the tune of Rs. 8,50,00,000/-, which was allowed by the Assessing Officer. The Commissioner issued a notice under Section 263 of the Act and passed Annexure-2 order. The Commissioner noticed Section 37 of the Act, which makes it abundantly clear that any expenditure, not in the nature of a capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purposes of the business or profession, shall be allowed in computing the income chargeable under the head 'Profits and gains of business or profession'. Hence, a provision made for leave encashment, which is definitely an expenditure laid out for the purposes of the business, is allowable under Section 37 and it has to be computed in the total income offered by the assessee in its returns.

3. The Tribunal finding the provision having been computed in the total income, interfered with the Section 263 order; while the Commissioner had specifically dealt with the computation of the income chargeable to tax under the head 'Profits and gains of business or profession'.

4. That the expenditure is allowable under Section 37 is undisputed, but only if the provision made is one validly made. The Commissioner has interfered with the allowance only

on the ground that the Assessing Officer has not made any inquiry with respect to the provision made for leave encashment. Hence, the interference to the assessment order on the ground of prejudice caused to Revenue is not for the reason of the assessee not having reckoned the provision made for the purpose of computing the total income, but is only against the allowance permitted by the Assessing Officer under Section 37, without verifying as to whether the provision is validly raised.

5. We hence find the question of law framed in favour of the Revenue and against the Assessee. We set aside the order of the Tribunal and affirm that of the Commissioner. The Assessing Officer shall make an inquiry as to the provision made and if the provision is validly made, for the purpose of leave encashment of its employees, then necessarily it has to be permitted allowance under Section 37 of the Act.

6. The appeal stands allowed to the above extent.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
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