IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.507 of 2015

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Santosh Kumar Jha Son of Shri Bhagwan Lal Jha Resident of flat No. 122, Jamuna Apartment , Boring Road, Po S.K. Puri P.s Sk.Puri, District Patna.

... ... Appellant/s

Versus

Deputy Commissioner Of Income Tax Central Circle 2 Patna

... ... Respondent/s

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with

Miscellaneous Appeal No. 195 of 2016

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Santosh Kumar Jha Son of Shri Bhawan Lal Jha Resident of Flat, 22, Jamuna Apartment, Boring Road, P.O. S.K. Puri, PS S.K Puri, District Patna.

... ... Appellant/s

Versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2 PATNA

... ... Respondent/s

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Appearance :
(In Miscellaneous Appeal No. 507 of 2015)
For the Appellant/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax
(In Miscellaneous Appeal No. 195 of 2016)
For the Appellant/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-02-2024

The two appeals are by the assessee against a common order of the Income Tax Appellate Tribunal, Patna Bench, in two appeals before the Tribunal, from the common order of the First Appellate Authority; one by the revenue and the other by the assessee.

2. We shall first take up the appeal against the revenue's appeal. In the appeal before the Tribunal, the revenue had raised two grounds, one with respect to the relief granted to the assessee by the First Appellate Authority with reference to the amounts withdrawn by the assessee from different accounts maintained and operated by him. This issue was remanded to the Assessing Officer for consideration and we find no question of law arising from the same. The next issue urged by the revenue was with respect to the difference in the value of immovable properties based on the valuation of the District Valuation Officer, in excess of that shown in the registered deed. We have, on the date of hearing, rejected the appeal by the revenue against the said ground for reason of it being below the limit prescribed under the litigation policy. What remains is the assessee's appeal for the assessment year 2005-06.

3. The only question arising from the above order is as to:-

> *'Whether the assessment for the year 2005-06 has to wait till the disposal of the suit filed by the assessee, wherein he had claimed amounts from the State far in excess of that already disbursed; which disbursed amounts also is*

claimed to have been utilized fully in providing flood relief ?

4. The entire assessment arises from an alleged scam, in which the assessee is said to have been involved. The assessee was the proprietor of two concerns supplying materials to the Bihar Government in its various Departments. In the year 2004, 6 districts of Bihar were badly affected by floods and there was a massive flood relief work initiated by the State Government in conjunction with the Central Government. Tenders were apparently invited and received and the successful bidder was the Bihar State Small Scale Industries Corporation Ltd., Indra Bhawan Patna, a State Government undertaking. The flood relief work was immediately commenced by the District Magistrate, Patna, designated as the Nodal Officer with the Ministry of Home Affairs, Government of India acting as the Nodal Agency. The State Government was overseeing the relief work through the Disaster Management Department, headed by the Commissioner, Patna, under the direct supervision of the Chief Secretary, Bihar. Funds were released and relief material were said to have been supplied, both by air and road.

5. Later, a scam came to light in which funds to the extent of Rs.17.80 crores released by the State Government between 12.07.2004 to 06.08.2004 was siphoned off to a fraudulent firm with the abbreviation 'BSSSI' which stands for Baba Satya Sai Enterprises; akin to the short form of Bihar State Small Scale Industries Corporation Ltd.; in the name of Sanjeev Kumar, a fictitious person. On inquiry, it was revealed that the accounts in the name of the fraudulent firm was operated by the assessee; established through forensic reports of hand writing experts and statement on oath by the Branch Manager of the Bank. Funds were transferred from this account to several other accounts of the assessee and his family members and associates aggregating to Rs.1678.45 lakhs. FIRs were lodged against the District Magistrate, Patna the Computer Operator and the assessee; the first of whom expired in the course of the proceedings.

6. The assessment made against the assessee was of the entirety of the amounts diverted from the amounts sanctioned by the State Government. The assessee's contention itself was that he had supplied the material far in excess of that received and he has to receive Rs.1317.09 lakhs from the State Government. The assessee also asserted that he has supplied relief material to the extent of Rs.3097.09 lakhs and for realization of the balance amounts, he has filed Title Suit of

5743 of 2014 in the Court of First Sub-Ordinate Judge, Patna.

7. The learned counsel for the appellant-assessee Sri. D.V. Pathy, specifically relied on the judgment of the learned Single Judge in Civil Miscellaneous Jurisdiction Case No.1107 of 2023, wherein an expeditious consideration of the suit was directed. Learned Standing Counsel for the Department, however, asserted that there was no substantiation of the purchases made of relief materials and in such circumstances, the entire income has to be assessed in the hands of the assessee. The fact that the assessee received the amounts by way of a fraud, would not deviate from the liability of income tax as against the money's received in the hands of the assessee, which is income assessable to tax. The Department also relied on ***Indraprastha Agencies v. Commissioner of Income Tax*** reported in ***(2004) 266 ITR 320.***

8. We have to immediately notice that though the amounts were siphoned off and deposited in an account of a fictitious firm, registered in the name of a fictitious person, the assessee admits to have utilized the said amounts in supplying relief material. There is also evidence to substantiate the operation of the accounts by the assessee. Hence, as held by the Tribunal, the assessee cannot wriggle out of the liability unless the purchases and the money spent on relief material is substantiated, failing which the assessee would have to be taxed for the entire money's received in the accounts.

9. We do not think that there is any reason to keep the matter pending till the suit is disposed off. As has been rightly noticed by the Tribunal, neither would the findings of the Assessment Officer have a bearing on the disposal of the suit nor would the findings in the suit have a bearing on the assessment to be carried out. The assessee has not produced any material before the Assessing Officer to substantiate the purchases made by him, from the amounts disbursed by the State Government for the purpose of providing flood relief. The Tribunal has categorically noticed that no evidence was led by the assessee before the Assessing Officer.

10. A contention was raised based on Section 50 of the Disaster Management Act, 2005, but no certificate of utilization was produced by the assessee. The supply of relief material was the responsibility of the Corporation and if at all, the utilization certificate is obtained, it can only be by the Corporation. The assessee had no privity of contract either with the State or the Corporation to supply relief material and there is no question of a utilization certificate issued under the Disaster

Management Act coming to the rescue of the assessee.

11. We find absolutely no question of law arising in the case and the question framed is one on facts and not on law. The appeal against the order of the Tribunal, in the second appeal filed by the assessee, would stand rejected.

12. Ordered accordingly.

(K. Vinod Chandran, CJ)

Rajiv Roy, J. I agree.

(Rajiv Roy, J)

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AFR/NAFR	NAFR
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