IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12620 of 2023

==

M/s Krishna Seeds a Partnership Firm, having its registered office at Ground Floor, Krishna Tower, Dr. Kamal Ashraf Lane, S.P. Verma Road, Patna through its partner namely Rohit Kumar Bohra, aged about 42 years, Male, S/o Pradeep Kumar Bohra, resident of 205, Surya Vihar Apartment, Exhibition Road, P.O.-GPO, P.S.-Gandhi Maidan, District-Patna.

... ... Petitioner/s

Versus

1. The Income Tax Appellate Tribunal Patna Bench, Patna, 5th Floor, Central Revenue Building (Annexe) Beer Chand Patel Path, Patna.
2. The Principal Commissioner of Income Tax-1, Patna, 2nd Floor, Central Revenue Building, Beer Chand Patel Path, Patna.
3. The Assistant Commissioner of Income Tax, Circle-4, 3rd Floor, Lok Nayak Jai Prakash Bhawan, Dak Bungalow Chowk, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate Mrs. Kalpana Rastogi, Advocate
For UOI	:	Mr. K. N. Singh, ASG Mr. Alok Kumar, CGC, UOI
For the Income Tax Deptt:		Mrs.Archana Sinha @ Archana Shahi, Sr. S.C.

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

ORAL ORDER

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

15 17-03-2025 Heard learned counsel for the parties.

(2) The petitioner seeks following relief :-

i) For issuance of writ in the nature of certiorari or any other appropriate writ/order/direction for quashing order dated 30.08.2022 whereby the Income Tax Appellate Tribunal, Patna Bench has suo moto directed the Department to file fresh ground of appeal without any application from the Department to this effect and without assigning any reason for such direction.

ii) For issuance of writ in the nature of certiorari or any other appropriate writ/order/direction for quashing order dated 12.07.2023 passed by Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No. 138/Pat/2019 whereby the Income Tax Appellate Tribunal has admitted the *revised Grounds of Appeal dated 01.02.2023 by treating the discrepancy in the figure mentioned in Ground no.1 of the original Grounds of Appeal dated 24.04.2019 as a "Clerical Error' and by ignoring that Form No.36 is not in proper format and in rejecting the prayer of the petitioner of filing cross objection under Section 253(4) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') read with Rule-47(2) of the Income Tax Rules, 1962 (hereinafter referred to as 'Rules') on the revised Grounds of Appeal so admitted for adjudication.*

iii) For issuance of writ in the nature of mandamus or any other appropriate writ/order/direction for a direction to the respondent authority for granting permission to the petitioner to file cross objection in the ITA Appeal No.138/Pat/2019 filed by the Department in light of the provisions of section 253(4) of the Income Tax Act, 1961 and Rule 47(2) of the Income Tax Rules, 1962 after admission of the revised Grounds of Appeal filed by the Department.

iv) For granting such other and further relief(s) to which the petitioner may in law be found entitled.

(3) Brief facts are as under :-

DATE	EVENTS
17.10.2015	Petitioner a partnership firm filed a return of income for A.Y.2014-15 and declared total income of Rs.12,35,270/-.
22.12.2016	Limited scrutiny of petitioner case under CASS and disallowance of Rs.2,52,42,539/- was made and assessment order was passed u/s 143(3).
12.02.2019	Petitioner challenged the assessment order in appeal where the commissioner of income tax (Appeal), Patna allowed the appeal in favour of petitioner by deletion of the addition of the disallowance of Rs.2,52,42,539. (Annexure-P3)
24.04.2019	Department filed an appeal against the CIT(A) order before the ITAT. (Annexure-P4 series)
29.06.2022	Appeal taken up for hearing where it was adjourned to 30.08.2022.
30.08.2022	Petitioner filed paper book and raised preliminary objection on maintainability of appeal where dept has assailed the deletion of addition of Rs. 86,18,109/-. (Annexure-P5) ITAT, suo moto, directed the department to file fresh grounds of appeal. No application was

	made by the department for such an amendment. (Annexure-P1)
01.02.2023	Department filed revised grounds of appeal through covering letter, more than 5 months after ITAT's direction. The revised filing was stated to be "without prejudice" to the original grounds. (Annexure – P6 series)
30.03.2023	Petitioner filed a petition raising objection as to maintainability of the revised grounds of appeal on grounds of statutory provision and CBDT Circular Nos. 17/2019 and 3/2018 (Annex-P8) and also requested for grant of permission to file cross objection against revised grounds. (Annexure-P7)
12.07.2023	ITAT passed an order where revised grounds of appeal was admitted by treating earlier original grounds as a clerical error and prayer of petitioner to file cross objection also get rejected. (Annexure- P2)

Hence, this writ petition

(4) Perusal of the records, it is evident that correct factual aspects have not been appraised in the memorandum of appeal filed by the revenue before the Income Tax Appellate Tribunal resulted in passing the impugned order. Technically speaking petitioner challenge the order of the Appellate Tribunal insofar as directing the revenue to file a fresh grounds of appeal with the correct amount is not fair in the absence of any application to amend the memorandum of appeal. On this short ground, the petitioner has made out a case.

(5) Perusal of the memorandum of appeal filed on behalf of the revenue, it is evident that it is not crystal clear with reference to the assessment order and to what extent revenue is aggrieved by the assessment order dated 22.12.2016 read with the appellate

authority order allowing the appeal on 12.02.2019. Ultimately, certain disputed amount mentioned in assessment order is required to be adjudicated before the Second Appellate Authority. There may be a patent error in drafting the second appeal and its submission before the Appellate Tribunal.

(6) Taking note of these facts and circumstances, the impugned decisions are set aside and the matter is remanded to the Second Appellate Authority, namely, Appellate Tribunal. Reserving liberty to the official respondents to file necessary interlocutory application to amend their appeal before the Tribunal with a period of eight weeks from today, thereafter petitioner shall be provided an opportunity of filing or say on the amended petition. Tribunal is requested to adjudicate the pending appeal within a period of six months from the date of receipt of this order.

(7) With the above observation and direction, this writ petition is disposed of.

(8) Petitioner is also at liberty to file cross objection in the aforementioned litigation in accordance with law.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

sanjeev/-

U			