IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.590 of 2008

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Sanjay Shankar son of Sri Sheo Shankar Prasad, resident of D.N. Singh, Road, Karamanchak, P.S. Kotwali, District – Bhagalpur.

.... Appellant/s

Versus

1. Income Tax Appellate Tribunal, Patna Bench having its office at Beerchand Patel Path, Patna
2. The Commissioner of Income Tax (Appeals) – II, Patna
3. Assistant Commissioner of Income Tax, Special Investigation Circle – I, Patna

.... Respondent/s

with

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Miscellaneous Appeal No. 591 of 2008

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Sanjay Shankar son of Sri Sheo Shankar Prasad, resident of D.N. Singh, Road, Karamanchak, P.S. Kotwali, District – Bhagalpur.

.... Appellant/s

Versus

1. Income Tax Appellate Tribunal, Patna Bench having its office at Beerchand Patel Path, Patna
4. The Commissioner of Income Tax (Appeals) – II, Patna
5. Assistant Commissioner of Income Tax, Special Investigation Circle – I, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Smt. Manju Jha, Adv.
Mr. D.N. Pathy, Adv.

For the Respondent/s : Mr. Mrs. Archana Sinha, Sr. S.C.
Mr. Suman Kumar Mishra, Jr. S.C.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 09-02-2015

Heard learned counsel for the appellant and learned Sr. Counsel for the Income Tax Department.

The appellant has before us assailed the order dated 15.02.2008 passed by the Income Tax

Appellate Tribunal, Patna Bench, Patna in I.T.A. No. 139/Pat/1999 for the assessment years 1992-1993 and 1993-1994.

The assessment orders in the case of the appellant, who was alleged to have been involved in the A.H.D. Scam, were passed on 07.02.1997 under Sections 147/144/154 of the Income Tax Act by which the addition to the income of the appellant was made to the extent of Rs. 5,95,010/- for the assessment year 1992-93 and Rs. 4,99,290/- for the assessment year 1993-94.

Pursuant to notice issued under Section 148 of the Act, apart from filing a return showing net income of Rs. 11, 700/- on total sales of Rs. 6,92,669/- for the assessment year 1992-93 and showing net income of Rs. 24,100/- on total sales of Rs. 8,51,513 for the assessment year 1993-94, the appellant did not file any other response or document despite several adjournments granted resulting in the assessment being made under Section 147 read with Section 144 of the Act.

Aggrieved by the same, the appellant filed appeals before the Commissioner of Income Tax (Appeals) (II) Patna which were dismissed by a common order dated 6.07.1998. Further appeals before the Income Tax Appellate Tribunal, Patna Bench being I.T.A. Nos. 139/Pat/1999 and 140/Pat/1999 met the same fate. The appellant is, accordingly, before us with these two appeals.

Learned counsel for the appellant has sought to argue that the Tribunal and the authorities of the Income Tax Department ought not to have drawn the conclusions only on the basis of the allegations made in the First Information Report filed by the C.B.I in the A.H.D. Scam cases, in three of which the appellant was also an accused, without making an independent investigation and coming to findings of their own before reaching the conclusion regarding non-supply by the appellant.

From a perusal of the impugned orders, it is evident that the department has not acted only on the basis of the allegations made in the First Information Report rather the DDI Investigation, Patna has collected details for the purpose, so far as it concerned the

Income Tax Department and the materials collected by him, have also formed the basis for the Assessing Officer coming to the conclusions which he has.

The appellant himself does not challenge the figures of total sales. The only issue raised by the appellant is with regard to the non-allowance of the expenditure. The Assessing Officer and the Appellate Authorities have taken note of the fact that the expenses which are incidental to supply, such as, purchases on which the business expenses are claimed and other expenses such as, freight, inwards/outwards, loading/unloading charges, godown rent, labour charges, stock insurance etc. which are indicative of a business operation being carried out were not reflected in the accounts of the assessee which would lead to the reasonable conclusion that the assessee was not carrying on any business operation in the nature of supply to the A.H.D. and, accordingly, the story of expenditure has been disbelieved.

The aforesaid findings are purely findings of fact which cannot be assailed by the appellant in appeals filed under Section 260A of the Income Tax Act.

Learned counsel for the appellant is unable to show how the conclusions drawn by the Income Tax Appellate Tribunal are perverse as being either based on no materials or contrary to the materials on the record.

We are, thus, of the view that no substantial question of law arises in the present matter. The appeals being devoid of merit are, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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