(1988) 08 PAT CK 0017

In the Patna High Court

Case No : Taxation Case No''s. 305 and 306 of 1980

Commissioner of Income Tax APPELLANT

Vs

Smt. Sharda Devi Lath RESPONDENT

Date of Decision : 22-08-1988

Acts Referred:
Income Tax Act, 1961 — Section 263, 263(1)

Citation : (1989) 175 ITR 566

Hon'ble Judges : D.K. Sen, C.J;Uday Sinha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia, for the Appellant; None, for the Respondent

Judgement

1. On an application by the Revenue u/s 256(1) of the Income Tax Act, 1961, the following questions stated to be questions of law arising out of the order of the Tribunal have been referred to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the assessment orders, having been passed by the Income Tax Officer after necessary enquiries in pursuance of the scheme to help the new taxpayers in the small income groups'' launched by the Government, were not erroneous so as to enable the Commissioner of Income Tax to assume jurisdiction u/s 263(1) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the Commissioner of Income Tax did not follow the principles of natural justice before passing the impugned order and so his order is not valid ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the impugned order of the Commissioner of Income Tax is based upon mere surmises and conjectures and is, therefore, not valid ?

4. Whether in view of the decision of the Income Tax Appellate Tribunal, Patna, in the case of Smt. Rambha Devi v. ITO (I.T.A. Nos. 1713 to 1715 (Pat) of

1974-75), the Tribunal has rightly held that the Commissioner of Income Tax, acting u/s 263(1) of the Income Tax Act, 1961, could not legally set aside an order of assessment made u/s 143(1) in pursuance of the scheme ''to help the new taxpayers in the small income groups'' evolved by the Government ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly held that the Commissioner of Income Tax acted in a mechanical manner in setting aside the assessment order for the assessment year 1973-74 and so his order for that, year is invalid ? and

6. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly cancelled the consolidated order passed by the Commissioner of Income Tax u/s 263(1) of the Income Tax Act, 1961, for the assessment years 1972-73 and 1973-74 ?"

2. The controversy raised in the questions is covered by two decisions of this court in Commissioner of Income Tax Vs. Pushpa Devi, and Commissioner of Income Tax Vs. Smt. Rambha Devi, . Following the said decisions, we answer all the questions in the negative and in favour of the Revenue. In the facts and circumstances, there will be no order as to costs.

3. Let a copy of this order be communicated by the office of this court to the Assistant Registrar, Income Tax Appellate Tribunal, Patna.