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Miscellaneous Appeal No.175 of 2015

FORUM

Patna High Court

ORDER DATE

29 Jan 2018

NOTE TYPE

Source extract

01 CONCLUDING COURT PASSAGE - SOURCE EXTRACT

Until and unless the copy of the seized paper is made available to the appellant, he could not be expected to file the return. Therefore, there was no such delay as could be a ground for charging of interest u/s 158BFA (1). The interest charged is cancelled." 12. This is a reasonable finding and while considering ground no.5 of the revenue and allowing it, the Tribunal has simply recorded a finding that there is delay in filing of the return which is attributable to the assessee and, therefore, interest was rightly assessed. However, while doing so, the Tribunal did not take note of the finding recorded by the learned Appellate Authority, as indicated hereinabove, wherein the delay is attributed to the Department in the matter of submitting photo copies of the seized documents which resulted in delay of filing of the return and if that be so, charging of interest under Section 158BFA (1) was not permissible. 13. Accordingly, this question is answered in favour of the assessee by holding that the delay in filing of the return is not attributable to assessee and, therefore, interest under Section 158BFA (1) was not chargeable. To that effect also the order passed by the Tribunal is quashed." and answered the question in favour of the assessee. To that extent, the appellant in this appeal is also entitled to the similar treatment. Accordingly, we allow this appeal in part. As far as the grounds of challenge on ground Nos.1 and 2 indicated hereinabove are concerned, the same fails. Ground No.3 is allowed for the reasons indicated in para Nos.11 to 13 of the order passed in the order passed in M.A. No.535 of 2017 and other cases. To that extent, the appeal stands allowed and disposed of.

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