

Munni Rai

Miscellaneous Appeal No.419 of 2015

FORUM

Patna High Court

ORDER DATE

02 May 2019

NOTE TYPE

Source extract

01 CONCLUDING COURT PASSAGE - SOURCE EXTRACT

Having noted the issues canvassed by Mr. Sriram Krishna in support of the appeal, as opposed by learned counsel for the Income Tax Department, we are in no confusion to hold that there was no infirmity in the exercise done by the Commissioner, Income Tax II purportedly under Section 263 of 'the Act' because the provisions of Section 263(c) suitably empowers the Commissioner to pass such order even if any appeal is pending but with a caveat, that the order passed under Section 263 of 'the Act' shall govern only such matters which was neither a subject matter nor decided in appeal. It is not in dispute that issue on which the remand order was passed in purported exercise of powers vested in the Commissioner, Income Tax under Section 263 i.e. unsecured loans/creditors, was not a subject matter of appeal and obviously could not have because this issue had been decided by the statutory authority in favour of assessee. In the circumstances discussed, we find no infirmity in the exercise and since the order has been acted upon to result in the fresh assessment order, we leave it open for the assessee to question the same in accordance with law but finding no issues which are in the nature of substantial question of law we refuse to grant indulgence, to dispose in this appeal. Be noted that we have not expressed any opinion on the inter-party merits and the appellant shall be at liberty to raise all issues as he chooses to raise, to question the order passed on remand of the matter under Section 263 of 'the Act'. This appeal is disposed of accordingly. Anjula/skpathak (Anjani Kumar Sharan, J)

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