

Misc. Appeal No.376 OF 2009
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Misc. Appeal No.384 OF 2009

Against the common order dated 4.2.2009, passed by the learned Income Tax Appellate Tribunal, Patna Bench, Patna in I.T.A. Nos.444 & 445 (Pat)/2007 and I.T.A. Nos.443 & 446(Pat.)/2007.

In Misc. Appeal No.376 of 2009:

COMMISSIONER OF INCOME TAX, Central Circle, Patna

.... **...Appellant**

Versus

SMT. RITA KESHRI, W/o Satish Kumar Keshri, Hira Panna Jewellers, r/o Hira Place, Dak Bungalow Road, Patna.

.... **....Respondents**

In Misc. Appeal No.377 of 2009

COMMISSIONER OF INCOME TAX, Central Circle, Patna.

.... **.... Appellant**

Versus

SHRI SHEKHAR KESHRI, S/o Satish Kumar Keshri, Hira Panna Jewellers, r/o Hira Place, Dak Bungalow Road, Patna.

.... **....Respondents**

In Misc. Appeal No.378 of 2009

COMMISSIONER OF INCOME TAX, Central Circle, Patna.

.... **....Appellant**

Versus

SMT. RITA KESHRI, W/o Satish Kumar Keshri, Hira Panna Jewellers, r/o Hira Place, Dak Bungalow Road, Patna.

.... **....Respondents**

In Misc. Appeal No.384 of 2009

COMMISSIONER OF INCOME TAX, Central Circle, Patna.

.... **....Appellant**

Versus

SHEKHAR KESHRI, S/o Satish Kumar Keshri, Hira Panna Jewellers, r/o Hira Place, Dak Bungalow Road, Patna.

.... **...Respondents**

For the Appellant:

Mr. Mr. Harshwardhan Prasad with

For the Respondents: Mrs. Archana Sinha, Advocates.
Mr. A.K. Rastogi, Advocate.

P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE SAMARENDRA PRATAP SINGH

S.K. Katriar, J. The department of Income Tax has preferred these appeals under section 260A of the Income Tax Act 1961 (hereinafter referred to as 'the Act'), and are directed against a common judgment dated 4.2.2009, passed by the learned Income Tax Appellate Tribunal, Patna Bench, Patna, whereby the following four appeals have been allowed, and the orders of remand passed by the learned Commissioner of Income Tax (Central), Patna, in purported exercise of powers under section 263 of the Act, has been set aside.

(i) I.T.A. Nos.444 & 445(Pat.)/2007 (Smt. Rita Keshari Vs. The CIT (Central), Patna, with respect to assessment years 2003-04 & 2004-05:

(ii) I.T.A. Nos.443 & 446 (Pat.)/2007 (Sri Shekhar Keshri vs. The CIT (Central), Patna, with respect to assessment years 1999-2000 & 2003-04.

2. The following substantial questions of law arise for consideration:

(i) Whether the Hon'ble Tribunal is correct in holding that all inquiries were made and all bank accounts were verified by the assessing officer.

- (ii) Whether the Hon'ble Income Tax Appellate Tribunal is correct in observing that all inquiries were carried out and all verifications were made with respect to investment in shop no.203 & 204 of Sumati Palace.
- (iii) Whether the Hon'ble Income Tax Appellate Tribunal is correct in ignoring the decision of Supreme Court in CIT vs. Shree Manjunatheshwar Packing Product & Camper Works reported in (1998) 231 ITR 53, where it was observed that if the assessment is completed before the receipt of valuation report the assessment is erroneous and the CIT could revise the assessment order on the basis of the valuation report received subsequently.

3. A brief statement of facts essential for the disposal of the four appeals may be indicated. Satish Kumar Keshri is the proprietor of the group. His wife is Rita Keshri, and their sons are Shekhar Keshri and Sharad Keshri who have interest in different business which are subject-matter of assessment proceedings for the period in question. Separate orders of assessment dated 29.12.2006, for the assessment years 2003-04 and 2004-05 were passed. The same had given rise to revision applications in Suo Motu exercise of powers by the learned Commissioner under section 263 of the Act, who disposed of the same by his judgment dated 6.6.2007, with respect to Smt. Rita Keshri for the assessment years 2003-04 and 2004-05, and by his judgment dated 15.6.2007, with respect to

Shekhar Keshri for the periods 1999-2000 and 2003-04. The learned Commissioner took the view that the learned assessing officer had not taken into account certain vital aspects of the matter which were prejudicial to the interest of the Revenue and, therefore, set aside the orders of the learned assessing officer, and remitted the matter for a fresh consideration and orders of assessment in accordance with law and the observations in the order of the learned Commissioner. The assessee challenged the same by preferring appeals before the learned Tribunal which have been numbered as I.T.A. Nos.444 & 445(Pat.)/2007 (Smt. Rita Keshari vs. The C.I.T. (Central), Patna), and I.T.A. Nos. 443 & 446 (Pat.)/2007 (Sri Shekhar Keshri vs. The C.I.T. (Central), Patna, with respect to the aforesaid four periods which have been allowed by a common judgment dated 4.2.2009, the orders of the learned Commissioner have been set aside, those of the learned assessing officer have been restored, and impugned herein.

4. The four appeals have arisen as follows:

In M.A. Nos.376 & 378 of 2009 (CIT Vs. Rita Keshri)

Assessment Order (Ann.1)	29.12.2006	For A/Y 2004-05 with respect to Rita Keshri .	In M.A.No.376/09 (CIT Vs. Rita Keshri)
Assessment Order (Ann.1)	29.12.2006	For Y/Y 2003-04 with respect to Rita Keshri	In MA No.378/09 (CIT Vs.Rita Keshri)
Common Revisional Order u/s 263 (Ann.2 in both appeals)	6.6.2007	For A/Y 2004-05 & A/Y 2003-04	In M.A. No.376 & 378 of 2009 (CIT Vs.Rita Keshri)
Common Appellate Order	4.2.2009 in ITA Nos.444 & 445(Pat.)/07	For A/Y 2004-05 & A/Y 2003-04	In MA Nos.376 & 378 of 2009 (CIT.Vs.Rita Keshri)

In M.A. Nos.377 & 384 of 2009 (CIT vs. Shekhar Keshri)

Assessment Order (Ann.1)	29.12.2006	For A/Y 1999-2000 with respect to Shekhar Keshri	In M.A.No.377/09 (CIT Vs.Shekhar Keshri)
Assessment Order (Ann.1)	29.12.2006	For A/Y 2003-04 with respect to Shekhar Keshri	In MA No.384/09 (CIT v. Shekhar Keshri)
Common Rev. Order u/s 263 (Ann.2 in both appeals)	15.6.2007	For A/Y 1999-2000 & A/Y 2003-04	In M.A. No.377 & 384 of 2009 (CIT v. Shekhar Keshri)
Common Appellate Order	4.2.2009 in ITA Nos.443 & 446(Pat.)/07	For A/Y 1999-2000 & A/Y 2003-04	In MA Nos.377 & 384 of 2009 (CIT v. Shekhar Keshri)

Note-1: In all the four appeals separate orders of assessment, all dated 29.12.2006 have been passed. The periods with respect to Rita Keshri for the A/Y 2004-05 & 2003-04 are in question, and with respect to Shekhar Keshri for the A/Y 1999-2000 & 2003-04 are in question.

Note-2: Common revisional orders both dated 6.6.2007 have been passed with respect to Smt. Rita Keshri for the assessment years 2004-05 and 2003-04.

Note-2.1: Common revisional orders both dated 15.6.2007 have been passed with respect to Shekhar Keshri for the Assessment Years 1999-2000 & 2003-04.

Note 3: Common Appellate order has been passed with respect to the four periods. The periods with respect to Rita Keshri are for the Assessment Years 2004-05 & 2003-04 (ITA Nos.444 & 445(Pat.)/2007), and with respect to Shekhar Keshri for the Assessment years 1999-2000 & 2003-04 (in ITA Nos. 443 & 446 (Pat.)/2007).

5. While assailing the validity of the impugned judgment, the learned senior Standing Counsel submits that the learned Commissioner had detected vital flaws in the orders of assessment which have been clearly indicated in the revisional order, and have rightly been remitted to the learned assessing officer. In his submission, the learned Tribunal has erred in interfering with an order of remand.

6. Learned counsel for the respondents has advanced elaborate submission in support of the impugned judgment. He submits that the issues are concluded by findings of facts arrived at by the learned Tribunal. The present appeals do not give rise to any substantial question of law. He relies on the following judgments:

- (i) Judgment dated 30.3.2011, passed by the present Bench in Misc. Appeal No.657 of 2010 (Deputy Commissioner of Income Tax vs. Sulabh International Social Service Organisation).
- (ii) Division Bench judgment of this Court in **Commissioner of Income Tax, Patna vs. Mr. Mukul Kumar [2009 (4) P.L.J.R. 417: 2009 (2) B.B.C.J. 132]**, paragraph 10.

7. We have perused the materials on record and considered the submissions of the learned counsel for the parties. The three items in the returns of the two assesseees are in question, and have been discussed in detail in the orders of the authorities under the Act. Those are with respect to different bank accounts, their investment in shop nos.203 and 204, and their investment in the A.C. market. It appears that there was a search and seizure in the business premises of the assesseees on 15.12.2004, and in January 2005. Large mass of incriminating materials were seized and were taken into account by the learned assessing officer. It is manifest from a perusal of the assessment orders that the two assesseees assumed an abnormally defiant approach, and refused to disclose

informations called for by the learned assessing officer in spite of repeated notices and calls. It is evident on a perusal of the four assessment orders that the learned assessing officer felt exasperated and helpless in the matter and passed orders of assessment under severe constraints. The orders of assessment create a clear impression in our minds that the assessees are extremely dishonest persons who have no respect for the laws of the land, the established procedure, and the authorities charged with the duties under the Act.

8. Section 263 of the Act is headed “Revision of orders prejudicial to revenue”, and confers suo-motu powers of revision on the learned Commissioner of Income Tax to take steps for annulment, modification, cancellation etc. of an order of assessment under the circumstances indicated therein. The four orders of assessment in question attracted the attention of the learned Commissioner who rightly invoked the power under section 263 of the Act and, in his elaborate discussion in his two revisional orders dealing with the two assessees for the four periods in question, noticed vital flaws in the orders of assessment entirely attributable to the extremely dishonest and defiant approach of the assessees. The learned Commissioner in his elaborate, lucid, and eloquent order has pointed out vital flaws in the orders of assessment, and has observed that the vital materials could not be taken into account

because of the assessee's refusal to cooperate. We entirely agree with the discussion in the order of the learned Commissioner.

9. We feel extremely unhappy with the mode and manner in which the learned Tribunal has dealt with the order and has, by a very perfunctory approach, set aside the orders of the learned Commissioner. It has taken into account the materials which were noticed by the learned assessing officer, but has refused to take into account the vital materials or aspects of the matter pointed out by the learned Commissioner which were not considered by the learned assessing officer. In other words, the learned Tribunal has failed to attach due importance to the vital omissions indicated by the learned Commissioner. In such a situation, the two judgments relied on by the learned counsel for the assessee are inapplicable to the facts and circumstances of the present case. The issues are indeed not concluded by findings of facts.

10. There is yet another aspect of the matter. The superior court or quasi-judicial authority should normally act with restraint while setting aside the impugned order with a view to remit the matter to the same authority or the court, because such an order of remand sets at naught the entire effort made till then to resolve the dispute. The function of the appellate court is to rectify the errors and the mistakes committed in the impugned order. An order of remand can be passed under limited circumstances so that no

injustice is done to any side. It is equally well settled that the superior court or quasi-judicial authority do not normally interfere with an order of remand where the parties will have adequate & reasonable opportunity to present their cases. In the present case, the learned Commissioner remitted the matter for valid reasons discussed in detail in his orders, and the learned Tribunal erred in interfering with the same for unconvincing reasons and perfunctory approach. In the present situation, the learned Commissioner could not have rectified the errors in the orders of the learned assessing officer because entire materials were not on record due to the uncooperative approach of the assessees. As indicated above, the learned Commissioner had pointed out vital omissions in the assessment orders which could be taken care of only after receiving full factual material on record, and has rightly set aside the orders of assessment which are to the prejudice of the Revenue, and with which we entirely agree.

11. As indicated hereinabove, the learned assessing officer has made detailed reference to the defiant and extremely uncooperative attitude adopted by the assessees, which speaks of a very dishonest approach. It is impossible for this Court to countenance such an approach which is inspired by complete lack of respect for the established laws of the land, and the prescribed procedure. In that view of the matter, the Director General of

Investigation, Bihar, and/or the Chief Commissioner of Income Tax, Bihar, Patna, would be well advised to keep the entire group under constant surveillance so that the Revenue does not suffer, and the courts are not burdened with unwanted matters.

12. In the result, we set aside the judgment dated 4.2.2009, passed by the learned Income Tax Appellate Tribunal, Patna Bench, Patna, in I.T.A. Nos.444 & 445 (Pat.)/2007, and ITA Nos.443 & 446 (Pat.)/2007, and restore the orders of the learned Commissioner of Income Tax. The substantial questions of law are answered in favour of the Revenue, and against the assesseees. These are fairly old matters. The learned assessing officer will be well advised to dispose of the same expeditiously. In the circumstances of the case, there shall be no order as to costs.

S.P. Singh, J. I agree.

(S.K. Katriar, J.)

(S.P. Singh, J.)

Patna High Court, Patna.
Dated the 26th day of April, 2011.
S.K.Pathak/ (AFR)