

CASE NO.:
Appeal (civil) 2101 of 2008

PETITIONER:
L.N. Hota & Company

RESPONDENT:
Commissioner of Income-Tax & Anr

DATE OF JUDGMENT: 26/03/2008

BENCH:
S. B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T
(NON-REPORTABLE)

CIVIL APPEAL NO 2101 OF 2008
(arising out of SLP (C) No. 18971 of 2006)

HARJIT SINGH BEDI, J.

1. Leave granted.
2. This appeal at the instance of the Assessee arises from the following facts:
- 3 The Assessing Officer issued a notice on 3rd December, 1998, to the assessee under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") requiring the assessee to file the return of its income for the assessment year 1997-1998. This notice was served on the assessee on 7th December, 1998. The assessee filed its return on 5th January, 1999, whereafter the Assessing Officer issued a notice under sub section (1) of Section 142 of the Act to the assessee on 28th June, 2000. The Assessing Officer vide his order dated 27th November, 2000, completed the assessment estimating the income of the petitioner from the business by applying the provisions of Section 145 of the Act. The assessee filed an appeal before the Commissioner, who by his order dated 4th January, 2002, did not adjudicate the issue of the legality of the assessment, but nevertheless maintained the order of the Assessing Officer and the Commissioner of Income Tax (Appeals) by his order dated 25h February, 2002 held a petition under Section 154 of the Act was not maintainable and accordingly dismissed the same. An appeal was thereafter taken before the Income Tax Appellate Tribunal (hereinafter referred to as "Tribunal") which rejected the primary prayer of the assessee that the assessment made without issuance of notice under Section 143 (2) of the Act within a period of one year was invalid but on the facts of the case, observed that some reconsideration was called for and accordingly remitted the matter to the Assessing Officer for a fresh look vide order dated 13th April, 2004. The Assessing Officer thereupon in his order dated 24th March, 2006 Ex.P-5 made a fresh assessment under Sections 143 (3)/254 of the Act. The assessee also filed a miscellaneous application before the Tribunal praying for the recall of the order dated 13th April, 2004, but the Tribunal dismissed the application vide its order dated 18th May, 2006, holding that as the order dated 13th April, 2004 was sub-judice before the Orissa High Court in an appeal, the Tribunal had no locus standi to adjudicate upon the matter. The Orissa High Court however in its order dated

14th August, 2006 held that as the assessment order had not come about by way of scrutiny, the provisions of Section 143 (2) would not be applicable and as such there was no justification for the court in entertaining the matter under Section 260-A of the Act. It is in this circumstance, that the present appeal is before us by way of special leave.

3. The learned counsel for the parties have placed reliance on a large number of judgments relating to Sections 139 and 143 of the Act. The learned counsel for the appellant has tried to convince us that the Section 143 (2) of the Act would apply to the present assessment as well and has placed on record a large number of cases which have been given to us bound as a compilation of judgments. The learned counsel for the department has however reported the judgment of the courts below and has likewise referred us to a string of judgments. We are of the opinion that in the light of the issues raised that the matter does require consideration. We observe that though the question of the applicability of Section 143 (2) of the Act was specifically raised throughout, prima facie, no finding based on the law as it stands, has been recorded. We, are therefore, of the opinion that the matter needs to be remitted to the High Court for a fresh decision in accordance with law. We accordingly set aside the order dated 14th August, 2006 and request the High Court to entertain the appeal under Section 260 (A) of the Act and to re-appraise the matter in the light of the arguments that have been raised by the parties. There will be no order as to costs.