IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.26 of 2015

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M/s Band Box, Ground Floor, Abhay Bhawan, Frazer Road, Patna - 800001, P.O - G.P.O., P.S -Kotwali through its Properietor Sri Suraj Kapoor, Son of Late Gurdial Kapoor Resident of 81 Kaveri Appartment, Bandar Bagicha, P.S- Kotwali, District - Patna.

.... Petitioner/s

Versus

1. The Tax Recovery officer (Central), Range-1, Patna.
2. The Commissioner of Income Tax (Central), Patna.
3. Manager, Reserve Bank of India, Patna.
4. The State of Bihar.
5. Building Controller cum S.D.O., Patna Sadar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harsh Singh
For Respondent No.2 : Mrs. Archana Sinha
For Respondent Nos.4&5: Mr.Lalit Kishore, PAAG

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

8 22-06-2015 Heard learned counsel for the petitioner and learned counsel for the respondent-Income Tax Department as also learned counsel for the State.

The petitioner seeks quashing of the order dated 20.11.2014 passed by the respondent No.5, the House Controller-cum-Sub-divisional Officer, Patna, by which he has enhanced the rent of the premises of the petitioner along with that of others. He further seeks quashing of the letter dated 30.9.2014 issued by the Tax Recovery Officer (Central), Range-I, Patna, by which the petitioner has been treated as an assessee in default with a direction to deposit an amount of Rs.1,59,96,567/- as per prevalent market rate with effect from 31.03.1994 and for refund of an amount of Rs. 1,23,517/- recovered from the bank account of the petitioner under the provisions of the Income Tax Act, pursuant to the letter dated 30.9.2014.

The petitioner is a lessee of a small shop on the ground floor of Abhay Bhawan, Fraser Road, Patna as a tenant from where, it is carrying on its business of Dry Cleaning for several decades. The petitioner alleges that he was inducted as a tenant by the original owner of the said building, Abhay Bhawan, in June, 1968 at the rate of Rs.420/- per month. The said building was sold to one M/s. Sabicon Estate Pvt. Ltd. in the year 1995 and thereafter he continued paying rent at the rate of Rs.1400/- per month as a month to month tenant. By virtue of an order issued under Section 226 (3) of the Income Tax Act, the premises were taken over against the said M/s. Sabicon Estate Pvt. Ltd. by the Income Tax Department and subsequently the impugned notice dated 30.09.2014 was issued to the petitioner treating it to be an assessee in default. In addition, the Income-tax authorities had moved before the House Controller, Patna, who passed the impugned order dated 20.11.2014 enhancing the rent with respect to all the tenants under the Building at different rates as stated in the impugned order dated 20.11.2014.

So far as the premises of the petitioner as an assessee in default is concerned, learned counsel for the petitioner relies upon a decision of this Court in identical matters in C.W.J.C. No.19413 of 2014: Union Bank of India vs. The Tax Recovery Officer (Central) Range-I, Patna and others along with two analogous cases, in which this Court quashed the similar action of the recovery officer and directed refund of the amounts recovered from the accounts of the said petitioners.

In view of the finding of this Court by the said order dated 16.01.2015, the letter dated 30.9.2014 is also quashed and the respondent-authorities of the Income-tax Department are directed to refund the amount of Rs. 1,23,517/- recovered from the account of the petitioner within a period of two months from today.

So far as the order dated 20.11.2014 of the House Controller is concerned, the clear stand of the petitioner is that no notice of the proceedings was ever issued to the petitioner at any stage and thus the impugned order is violative of the principles of natural justice.

In the counter affidavit filed on behalf of the State respondent No.5, the Sub-divisional Magistrate, Patna Sadar, it is admitted in paragraphs Nos. 9 and 10 thereof that before passing of the impugned order although notices were issued against the petitioner to be served through the Officer-in-charge, Kotwali Police Station, Patna but on account of carelessness on the part of the Officer-in-charge, delay was caused in serving the said notice, for which show cause has been issued on 15.5.2015 to the officer-in-charge, Kotwali Police Station.

In view of the aforesaid admission of the respondent No.5 himself, the impugned order dated 20.11.2014, in so far it concerns the petitioner, cannot stand and it is, accordingly, quashed.

Learned counsel for the petitioner does not press the issue of locus of the Income-tax authorities to approach the House Controller. The matter, therefore, is remanded to the respondent No.5 to proceed afresh and decide the same in accordance with law.

It is the contention of learned counsel for the petitioner that whatever notice has been served upon him after the impugned order dated 20.11.2014 has been passed is not accompanied by any document.

It is also submitted by learned counsel that the proprietor of the petitioner's firm is aged about 78 years and has gone to Delhi for his treatment. The petitioner is, accordingly, directed to be present before the House Controller on 14.09.2015 at 11 A.M., whereupon the House Controller shall ensure that a copy of the application is served upon the petitioner and thereafter shall proceed to hear and dispose of the matter expeditiously after giving an opportunity of hearing to the petitioner. It is made clear that the petitioner shall co-operate in the disposal of the matter before the House Controller.

The writ application is, accordingly, allowed with the aforesaid observations and directions.

V.P.Sinha/-

(Ramesh Kumar Datta, J)

(Anjana Mishra, J)

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