IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8487 of 2016

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1. M/s Gurukul, a registered trust having its office at Veer Kunwar Singh Colony, Kashipur, Samastipur through its Secretary Sri Minesh Chaudhary, S/o Shri Janardan Choudhary, resident of Veer Kunwar Singh Colony, Kashipur, Samastipur

.... Petitioner/s

Versus

1. The Commissioner of Income Tax (Exemptions), Central Revenue Building, Bir Chand Patel Path, Patna,
2. The Joint Commissioner of Income Tax Range, Lok Nayak Bhawan, Dak Bunglow Chowk, Patna,
3. The Assistant Commissioner of Income Tax, Darbhanga,
4. The Income Tax Officer (Exemptions) Exemption Ward, Bela Kothi, Bela, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kejriwal, Advocate
Mr. Zahid Hussain, Advocate

For the Respondent/s : Mr. Rishi Raj Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
&
HONOURABLE DR. JUSTICE RAVI RANJAN

JUDGMENT AND ORDER
CAV

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 27-10-2016

The writ petitioner, which is a non-profitable educational trust, having its office at Samastipur, was formed with an object to meet the academic requirements of children from poor sections of society, seeks issuance of a writ of *certiorari,* quashing the order of assessment and demand notice, dated 31.03.2016, passed by the respondent, Income Tax Officer (Exemptions), Muzaffarpur, for the assessment year 2014-15, under Section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), on the ground of being without jurisdiction and in violation of the Notification No.52/14, dated 22.10.2014, issued by the Central Board of Director Taxes (CBDT). The petitioner also seeks a direction restraining the respondent, Income Tax Officer (Exemptions), Muzaffarpur, from executing the impugned order of assessment and demand notice, dated 31.03.2016, aforementioned.

2. With the help of this writ petition, the petitioner seeks a declaration that, in the light of the Notification No. 52/14, dated 22.10.2014, issued by the CBDT, the respondent Assessing Officer, i.e., Income Tax Officer (Exemption), Muzaffarpur, has no jurisdiction to make assessment in respect of the petitioner as an assessee under Section 143(3) of the Act on the ground that it is neither registered under Section 12AA of the Act nor has claimed any exemption under Section 11 of the Act.

3. We have heard Mr. Gautam Kejriwal, learned counsel, appearing on behalf of the petitioner and Mr. Rishi Raj Sinha, learned counsel appearing, on behalf of the respondents.

Background facts:

4. Shorn of unnecessary details, the facts necessary for adjudication of writ petition are, in brief, as under:

5. The petitioner trust was established on 24.12.2007 and though PAN was obtained in the year 2008 itself, no annual returns for the Assessment years 2008-09 to 2011-12 could be filed for lack of knowledge of the trustees. On 20.12.2013, a notice, under Section 148 of the Act, was issued by the office of the respondent Deputy Commissioner of Income Tax, Darbhanga, directing the petitioner to file returns for the assessment years 2008-09 to 2011-12. Pursuant thereto, the petitioner filed returns for the assessment years 2012-13 and 2013-14. Later on, the petitioner also filed its returns for the assessment years 2008-09, 2009-10, 2010-11 and 2011-12, which were duly acknowledged.

6. Thereafter, a proceeding, under Section 142(1) of the Act, for scrutiny and assessment of the returns was initiated by the respondent Assistant Commissioner of Income Tax, Darbhanga. According to the petitioner, thereafter, the said proceeding was transferred to respondent, Income Tax Officer (Exemption), Muzaffarpur, and the impugned assessment and demand notice, dated 31.03.2016, came to be issued.

7. The petitioner, immediately, filed his objection, on 30.04.2016, through its Chartered Accountant, pointing out the error of jurisdiction in issuance of the impugned assessment and demand notice, dated 31.03.2016, aforementioned, the same being in contravention of Notification No. 52/14, dated 22.10.2014, issued by the Central Board of Direct Taxes (CBDT), as the petitioner was not registered under Section 12AA of the Act and has never claimed any exemption under Section 11 of the Act.

8. While it is the submission, made on behalf of the writ petitioner, that the Notification No.52/2014, dated 22nd October, 2014, issued by the CBDT having specifically conferred jurisdiction on the Commissioner of Income-tax (Exemption), Patna, to deal with such Trust, which, as assessee, claims exemption, the assessment made in the present case by the Income Tax Officer (Exemptions), Muzaffarpur, is wholly without jurisdiction and, therefore, void *ab initio,* the contention of the respondents is that the act of making of assessment by Income Tax Officer (Exemptions), Muzaffarpur, is merely irregularity and is, therefore, valid in law.

9. While considering the present writ petition, it needs to be noted that in exercise of its power under sub-sections 1 and 2 of Section 120 of the Income Tax Act, 1961, the CBDT has directed the Commissioners of Income Tax, specified in column (2) of the Schedule annexed to the notification, having their headquarters at the places specified in the corresponding entries in column (3) of the said Schedule, that they shall exercise the powers and perform all the functions in respect of such cases or classes of cases as specified in column (5), in such territorial areas as specified in the corresponding entries in column (4) of the said Schedule. This Notification dated, 22nd October, 2014, also authorizes the Commissioners of Income Tax referred to in this notification to issue orders in writing for the exercise of the powers and performance of the functions by the Additional

Commissioners of Income Tax or Joint Commissioners of Income Tax and Tax Recovery Officers, who are subordinate to them, in respect of cases or classes of cases specified in column (5) in such territorial areas specified in the corresponding entries in column (4) of the said Schedule in accordance with the orders issued by the respective Commissioners of Income Tax.

10. The relevant part of the Schedule reads thus:

S. No.	Designation	Headquarters	Territorial Area	Cases or classes of cases
1.	xxxx			
2.	xxxx			
3.	xxxx			
4.	xxxx			
5.	xxxx			
6.	xxxx			
7.	xxxx			
8.	xxxx			
9.	xxxx			
10.	xxxx			
11.	xxxx			
12.	xxxx			
13.	Commissioner of Income-tax (Exemption), Patna	Patna	State of Bihar and Jharkhand	*"All cases of persons in the territorial area specified in column (4) claiming exemption under Clauses (21), (22), (22A), (22B), (23), (23A), (23AAA), (23B), (23C), (23F), (23FA), (24), (46) and (47) of Section 10, Section 11, Section 12, Section 13 A and Section 13 B of the Income Tax Act, 1961, and assessed or assessable by an Income Tax authority at serial numbers 228 to*

				235 specified in the notification of the Government of India bearing No. S.O._ dated the__ October, 2014."
14.	xxxx			

11. From a bare reading of the relevant part of the notification, dated 22nd October, 2014, aforementioned, it becomes abundantly clear that it is the Commissioner of Income Tax (Exemption), Patna, who has been vested with the jurisdiction to make assessment under various provisions of the Income Tax Act including Section 11 thereof, which relates to income from property held for charitable or religious purposes.

12. Considering the fact that impugned order of assessment has been made by Income Tax Officer (Exemptions), Muzaffarpur, who, in the light of the Notification, dated 22nd October, 2014, has not been vested with the jurisdiction to deal with the Trust, which do not claim exemption from payment of taxes, the Income Tax Officer (Exemptions), Muzaffarpur, could not have, apparently, made any assessment of tax in the case of the present petitioner.

13. In other words, the impugned order of assessment runs wholly contrary to the directions of the CBDT contained in the Notification, dated 22nd October, 2014, which are, admittedly, binding on even the assessing authority concerned.

14. Because of the fact that the assessment, has impugned in the present case, has been made by an authority, which had no jurisdiction to make assessment inasmuch as the authority to make assessment stood vested in the Commissioner of Income-Tax (Exemption), Patna, the impugned assessment, so made, is void *ab initio* and cannot be regarded as a mere irregularity.

15. Left, therefore, with no other option, we hereby, in the interest of justice, set aside and quash the impugned assessment and demand notice, dated 31.03.2016, raised by the respondent- Income Tax Officer (Exemption), Muzaffarpur, with, however, liberty given to the Revenue to deal with the question of assessment of the petitioner's case, in accordance with law, in the light of the Notification, dated 22nd October, 2014.

16. In terms of the above, this writ petition accordingly stands allowed. However, there shall be no order as to costs.

(I. A. Ansari, CJ)

Dr. Ravi Ranjan, J: I agree.

(Dr. Ravi Ranjan, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	**20.10.2016**
Uploading Date	28.10.2016
Transmission Date	