IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11929 of 2015

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Rakesh Kumar, S/o Late Mahangu Singh, Flat No. 703, Jagat Trade Centre, Frazer Road, P.S. - Gandhi Maidan, District - Patna.

.... Petitioner

Versus

1. The Principal Chief Commissioner of Income Tax, Bihar and Jharkhand, Revenue Building, Veerchand Patel Path, Patna.
2. The Commissioner of Income Tax II, Revenue Building, Veerchand Patel Path, Patna.
3. The Commissioner of Appeal II, Lok Nayak Bhavan, 4th Floor, Patna.
4. The Assistant Commissioner of Income Tax, Circle 4, Lok Nayak Bhawan, Patna.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Krishna Mohan Mishra, Advocate.
For the Respondent-Income Tax Department : Mr. Rishi Raj Sinha, Sr. SC.
Mrs. Archana Prasad, Jr. SC

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)
Date: 06-12-2016

The petitioner has sought quashing of the order dated 27th of May, 2015 passed by the Assistant Commissioner of Income Tax whereby, the application for stay of demand was declined. The petitioner has also prayed for a direction to the Commissioner of Income Tax, Appeal-II to dispose of the appeal as well as an application for stay of demand filed by the petitioner.

The petitioner relies upon the circular dated 29.02.2016 (Annexure-P/6) whereby, if the outstanding demand is disputed before the Commissioner of Income Tax (Appeal), the Assessing Officer shall grant stay of demand till disposal of first appeal on payment of 15% of the disputed demand, unless the case falls in the category discussed in Para 4 (B) of the said circular. It is contended that the claim of the petitioner does not fall in any of the category of Para 4(B) of the Circular dated 29.02.2016, therefore, in terms of Para 4(A), the petitioner is entitled to stay of recovery of demand.

On the other hand, in the counter affidavit, it has been averred that the application for stay of demand was declined by the Assessing Officer on 27.05.2015. According to the petitioner, the said order is also the subject matter of appeal before the Commissioner of Income Tax (Appeal).

Keeping in view the fact that the appeals are pending before the Commissioner of Income Tax (Appeal) against the order of assessment as well as against the order of refusing stay, we dispose of the present writ application with direction to the Commissioner of Income Tax (Appeal) to decide the appeal against the order refusing stay on merits in accordance with law expeditiously preferably within three months from the date of receipt/production of a copy of this order.

(Hemant Gupta, ACJ)

(Dinesh Kumar Singh, J)

Mishra

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	09.12.2016
Transmission Date	