IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.435 of 2012

In

Civil Writ Jurisdiction Case No.10707 of 2011

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1. Chief Commissioner of Income Tax (CCA), Patna
2. The Director General of Income Tax (Inv.), 9, Bailey Road, Patna

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Bihar Human Rights Commission, Patna, through its Deputy Secretary
3. Rajendra Singh, S/o- Late Sardar Charan Singh, C/o- Bhargo Saw Mill, Mithapur, P.S.- Jakkanpur, Dist.- Patna

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sandeep Kumar, Advocate

For the Respondent/s : Mr. Vinay Mistri, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-11-2017

In view of the order passed with regard to the same issue in question at the instance of the respondent Rajendra Singh in L.P.A. No. 787 of 2012 and the finding recorded by a coordinate Bench of this Court in a detailed order passed on

09.07.2012 which reads as under:-

> "In our opinion, neither of the aforesaid question nos. 15 or 31 indicates in any manner that the appellant was subjected to continuous interrogation; nor does the above referred endorsement made at the end of question no. 31. There is one more reason why we cannot believe that interrogation was continuous as held. The total interrogation runs from pp. 85 to 98 i.e. hardly 14 pages in the form of questions and answers. It is unbelievable that for recording less than 15 pages of interrogation and for eliciting answer to 41 questions the Income tax officials required 36 hours of continuous exercise. More particularly, quite a few questions were just a preliminary enquiry such as name, address, age, P.A. number and like information. On the contrary, the said interrogation suggests that the appellant was non-cooperative and recalcitrant in not producing the books of accounts. There is one more reason for not believing the appellant. In the complaint he lodged before the Commission, although he had made several other allegations there is no complaint or a whisper about the interrogation much less the continuous interrogation. It may be noted here that although the appellant made several allegations against the conduct of the Income tax officials he does not seem to have pressed the said allegations before

> the Commission.
>
> For the aforesaid reasons, we hold that in absence of a specific allegation made by the appellant and the records produced before the Commission, the finding of the Commission that the appellant was subjected to 36 hours of continuous interrogation is unsustainable. The challenge made by the appellant or the observations made by the learned single Judge in paragraph nos. 18 to 20 of the judgment cannot be countenanced.
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> Appeal is dismissed in limine."

We see no reason to take a different view, except to allow this appeal arising out of the same order of the writ court with regard to the same transaction, occurrence and issue. When a coordinate Bench of this Court has already recorded its finding as is detailed hereinabove with regard to violation of human right to the respondent assessee. Accordingly, this appeal has to be allowed and the order passed by the learned Writ Court quashed in the light of the finding recorded as detailed hereinabove.

Accordingly, we allow this appeal, quash the order passed by the learned Writ Court on 02.02.2012 in C.W.J.C. No. 10707 of 2011 so far it adversely affects the right of the appellant department and dispose of the appeal in terms of the order already passed by a coordinate Bench of this Court as indicated hereinabove on 09.07.2012 in L.P.A. No. 787 of 2012.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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