IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9138 of 2017

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M/s Ajanta Construction Company, F-175, P.C. Colony, Kankarbagh, Patna through its Partner Binod Kumar Choubey, Son of Sri Ram Choubey, Resident of F-175, P.C. Colony, Kankarbagh, P.S.- Kankarbagh, District- Patna.

... ... Petitioner/s

Versus

1. The Principal Commissioner of Income Tax-2, Patna, Central Revenue Building, Birchand Patel Marg, Patna-1.
2. Commissioner of Income Tax-2, Central Revenue Building, Patna-1.
3. Deputy Commissioner of Income Tax, Circle-4, Lok Nayak Bhawan, Patna-1.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Dinesh Choudhary, Adv.
For the Respondent/s : Mr. Suman Kumar Mishra, Adv.
Ms. Shilpi Kumari, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-11-2017

Petitioner has filed this writ petition and the only relief claimed by the petitioner is that in view of an order passed by the Commissioner of Income Tax, Appeal-2 Patna vide Annexure 2 on 22.8.2016 and subsequently in view of the order of refund, Annexure 3 dated 7th of October, 2016, passed by the Deputy Commissioner of Income Tax, Circle 4, Patna, petitioner is entitled to refund of Rs.14,13,779/- plus interest and as the same is not being granted, this writ petition has been filed for refund of the amount.

A supplementary counter affidavit has been filed by respondent No.2 and from the supplementary counter we find that with regard to assessment years in question, various orders were passed by the Income Tax Appellate Tribunal, Patna Bench vide Annexure A on 17.2.1998 and thereafter vide Annexure B on 31.8.2000 wherein, based on certain criminal case instituted against the petitioner in the matter of claiming certain benefit on the basis of fake T.D.R's., criminal prosecution against the petitioner has been lodged by the C.B.I. and it is stated in the supplementary counter affidavit that the amount cannot be refunded until and unless the criminal cases are not concluded.

Keeping in view the averments made in the supplementary counter affidavit filed, now, in the facts and circumstances that have come on record, we are not inclined to issue a mandamus commanding the respondents to refund the amount in pursuance to the order Annexure 3 dated 7th October, 2016. On the contrary, we direct that on the petitioner filing a certified copy of this order along with relevant documents, including the supplementary counter affidavit filed by respondent No.2, along with documents Annexures A and B, the Deputy Commissioner of Income Tax, Circle 4, Patna, the authority which passed the order Annexure 3, dated 7th of October, 2016 for refund, shall examine the matter, hear the petitioner and decide the question of refund afresh in accordance with law within a reasonable period, preferably within two months.

With the aforesaid this application stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	9.12.2017
Transmission Date	