IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1391 of 2018

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Dhananjay Kumar Singh, Son of Basudeo Narayan Singh, Resident of Main Road, Budha Colony, Opposite Amitbh Kunj, Apartment, Budha Colony, Patna- 800 001, P.O. G.P.O. & P.S. Budha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax , Circle -1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1527 of 2018

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Basudeo Naraian Singh, son of Late Krut Narayan Singh, resident of Main Road, Budha Colony, Opposite Amitabh Kunj Apartment, P.O. GPO, P.S. Budha Colony, District-Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1520 of 2018

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Prabhat Narain Singh, son of Late Prasiddha Narayan Singh, resident of 103, Shri Ram Place, East Boring Canal Road, Patna- 800 001, P.O. GPO & P.S. Budha Colony, District- Patna.

... ... Petitioner/s

Versus

1.The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2.The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1402 of 2018

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Balmiki Prasad Singh, son of Samprada Singh, resident of Shree Bhawan, Budha Colony, Patna- 800 001, P.O. G.P.O. & PS Budha Colony, District-Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.

3. The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1415 of 2018

Smt. Manju Singh Wife of Shri B.P. Singh, resident of Shree Bhawan, Budha Colony , Patna - 800001, P.O. GPO & P.S. Budha Colony, District - Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle - 1, Patna.
2. The Joint Commissioner Income Tax, Range - 1, Patna.
3. The Principal Commissioner on Income Tax - 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna - 8000001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1518 of 2018

Samprada Singh (HUF), son of Shri Narayan Singh, resident of Shree Bhawan, Budha Colony, Patna- 800 001, P.O. GPO & P.S. Budha Colony, District-Patna.

... ... Petitioner/s

Versus

1.The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2.The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1522 of 2018

Mritunjay Kumar Singh @ Mritunjay Singh, son of Basudeo Narayan Singh, resident of Main Road, Budha Colony, Opposite Amitabh Kunj Apartment, Budha Colony, Patna- 800 001, P.O. GPO & P.S. Budha Colony, District-Patna.

... ... Petitioner/s

Versus

1.The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2.The Joint Commissioner Income Tax, Range-1, Patna.
3.The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1428 of 2018

Smt. Anju Singh, wife of Nawal Kishor Singh, resident of Shree Bhawan, Budha Colony, Patna- 800 001, P.O. GPO & P.S. Budha Colony, District-Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1429 of 2018

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Late Rekha Singh, wife of Basudeo Narayan Singh, through Legal Heir Basudeo Narayan Singh, resident of Main Road, Budha Colony, Opposite Amitabh Kunj Apartment, Budha Colony, Patna- 800 001, P.O. GPO & P.S. Budha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1539 of 2018

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Satish Kumar Singh, son of Samprada Singh, resident of Shree Bhawan, Budha Colony, Patna-800 001, P.O. GPO & P.S. Budha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle- 1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax- 1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800 001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1451 of 2018

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Nawal Kishore Singh, Son of Samprada Singh, Resident of Shree Bhawan, Budha Colony, Patna- 800001, P.O. GPO & P.S.- Budha Colony, District- Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle-1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel Marg, Patna- 800001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1400 of 2018

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Rajesh Kumar, Son of Braj Nandan Sinha, Resident of Sushila Bhawan, Buddha Colony, P.S. Budha Colony, P.O. GPO, Patna- 800001, District- Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax , Circle -1, Patna.
2. The Joint Commissioner Income Tax, Range-1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna, 2nd Floor, Central Revenue Building, Birchand Patel marg, Patna- 800 001

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lalit Kishore, Senior Advocate Mr. Ajay Kumar Rastogi, Advoate Mr. Manish Rastogi, Advocate Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Advocate Mr. Sanjeev Kumar, Advocate Mr. Alok Kumar, Advocate

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

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 25-01-2018 In all these writ petitions, as challenge made is to an order of assessment passed by the Assessing Officer under Section143(3) of the Income Tax Act, 1961, for various periods, all the petitions are being dealt with and disposed of by this common order as the short question which was canvassed before us was to the effect that in passing the impugned order,

the show cause filed by the petitioners, the submission made in the show cause and certain documents, like the valuation report, have not been objectively considered and discussed.

Assessees, the petitioners herein, are individuals and derive income from salary paid by their employers, house property, capital gains and certain income from other sources. For the relevant assessment years, returns were filed by the assessees under the electronic system and the returns of the petitioners were selected for scrutiny under the CASS and while conducting scrutiny, the show cause notice was issued to the petitioners under Section 143(2) of the Act. The assessees appeared through their representatives on various dates and filed details of the bank accounts and various other documents along with a detailed show cause. Even though hearing took place from time to time, as is detailed in the order, a subsequent show cause notice and questionnaire was raised to the petitioners vide Annexure-5 on 21st December, 2017 and the petitioners again submitted a detailed reply and answer to the queries vide Annexure-6 on 26th of December, 2017 and much before that the petitioners had also brought on record a report on valuation of shares of Cachet Pharmaceuticals Private Limited given by the Chartered Accountants.

Be that as it may, it is the grievance of the petitioners are that in spite of filing overwhelming documents, like valuation report and making various grounds in the show cause, the Assessing Officer in a haste, only to meet the time limit for passing the assessment order, after the documents and other materials were submitted on 26.12.2017, without even looking to them, passed an order of assessment on 31.12.2017 in an arbitrary manner which does not meet the requirement of the principles of natural justice and, therefore, on this ground alone, the learned Senior Counsel appearing for the petitioners Shri Lalit Kishore assisted by Sri Ajay Kumar Rastogi, learned Counsel, seeks indulgence into the matters and brings to the notice of the Court various judgments, including a recent judgment of this Court delivered on 15.01.2018 in Civil Writ Jurisdiction Case No.3576 of 2017 and Civil Writ Jurisdiction Case No.3661 of 2017 (Alstom Bharat Forge Power Pvt. Ltd. Versus The State of Bihar & Ors.) to say that when an order is passed, in a manner, as is detailed hereinabove, without considering the relevant materials produced in support of the show cause, the order passed being in violation to the principles of natural justice is unsustainable.

Refuting the aforesaid submissions, Smt. Archana Sinha, learned counsel for the Revenue, took us through the detailed order available from page 26 to the writ petition and tried to argue that each and every relevant consideration was made, there is no error in the order and, therefore, indulgence into the matter is not called for.

We have heard learned counsel for the parties at length and we find that the petitioners did submit a detailed reply to the show cause along with various documents, including a valuation report. Even though in the opening para of the order, the learned Assessing Officer refers to appearance of the authorized representative and advocate of the assessees, submission of various documents, like copies of Income tax return, details of bank accounts and other documents and also says that on various dates discussion took place, but in the entire order passed, he proceeds on the basis of various legal principles derived and the findings have been recorded even without referring to what are the objections of the petitioners; what is the indication made in the show cause filed; what is the valuation report referred to; what is the finding recorded in the valuation report; and why the Assessing Officer feels that the objection raised in the show cause and the valuation report cannot be accepted. It is an order where various legal principles have been detailed, but they have not been discussed or applied properly by referring to the objection of the petitioners, the facts of the case and documents filed by them.

That being so, in our considered view, it is an order based on the *ipse dixit* of the Assessing Officer without adverting to consider the relevant materials produced before him and if that is the factual position as it emerges on going through the detailed order, we have no hesitation in holding that it is an order without taking note of the relevant materials and the objections raised by the petitioners and this itself is sufficient to hold that the order has been passed in violation of the principles of natural justice.

It is a cardinal principle of law that if relevant materials and objections are produced before a quasi judicial authority, the quasi judicial authority is duty bound, under law to advert to consider the same, discuss them and then reject it by recording reasons. In the said cases, this principle has not been followed. This principle can be made out if we go through the judgment rendered by the Hon'ble Supreme Court way back in the year 1985 in the case of **Anil Kumar Versus Presiding Officer**, AIR 1985 SC 1121, wherein it has been held by the Hon'ble Supreme Court that if relevant documents or material pointed out by a delinquent employee in defence of the charges levelled against him in a departmental enquiry are not adverted to by the enquiry officer, they are not discussed and the enquiry officer records a finding without taking note of the documents and the submissions, the finding of the enquiry officer is perverse based on his *ipse dixit* and in violation to the principles of natural justice.

Based on the aforesaid principle, in these cases also, we find that the Assessing Officer has proceeded to pass the assessment orders on the basis of legal principle, but while doing so, has not discussed the show cause filed by the petitioners and the relevant documents which they had brought on record in their defence, including the valuation report.

That being the position, we see no reason to reject the claim made by the petitioners, on the contrary, we are satisfied that the order passed is in gross violation of the principles of natural justice.

Accordingly, we allow these petitions, quash the orders of assessment. The assessees, in all these petitions, shall now appear before the Assessing Officer along with certified copy of this order and all other relevant documents that they may propose to file by 15th of February, 2018 and on the same being filed, the Assessing Officer shall proceed to decide the question in accordance with law at an earlier date.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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