IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18707 of 2017

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Nikhil Kheria @ Nikhil Kumar Kheria Son of Bhagwan Lal Kheria resident of Gandhi Chowk, Bara Bazar, Police Station - Town Thana, District - Darbhanga, Proprietor of M/s Purusham, Tower Chowk, Darbhanga.

.... Petitioner/s

Versus

1. The Principal Commissioner of Income Tax, Muzaffarpur.
2. The Deputy Commissioner of Income Tax, Circle - 3, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Parijat Saurav
Mr. Ajay Kumar Rastogi
Mr. Dinesh Sing

For the Respondent/s : Mr. Rishi Raj Sinha and Ms. Shilpi Keshri

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 03-01-2018

Challenging an order passed by the appellate authority namely, respondent no. 2 the Deputy Commissioner of Income Tax, Circle -3, Darbhanga, on 04.08.2017 vacating the stay earlier granted to a demand for Rs.9,93,803/- for the assessment year 2014-2015 on the appellant depositing 50% of the disputed amount as per the requirement of the CBDT dated 02.02.1993, this writ petition has been filed under Article 227 of the Constitutions of India.

It is pointed out that the stay earlier granted is vacated in view of another Office Memo dated 20th September, 2016 and the entire disputed amount is being directed to be deposited within 7 days, inter alia, contending that by misinterpreting the circular the amount is directed to be deposited the writ petition has been filed.

Even though the learned counsel for the Revenue has vehemently opposed the prayer made and argued that at this interlocutory stage when the matter is pending before the competent appellate authority interference is nor required. But on a perusal of the order impugned in Annexure-7 dated 14.11.2017, Annexure-8 dated 11.10.2017 and 04.12.2017 we find that the stay granted has been vacated without indicating any reason and even without referring to the requirement of the circular applicable in the matter, i.e. 29th February, 2016. As the stay earlier granted has been vacated without taking note of the requirement of the circular dated 29th February, 2016 in its right perspective and without indicating any reason thereof, we deem it appropriate to remand the matter to the appellate authority to reconsider the claim of the petitioner taking note of the requirement of the circular Annexure-2 dated 29th February, 2016 and thereafter pass a fresh order with regard to grant of vacation of stay. Till then, no coercive action for recovery shall remain stayed.

With the aforesaid, the writ petition is allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05/01/2018
Transmission Date	