IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7875 of 2017

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Balmiki Singh, Son of Mahesh Singh, village and P.O. Gorigama, P.S. Minapur, District Muzaffarpur, 843117.

... ... Petitioner/s

Versus

1. The Principal Commissioner of Income Tax, Bela Kothi, Ramkrishna Ashram Road, Bela, Muzaffarpur
2. The Income Tax Officer, Ward 1 (1), Bela Kothi, Ramkrishna Ashram Road, Bela, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Krishna Nandan Singh, Sr. Advocate Mr. Sriram Krishna, Advocate
For the Respondent/s	:	Mr. Rishi Raj Sinha, Advocate Ms. Shilpi Keshri, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-08-2018

Challenging the assessment order passed by the Assessing Officer on 16.02.2016 with regard to assessment of income for the year 2012-13 (Annexure-P-1) and the order Annexure-P-9 passed by the Principal Commissioner, Income Tax, Muzaffarpur on 28.03.2017 in exercise of his powers under Section 264 of the Income Tax Act, 1961, this writ petition has been filed.

At the very outset, learned senior counsel appearing for the petitioner argued that the petitioner would be satisfied if the assessment is undertaken after granting him an opportunity to produce his documents and evidence as it is a case where proper opportunity of submitting the documents and material has been denied to him.

Refuting the aforesaid contention, learned counsel appearing for the Revenue vehemently argued that in spite of opportunities granted before the Assessing Officer and again before the Revisional Authority in the proceeding under Section 264 the petitioner and his counsel failed to avail of the opportunity and having failed to do so, now after such a long period of time indulgence into the matter is not called for.

We have considered the aforesaid contentions advanced and we find that the petitioner claims to be an agriculturist and it is said that for the year in question a sum of Rs. 24,26,383/- was deposited by him in his account in the State Bank of Bikaner and Jaipur. Finding it to be concealment of assessment, proceedings were initiated by the Assessing Officer under Section 147 of the Income Tax Act.

It is the case of the petitioner that he was required to appear in the matter before the Assessing Officer on 21.02.2017. He received the notice on 20th of February, 2017, rushed to Muzaffarpur to meet his lawyer who was not available and, therefore, filed a petition for seeking time. This was not granted and the Assessment order was passed after a month and the order supplied to him. He, therefore, filed Revision Petition and in the Revision Petition also even though it seems that opportunities were granted to him but because of some lapse on the part of his counsel the petitioner pleads that he was not apprised of the date fixed and appropriate opportunity to lead evidence or document to show that the income is derived from the sale of agricultural land and, therefore, exempt from the payment of tax, has been denied to the petitioner.

Considering the totality of the circumstances, we deem it appropriate that at least one opportunity should be granted to the petitioner to give his say before the competent Assessing Officer and thereafter the Assessing Officer will proceed in the matter in accordance with law.

Accordingly, we allow this petition, quash both the Assessment order dated 16.02.2016 and the order of revision passed dated 28.03.2017 and direct that the petitioner shall appear before the Assessing Officer along with certified copy of this order on 17th of August, 2018 and produce all evidence and document as he requires and thereafter the Assessing Officer will proceed in the matter in accordance with law. In case of any default committed by the petitioner in not complying with the aforesaid direction, the Assessing Officer is free to proceed in the matter without granting any opportunity to the petitioner.

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

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.08.2018
Transmission Date	