IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5041 of 2018

==

Rameshwar Prasad, Son of Late Sugal Mahto, Resident of Purnendu Nagar, Near Shiv Mandir, P.O.- Phulwarisharif, P.S.- Phulwarisharif, District- Patna.

... ... Petitioner/s

Versus

1. Commissioner of Income Tax, Bhagalpur Kacheri Chowk, Bhagalpur.
2. Asst. Commissioner of Income Tax, Circle-2 (1), Begusarai.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Adv. Ms. Manju Jha, Adv. Mr. Sadashiv Tiwary, Adv.
For the Respondent/s	:	Mr. Rishi Raj Sinha, Sr. SC Ms. Shilpi Keshri, Jr. SC

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

4 25-07-2019 Heard Mr. D.V. Pathy, learned counsel appearing for the petitioner and Mr. Rishi Raj Sinha, learned Senior Standing Counsel for the Income Tax department who appears with Ms. Shilpi Keshri, learned junior Standing Counsel for the Income Tax department.

In the nature of the order that we propose to pass we do not intend to delve deep into the contentions advanced by Mr. Pathy for it is questioning the notice dated 30.03.2017 of the Assistant Commissioner, Income Tax, Circle 2(1), Begusarai which has culminated in the assessment order dated 11.12.2017 passed by the said assessing authority in purported exercise of jurisdiction vested in him under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') that the petitioner is before this Court.

A preliminary objection is raised by Mr. Sinha, learned Senior Standing Counsel appearing for the department to contest the writ petition because there is an appellate remedy under section 246 of 'the Act' available to the assessee to question the order on any ground including the grounds raised herein.

On the objection taken as to the statutory remedy available to the petitioner under section 246 of 'the Act' Mr. Pathy, learned counsel appearing for the petitioner after advancing some arguments prays for disposal of the writ petition to enable the petitioner to avail of the alternative remedy of appeal but since the limitation so prescribed under section 249 of 'the Act' has expired prays that this Court may grant reasonable time to the petitioner to take recourse to the appellate remedy.

Having heard learned counsel for the parties and in the nature of issue contested before this Court, we allow the petitioner to avail of the alternative appellate remedy so available to him in law and should any such appeal is filed within four weeks from today accompanied with a petition for condonation of delay, the same would be considered and disposed of on merits by the appellate authority after giving opportunity of hearing to the petitioner or his representative as well as the departmental representative within a period of three months of filing of such appeal bearing in mind that the matter was being pursued before this Court.

With the observation above, we dispose of this writ petition.

Let the file so produced by Mr. Sinha be returned to him for its transmission to the department.

(Jyoti Saran, J)

(Partha Sarthy, J)

skpathak/-

U			