IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1778 of 2019

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HAPPY SCIENCE Bodhgaya India, Mahamaya Palace Hotel and Conference Centre, Bakraur is registered under the TRUST having its registered Office at Bakrour- 824231, Bihar through its founder Secretary Sudama Kumar, Gender- male aged about 48, son of Sri Mangalchand Prasad, Resident of Mahamaya Palace Hotel, Village- Bakraur P.S. Bodhgaya and District- Gaya.

... ... Petitioner

Versus

1. The Commissioner of Income Taxes, Bihar, Patna
2. The Income Tax Officer, Exemption, Ward 1, Patna, Bihar.
3. The Union of India through the Secretary Home Department Ministry of Home Affairs Jasalmer House, 26 Man Singh Road, New Delhi- 110001
4. The Economic Offences Unit, Govt. of Bihar through the Additional Director General

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh, Adv.
		Mr. Ashok Kumar, Adv.
For the Respondent/s	:	Ms. Archana Sinha, Sr.S.C.
For the UOI	:	Mr. Kanak Verma, CGC
For EOU	:	Mr. V.N.P.Sinha, Sr. Adv.
		Ms. Soni Shrivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 10-04-2019

Heard Mr. Binod Kumar Singh, learned Counsel appearing for the petitioner, Ms. Archana Sinha, learned Counsel appearing for the Income Tax Department, Mr. V.N.P. Sinha, learned Senior Counsel with due assistance of Ms. Soni Shrivastava, learned Counsel for the Economic Offences Unit, Government of Bihar, Patna and Ms. Kanak Verma, learned Central Government Counsel appearing for the Union of India.

The petitioner has questioned the assessment order dated 15.12.2018 impugned at Annexure-7 together with the demand notice of the same date impugned at Annexure-7/A, inter alia on ground that the order is ex parte.

This matter was taken up for consideration primarily because it was the contention advanced by learned Counsel appearing on their behalf that it is because the Economic Offences Unit of the Government of Bihar, who were arraigned as party respondent to the present proceeding, had seized the documents which were subject matter of the notice issued to the petitioner by the Income Tax Department in purported exercise of powers vested under Section 142 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), which inter alia demanded production of various documents relatable to the affairs of the petitioner society, that the petitioner was precluded to respond to the notice and which has led to the assessment order that this Court while arraigning the Economic Offences Unit as a party respondent, sought their response thereon. An affidavit is filed on their behalf and Mr. Sinha, learned Senior Counsel informs that whatever documents were required by the Department are explained in the affidavit.

Having noted the stand of the Economic Offences Unit as well as the contention advanced on behalf of the petitioner regarding inability to produce the documents so desired by the

Income Tax Department, we are of the opinion that even if there be handicaps for the petitioner in producing the documents to the Income Tax Department, yet the matter does sustain the plea of ex parte assessment, as canvassed on behalf of the petitioner. We say so because the notice issued by the Income Tax Department dated 24.11.2018 at Annexure 4 was indeed received by the petitioner on 29.11.2018 but he chose to respond to the said notice only on 01.01.2019 vide Annexure-5/A in which he has also accepted that he appeared before the Department only on 17.12.2018 and when he was handed over the assessment order passed on 15.12.2018.

We completely fail to appreciate that if the notice under Section 142 of ‘the Act’ was received by the petitioner on 29.11.2018 what stopped the petitioner from visiting the Department either for seeking adjournment or for informing them regarding seizure of the documents by the Economic Offences Unit. It is obvious that the Assessing Authority awaiting the response from the petitioner on the notice at Annexure-4 had no other option but to pass the order on 15.12.2018 in absence of any assistance from the petitioner or any application filed in this regard.

Whether the documents mentioned in Annexure-4 were under seizure of the Economic Offences Unit or not are a subject matter of the dispute in view of the stand taken by the Economic Offences Unit and we would not enter into such disputed area for the present rather bearing note of the laid back attitude of the petitioner in not responding to the notice of the Income Tax Department, for the present we would only permit him to exhaust the alternative remedy available to him under 'the Act' and during which course the petitioner would be at liberty to raise all issues as he seeks to raise in the present writ petition. We note that pendency of the matter has taken away the period of limitation prescribed under 'the Act' and thus we hold that if the petitioner chooses to file an appeal within four weeks from today together with the petition for condonation of delay, the Appellate Authority i.e. the Commissioner, Income Tax (Appeal) shall consider and dispose of the same in accordance with law on its own merits bearing in mind the pendency of the matter before this Court.

With the observations above, we dispose of the writ petition.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2019
Transmission Date	NA