IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4218 of 2019

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Chanakya National Law University Nyaya Nagar, Mithapur, Patna (Bihar) through its Registrar Sri Manoranjan Prasad Srivastava, male, aged about 67 years, son of Late Narendra Nath, resident of Flat No. 204 D, Lekhraj Parisar, Road no. 03, Near Gandhi Murti, East Patel Nagar, Patna, P.O.- Shastri Nagar, P.S.-Shastri Nagar, District-Patna.

... ... Petitioner/s

Versus

1. The Commissioner of Income Tax (Exemption), Patna.
2. The Assistant Commissioner of Income Tax, Exemptions Circle, Patna.
3. The Commissioner of Income Tax (Appeals)-1, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Rastogi, Adv.
Mr. Parijat Saurav, Adv.
Ms. Smriti Singh, Adv.

For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. SC.
Mr. Sanjeev Kumar, Adv.
Mr. Alok Kumar, 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 : 29-03-2019

Heard Mr. Ajay Kumar Rastogi, learned counsel appearing for the petitioner and Ms. Archana Sinha, learned Senior Standing Counsel appearing for the Department.

It is for a limited purpose that this writ petition is filed feeling aggrieved by the order dated 29.01.2019 of the Assistant Commissioner, Income Tax, Exemptions Circle, Patna impugned at Annexure 4 and the order dated 26.02.2019 impugned at Annexure-8/A and that is because the petitioner has been directed to make a pre-deposit of 20% of the disputed tax before he can be provided with an interim protection.

Although Mr. Rastogi, learned counsel appearing for the petitioner has referred to some advisory issued by the Department in the matter as present in the Board's Instructions no. 1914 dated 02.12.2013 as improved through subsequent advisories on the issue of pre-condition of deposit for the purpose of interim stay but it is undisputed that the Income Tax Act, 1961 (hereinafter referred to as the 'Act') does not invite any pre-deposit for invoking the appellate jurisdiction. It is thus completely at the discretion of the Appellate Authority or the competent authority concerned, to direct for any deposit in case the assessee seeks interim protection pending disposal of the appeal preferred against the assessment order.

In so far as the case in hand is concerned, the petitioner is an educational institution registered under section 12AA of the 'Act' and entitled to the benefits of exemption as provided under sections 11 and 12 thereof.

Now while it is the stand of the petitioner that he is not exigible to the tax so assessed, the position is contested by learned counsel appearing for the Department and since the matter is pending consideration before the Appellate Authority, we refrain from expressing any opinion but while doing so we are persuaded to bear in mind the registration of the petitioner under section 12AA of the 'Act' which does entitle the petitioner to certain exemption. Now what is the extent of such exemption, is a subject matter of adjudication in the pending appeal.

In so far as the issue of pre-deposit is concerned, the guidelines issued by the Department from time to time do prescribe an amount of about 20% or so for obtaining an order of stay on recovery process but which limit can be reduced at the discretion of the Assessing Authority. In so far as the present case is concerned, no such discretion has been exercised and by the order impugned the petitioner has been directed to deposit of 20% of the disputed amount, for availing the interim protection.

It is not in dispute that while initially a sum of Rs.5,00,000/- was deposited by the petitioner towards the disputed tax amount but during the pendency of the matter another sum of Rs.15,00,000/- has been deposited. Thus when this matter came up for consideration on 26.03.2019, a sum of Rs.20,00,000/- had already been deposited by the petitioner. Allowing the petitioner to move ahead, it is informed by Mr. Rastogi and not contested by Ms. Archana Sinha, learned counsel representing the Department that a further sum of Rs.20,00,000/- has been deposited by the petitioner-University.

Having considered the submissions of learned counsel appearing for the contesting parties and considering that there is admittedly a discretion vested in the statutory authority to go below the limit of 20% so fixed in the advisories issued, that the institution is registered under section 12AA of the 'Act', we are satisfied by the conduct of the petitioner to grant interim protection until the disposal of the appeal bearing note of the deposit of about Rs.40,00,000/- by the petitioner towards the disputed amount.

Let no coercive measures be taken by the Department towards the recovery of the balance amount until disposal of the appeal pending before the Commissioner of Income Tax (Appeals), Patna who is accordingly advised to consider and dispose of the appeal expeditiously and preferably within 8 weeks from the date of receipt/production of a copy of this judgment. It goes without saying that parties would cooperate in the expeditious disposal of the appeal.

The writ petition is allowed with the direction above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Anjula/skpathak

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2019
Transmission Date	NA