IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5576 of 2019

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Radha Govind Public Welfare Society Jara Tola Near Ramgarh College, Ramgarh Cantt. Hazaribagh (Jharkhand) through its Secretary Sri Baijnath Sah, Son of late Govind Sah, Resident of Gaushala Road, Vikashnagar, Opposite Ramgarh Railway Station, Police Station- Ramgarh, District-Ramgarh(Jharkhand).

... ... Petitioner/s

Versus

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

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 5967 of 2019

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Radha Govind Public Welfare Society Jara Tola Near Ramgarh College, Ramgarh Cantt. Hazaribagh (Jharkhand) through its Secretary, Sri Baijnath Sah, male, aged about 51 years, son of Late Govind Sah, resident of Gaushala Road, Vikashnagar, Opposite Ramgarh Railway Station, Police Station-Ramgarh, Distt.- Ramgarh (Jharkhand)

... ... Petitioner/s

Versus

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

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 5577 of 2019

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Radha Govind Public Welfare Society Jara Tola Near Ramgarh College, Ramgarh Cantt. Hazaribagh (Jharkhand) through its Secretary Sri Baijnath Sah, male, aged about 51 years, son of late Govind Sah, resident of Gaushala Road, Vikashnagar, Opposite Ramgarh Railway Station, P.S.-Ramgarh, District-Ramgarh (Jharkhand)

... ... Petitioner/s

Versus

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

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 5576 of 2019)
For the Petitioner/s : Mr.Ajay Kumar Rastogi, Adv.
For the Respondent/s : Mr.Archana Sinha @ Archana Shahi, Adv.
(In Civil Writ Jurisdiction Case No. 5967 of 2019)
For the Petitioner/s : Mr.Ajay Kumar Rastogi, Adv.
For the Respondent/s : Mr.Archana Sinha @ Archana Shahi, Adv.
(In Civil Writ Jurisdiction Case No. 5577 of 2019)
For the Petitioner/s : Mr.Ajay Kumar Rastogi, Adv.
For the Respondent/s : Mr.Archana Sinha @ Archana Shahi, 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

Since all these writ petitions raise common issues of law that they have been taken up together and are being disposed of by a common judgment.

The petitioner in each of the three writ petitions, is the same and is aggrieved by the order of the Commissioner, Income Tax(Exemptions) whereby, pending disposal of the appeal arising from an order passed by the assessing authority that he has been directed to make a deposit of 20% of the disputed amount before he can be allowed the benefit of ad interim stay of the demand.

The three writ petitions relate to the assessment year 2014-15, 2015-16, 2016-17 and in each of the cases the Deputy Commissioner, Income Tax Exemptions Circle, Ranchi, by the impugned order at Annexure-2 has while revoking the exemption granted to the petitioner under Section 11 and 12 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') by virtue to their registration under Section 12AA of 'the Act', has assessed the society, with penalty proceedings, sought to be initiated.

Mr. A.K. Rastogi, learned counsel appears for the petitioner while the writ petition is resisted by Ms. Archana Sinha, learned counsel for the Income Tax Department.

The short submission made by Mr. Rastogi, is that until such time that the petitioner society would enjoy the benefit of registration under Section 12AA and until it is interfered with by a competent authority, the Deputy Commissioner, Income Tax has no jurisdiction to revoke the benefit to which the petitioner is entitled under Section 11 and 12 of 'the Act' by virtue of the registration so given and any such attempt by the Deputy Commissioner, Exemption Circle, would be without jurisdiction because such power is exclusively reserved for the Commissioner.

We are certainly not entering into the merits of the contest as to whether the computation of income is correct because the appeal arising from the orders passed for the respective assessment years, is yet pending consideration before the Appellate authority. What we are concerned presently is whether in the circumstances discussed, there is any requirement of a pre-deposit where undisputedly the registration of the petitioner under Section 12AA of 'the Act' has not been interfered with by a competent authority. For ascertaining as to whether the petitioner enjoys registration under Section 12AA of the Act, we had allowed time to learned counsel for the Income Tax Department to clarify as to the source of power for the Deputy Commissioner, Income Tax to revoke the registration under Section 12AA of 'the Act'. A supplementary counter affidavit is filed and which is silent on any such order of revocation.

In such view of the matter and without expressing any opinion on the merits of the case, we are certainly satisfied to interfere with the order passed by the Commissioner, Income Tax(Exemptions) in so far as it requires the petitioner to make a pre-deposit of 20% of the tax assessed amount before the appeal(s) can be heard and which order is hereby set aside. We also hereby issue direction to the Commissioner (Appeals) to consider the appeal preferred by the petitioner for the respective years and dispose of the same in accordance with law within a maximum period of 6 weeks from today and until such disposal, the respondents are restrained from taking coercive measures for realization of the demand which are subject matter of appeals.

As a consequence of decision above, the attachment orders if any issued, stands removed.

The writ petition is allowed with the direction above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Bibhash

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