IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16890 of 2017

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Bihar Police Building Construction Corporation Pvt. Ltd. Through its Managing Director Mr. Sunil Kumar, 5 B M P Campus, PO Veterinary College, PS Veterinary College, Distt. Patna, Bihar

... ... Petitioner/s

Versus

1. Principal Chief Commissioner Of Income Tax, C R Building, Bir Chand Patel Path, Patna -800001
2. Commissioner of Income Tax, C.R. Building, Bir Chand Patel Path Patna. 800001
3. Joint Commissioner of Income Tax, Lok Nayak Bhawan Dakbanglow Road, Patna 800001.
4. Deputy Commissioner of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna 800001
5. Assistant Commissioner, of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna 800001

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Prakash Sahay, Advocate
For the Respondent/s : Mr.Archana Sinha @ Archana Shahi
Sr. Standing Counsel

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 14-05-2019

Heard Mr. Prakash Sahay for the petitioner and Ms. Archana Sinha, learned Sr. Standing Counsel for the Income Tax Department.

The petitioner is aggrieved by the assessment order passed for the Assessment Year 2004-05 pertaining to the Financial Year 2003-04 together with appellate order passed in Appeal No.466/CIT(A)-1/2006-07 by the Commissioner of Income Tax

(Appeals), which orders are impugned at Annexures-1 and 3, respectively to the writ petition. The exercise is under Section 143 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

Mr. Prakash Sahay, learned counsel representing the petitioner, submits that even on merits the petitioner has a strong case as according to him the interest accrued on the deposit, cannot be treated as income because it simply adds to the grant released by the State Government from time to time and the interest amount is reduced to that extent from the fresh grant that the petitioner-Police Building Construction Corporation would receive from the State. He states that the findings on other issues as well are not sustainable but the issue which closes the contest in favour of the petitioner is that the assessment order passed under Section 143 of 'the Act' is time barred and hit by the proviso attached to Section 143(2) of 'the Act' which, inter alia, mandates that no notice in this regard can be served on the assessee on the expiry of six months from the end of the financial year in which the return was filed.

Mr. Sahay with reference to the assessment order itself submits that while the return for the assessment year 2004-05 was filed under Section 139 of the Act by the assessee on 30.09.2004, the limitation prescribed under the proviso attached to Section 143(2) of 'the Act' expires on 30th September, 2005, i.e. six months of the end of the financial year in which the return was filed. He submits that since the return was filed on 30.09.2004, in the financial year 2004-05 ending on 31.03.2005, the six months period prescribed in the proviso to Section 143(2) of ‘the Act’ would end on 30.09.2005. Learned counsel with reference to the assessment order submits that as per the Assessing Authority itself the notice under Section 143(2) of ‘the Act’ read along side Section 142(1) of ‘the Act’ was issued on 08.08.2006 and which is clearly hit by limitation so prescribed by proviso attached to Section 143(2) of ‘the Act’.

Ms. Archana Sinha, Sr. Standing Counsel, while accepting the legal position submits that the petitioner having not raised the issue of limitation at any stage, he cannot be permitted to raise it for the first time before this Court and, on merits, the petitioner would have no case because the interest accrued on the deposit of the assessee lying in the bank, whatever be the understanding between the petitioner and the State Government, the element of interest would be treated as ‘income from other sources’ in terms of the provision underlying Section 2(24) read with Section 56(id) of ‘the Act’.

Having heard learned counsel for the petitioner and having perused the materials on record, for the present, we do not think that we need to look into the inter-party merits because in our opinion the petitioner succeeds on the issue of limitation and even if the assessee has failed to raise this objection at any stage of the proceedings, where law itself prohibits initiation of a proceeding on happening of an event, a waiver by the assessee to raise such issue and his participation in the proceeding neither precludes him to raise such issue at any stage of the proceeding nor provides sanction to a void proceedings.

On the facts available on record, there is no dispute that the return was filed in the financial year 2004-05 which ended on 31.03.2005 and the notice under Section 143(2) of 'the Act' was being issued on 08.08.2006 as admitted by the Assessing Authority himself, which was far beyond the limitation prescribed under the proviso attached to Section 143(2) of 'the Act' which ended on 30.09.2005 and thus was clearly hit by limitation.

In such view of the matter, the entire exercise by the Assessing Authority under Section 143(3) of 'the Act' is illegal and time barred and its affirmation by the appellate authority is an illegality perpetuated.

For the reasons discussed, we quash the entire proceedings including the assessment order passed by the

Assessing Authority for the assessment year 2004-05 together with the appellate order impugned at Annexures -1 and 3, respectively.

The writ petition is allowed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-

AFR/NAFR	NAFR
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