IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2089 of 2018

==

Bihar State Hydroelectric Power Corporation Ltd. Having it office at 2nd Floor, Sone Bhawan, Bir Chand Patel Path, R Block More, Patna- 800001 through its Chief Engineer, Sri Mani Sharan, Son of Late Jagdishwari Sharan, resident of Kumhrar, Nayatola Kankarbagh, P.O. Agamkuan P.S. Agamkuan, District-Patna-800026.

... ... Petitioner/s

Versus

1. Commissioner of Income Tax, I having its office at Bir Chand Patel Path, Patna, Bailey Road, Patna.
2. Asst. Commissioner of Income Tax, Circle 2, Patna.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr. D.V.Pathy, Adv.
For the Respondent/s : Ms.Archana Sinha @ Archana Shahi, SC.

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 05-08-2019

Heard Mr. D. V. Pathy, learned counsel for the petitioner and Ms. Archana Sinha, learned Standing Counsel for the Department.

This writ petition was filed to question the notice dated 30.03.2017 at Annexure 3 together with the order dated 31.12.2017 passed by the Assistant Commissioner of Income Tax in a proceeding initiated under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') read alongside the provision under Section 143(3) of 'the Act'.

The petitioner also questions the consequential demand notice which forms part of the Annexure 4 series. Amongst the several issues raised in this writ petition to question the entire exercise under Section 147 of ‘the Act’ to result in the order impugned, one of the issue that was raised by Mr. Pathy and taken note of by us in our order dated 18.06.2019 is the rejection of the claim on the business losses and its addition which according to Mr. Pathy was an illegality as despite such addition made, yet the petitioner continued to be in loss income.

The issue so raised perhaps was examined by the Department as reflected from the supplementary counter affidavit filed today because paragraph 14 admits to the error committed in so far as the order on re-assessment purports to reject the claim on the business losses of Rs. 39,44,57,728/-. It is informed that on the mistake becoming apparent, a rectification order was passed under Section 154 of ‘the Act’ and the business loss claimed by the assessee has been allowed to result in a refund of Rs. 27,17,210/-. For the sake of convenience we reproduce the statement made in para 14 of the supplementary counter affidavit filed on behalf of Department which runs under:-

> “ That it is also important to mention here that a rectification order u/s 154 of Income Tax Act, 1961 has already been passed in the instant case

> of the assessee pertains to A.Y. 2012-13 on 07.08.2018. It is mainly because of while passing the re-assessment under Section 147 of the Income Tax Act, 1961 the claim of business loss by the assessee of Rs.39,44,57,728/- was not allowed inadvertently. As the mistake was apparent from record, the same was allowed vide rectification order under Section 154 of the Income Tax Act, 1961, under memo no. 746, dated 07.08.2018 and the same has resulted into a refund of Rs. 27,17,210/-."

Mr. Pathy, learned counsel for the petitioner at this stage while submitting that the assessment order impugned at Annexure-4 series together with the demand notice as impugned at Annexure-4 series yet continues with a number of infirmities prays for liberty for the petitioner to raise the other issues in a statutory appeal under Section 246 of 'the Act' but further submits that since the period of limitation has expired in the meanwhile, a reasonable time may be granted to the petitioner for taking recourse thereto.

We do not think Ms. Archana Sinha, learned counsel appearing for the Department would have serious objection on the liberty so prayed and accordingly we dispose of the writ petition allowing the petitioner to contest the assessment order on its merit in so far as the other issues are concerned by filing statutory appeal under Section 246 of ‘the Act’ and should any such appeal be preferred by the petitioner within 6 weeks from today, if accompanied with the petition for condonation of delay, the Commissioner, Income Tax Appeal shall consider and dispose of the same on its merits in accordance with law after opportunity of hearing to the petitioner or its representative bearing in mind the pendency of the matter before this Court, preferably within six weeks of the filing of the appeal.

(Jyoti Saran, J)

(Partha Sarthy, J)

Anjula/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21-08-2019
Transmission Date	NA