

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12352 of 2019

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M/s Parsvnath Developers Ltd. through its Director Mr. Pradeep Jain, gender-
male Age- 54 Yrs. At and P.O.- Budha Samirty Udyan Project, Old Jail, Near
Railway Station, Frazer Road, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, Bihar, New Secretariat, Bailey road, P.S.- Sachivalay, Dist.- Patna.
2. The Principal Secretary Finance, State of Bihar, Patna.
3. The Additional Commissioner of State Tax Patna West Division, Antaghat, Patna.
4. The Deputy Commissioner State Tax, Patna West Circle, Antaghat, Patna.
5. The Joint Commissioner of State Tax Patna West Circle, Antaghat, Patna.
6. The Treasury Officer District Collectorate, Antaghat, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Usha Kumari
For the Respondent/s : Mr.Kumar Manish (Sc5)

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

Date : 17-08-2019

Heard Mr. Rakesh Kumar Singh, learned counsel
for the petitioner and Mr. Kumar Manish, S.C.5 for the State.

This writ petition is filed to question the notice
dated 06.05.2015 issued by the respondent No.4, the Deputy
Commissioner, State Taxes, Patna Circle Patna in purported
exercise of power vested in him to reopen the assessment under
Section 33 of the Value Added Tax Act, 2005 (hereinafter
referred to as 'the Act') for the assessment year 2012-13 on the



audit objection of the Accountant General.

Although exhaustive arguments have been advanced by learned State counsel to object to the submission of Mr. Singh that the issue in hand is squarely covered by the judgment of this Court rendered in the case of **Tata Projects versus State of Bihar** reported in **2019(4) BLJ 387** but in our opinion it is a failed attempt.

We have already held in the judgment under reference that the Controller and Auditor General has no jurisdiction to raise audit objection in a case of deemed assessment in view of the clear jurisdiction set up in the provision of Section 33. We have also held that there cannot be a mechanical discharge by the Assessing officer to proceed thereon until he records a satisfaction that the objection needs to be proceeded accordingly.

It is in reference to the judgment of **Tata Projects** (supra) that Mr. Singh submits that the petitioner filed his returns on 31.03.2013 for the assessment year in question, a copy of which is at Annexure-2 and although certain queries were made but on reply filed, they were not proceeded thereafter nor there any assessment order was passed to such effect. Such is the submission made in paragraphs 6 and 8 to the writ



petition. He further submits that the final orders have been passed by the Assessing Officer on 6.05.2019 and which has been questioned by filing I.A. No.2 of 2019 and the consequential demand notice has been questioned by filing I.A. No.1 of 2019 at Annexure- 8 and 6 respectively to the said interlocutory application.

While submitting that the entire proceedings, is dehors the statutory provisions of Section 33 of 'the Act' and is fit to be struck down in view of the judgment of this Court in **Tata Projects** (supra), he prays for allowing the amendment to question the orders so passed.

We permit him to do so and consequently I.A. No. 1 of 2019 and I.A. No. 2 of 2019 are allowed.

Mr. Kumar Manish, S.C. 5 in reference to the counter affidavit attempts to object to the submission of Mr. Singh by submitting that the case is not covered because the returns of the petitioner itself was belatedly filed and thus would not sail into the jurisdiction of a deemed assessment and for which he relies upon a statement made in the rejoinder to the interlocutory application in which it is stated that annual return was filed on 24.1.2014. We are not persuaded to accept such statement of the Assessing officer in absence of any records to



support such submission and in absence of any denial to the statement of the petitioner made in paragraph 6 of the writ petition in which it is specifically stated that the annual return was filed on 31.03.2013. In fact, the respondents while replying to the statement made at paragraph 6 have simply stated that it is a matter on record as manifest from the statement present at paragraph 16 of the counter affidavit to the writ petition. In fact the statement made in paragraph 5 onward of the counter affidavit itself confirms that it is on a simple objection raised by the Accountant General under Section 33 of 'the Act' that the proceeding was initiated to result in the orders impugned.

We have heard learned counsel for the parties and we have perused the records and though an attempt is made by the respondent authorities in the Commercial Taxes Department to wriggle out of the judgment of **Tata Projects**(supra) but in our opinion the case is hopeless for on each of the two issues i.e lack of jurisdiction on the Accountant General to raise objection in a case of deemed assessment as well as on the failure of the Assessing officer to record satisfaction thereon, that we find the entire proceedings de hors the statutory discharge as well as our opinion in **Tata Projects** (supra) and consequently, the entire proceedings including the assessment order at Annexure- 8 of



I.A. No.2 of 2019 together with demand notice at Annexure-6 to
I.A. No. 1 of 2019 are quashed and set aside.

The writ petition is allowed.

Let the records so produced by Mr. Kumar Manish,
S.C.5 be returned to its transmission to the department.

(Jyoti Saran, J)

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2019
Transmission Date	NA

