IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17238 of 2017

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Bhagalpur Central Cooperative Bank Ltd. a Cooperative Bank registered under the co-operative Societies Act, 1935 under the having its office at Jageshwar Mandal Bhawan, Red Cross Road, Adampur, Bhagalur thrugh its Managing Director Subhash Kumar, son of Bal Narain Kunwar, Resident of Jageshwar Mandal Bhawan, Red Cross Road, P.O.- GPO and P.S.- Adampur, Bhagalpur.

... ... Petitioner/s

Versus

1. Commissioner of Income Tax, Bhagalpur Kacheri Chowk Bhagalpur
2. Asst. Commissioner of Income Tax, Circle-1, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V. Pathy, Adv.
For the Respondent/s : Mr. Rishi Raj Sinha, Adv.

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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 : 02-07-2019

Heard Mr. D.V. Pathy learned counsel for the petitioner and Ms. Archana Sinha learned Senior Standing counsel for the Income Tax Department who opposes the writ petition which questions the notice dated 30.03.2017 issued by the Assistant Commissioner, Income Tax in purported exercise of power vested under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

This writ petition was heard by a coordinate bench on 13.12.2017 and the bench while issuing notice, stayed further proceedings under Section 147/148 of ‘the Act’ for reopening of assessment. This position was reiterated when the matter came up next on 09.01.2018.

The position as it stands is that it is during the operation of the interim order passed on 13.12.2017 staying further proceeding that the assessment order was passed under Section 148 read along side Sections 144 and 143 of ‘the Act’ on 20.12.2017 and a copy of which is placed on record vide Annexure-8 series to I.A. No. 58 of 2018.

When this matter came up for consideration before us, while it was contended on behalf of the Department that none appeared on their behalf when the matter was taken up before this Court on 13.12.2017, learned counsel for the petitioner in reference to the said order, submitted that some counsel had accepted notice on behalf of the department. The position is disputed because while the memo of parties records no appearance of respondent counsel but the ordersheet records acceptance of notice. We do not intend to go into this dispute but the fact remains that even when the interim order passed on 13.12.2017 was in operation, the assessment order was passed. The petitioner did draw the attention of the authorities, after the confirmation of the interim order was passed on 09.01.2018 vide his representation dated 11.01.2018 as manifest from Annexure -A to the supplementary counter affidavit filed in the present proceedings but before the said date the final order had already been passed on the assessment proceedings.

The legal position is very well settled and any order passed during operation of the order of stay, is held a nullity. There is no dispute that the assessment order was passed by the Assessing authority i.e the Assistant Commissioner, Income Tax, Circle I, Bhagalpur in purported exercise of power under Section 144/148/143(3) of 'the Act' on 20.12.2017 i.e while the interim order staying further proceedings passed by this Court on 13.12.2017 was in operation.

On this simple note that the assessment order dated 20.12.2017 was passed in violation of the interim order dated 13.12.2017 and without examining the same on merits, we hold the order dated 20.12.2017 of the Assistant Commissioner, Income Tax Circle-1(1), Bhagalpur, void and accordingly quash the same together with demand if any, issued pursuant thereto.

We remit this matter back to the Assistant Commissioner, Income Tax, Circle- 1(I), Bhagalpur to pass order afresh but after opportunity of hearing to the petitioner who shall appear before the Assistant Commissioner together with the copy of this order on 15.07.2019 at 11 A.M. and when he shall proceed to dispose of the proceedings in the manner above.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.07.2019
Transmission Date	NA