IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22225 of 2018

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Anju Singh W/o Nawal Kishore Singh, Resident of Shree Bhawan, Budha Colony, Patna, P.O.- G.P.O. and P.S.- Buddha Colony, District- Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building, Bir Chand Patna-800001

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 22327 of 2018

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Satish Kumar Singh S/o Shri Samprada Singh, Resident of Shree Bhawan, Budha Colony, Patna., P.O.-GPO and P.S.-Budha Colony, District-Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna-800001.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 22389 of 2018

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Basudeo Narain Singh S/o Late Krut Narayan Singh, Resident of Main road, Budha Colony, Opposite Amitabh Kunj Apartment, Budha Colony, Patna, P.O.-GPO and P.S.-Buddha Colony, Disrict-Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna-800001

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 22552 of 2018

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Prabhat Narain Singh S/o Late Prasiddha Narayan Singh, Resident of 103, Sri Ram Place, East Boring Canal Road, Patna- 800001, P.O.- GPO and P.S.- Buddha Colony, District- Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building Bir Chand Patel Marg, Patna-800001.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 22674 of 2018

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Nawal Kishore Singh S/o Shri Samprada Singh, Resident of Shree Bhawan, Budha Colony, Patna., P.O.-GPO and P.S.-Budha Colony, District-Patna.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna-800001.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 22735 of 2018

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Mritunjay Kumar Singh @ Mritunjay Singh Son of Basudeo Narain Singh, Resident of Main Road, Budha Colony, Opposite Amitabh Kunj Apartment, Budha Colony, Patna, P.O.- GPO and P.S.- Buddha Colony, District- Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna.

3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna-800001.

... ... Respondents

with

Civil Writ Jurisdiction Case No. 22825 of 2018

Samprada Singh (HUF) S/o Shri Narayan Singh, Resident of Shree Bhawan, Budha Colony, Patna- 800001, P.O.- GPO and P.S.- Buddha Colony, District-Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax and Ors Circle Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax Range 1, Patna.
3. The Principal Commissioner of Income Tax-1 Patna 2nd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna- 800001.

... ... Respondents

with

Civil Writ Jurisdiction Case No. 22948 of 2018

Dhananjay Kumar Singh S/O- Bausdeo Narain Singh, R/O- Main Road, Opp. Amitabh Kunj Apartment, Budha Colony, Patna- 800001., P.O- GPO and P.S.- Budha Colony, District- Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Bulding, Bir Chand Patel Marg, Patna-800001.

... ... Respondents

with

Civil Writ Jurisdiction Case No. 23019 of 2018

Balmiki Prasad Singh S/o Shri Samprada Singh, Resident of Shree Bhawan, Budha Colony, Patna., P.O.- GPO and P.S.-Budha Colony, District-Patna, Bihar at present R/O 101 west more no.02 worli pachkhan Road, Worli Mumbai Maharashtra.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna,
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna-800001.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 23091 of 2018

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Rajesh Kumar s/o Braj Nandan Sinha, Resident of Sushila Bhawan, Budha Colony, Patna, P. O. -GPO and P.S- Buddha Colony, District- Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commission of Income Tax,Range 1,Patna.
3. The Principal Commissioner of Income Tax -1,Patna 2nd Floor, Central Revenue N-Building , Bir Chand Patel Marg, Patna-800001.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 23392 of 2018

==

Manju Singh W/o Shri B.P. Singh Resident of Shree Bhawan, Budha Colony, Patna, P.O.- GPO and P.S.- Buddha Colony, District- Patna, Bihar

... ... Petitioner

Versus

1. The Assistant Commissioner of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building, Bir Chand Patel Marg, Patna-800001.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 23562 of 2018

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Late Rekha Singh W/o Basudeo Narain Singh, through legal heir Basudeo Narain Singh, Resident of Main Road, Budha Colony, opposite Amitabh Kunj Apartment, Budha Colony, Patna, P.O.- GPO, and P.S.- Buddha Colony, District - Patna, Bihar.

... ... Petitioner

Versus

1. The Assistant Commissioner Of Income Tax, Circle-1, Patna.
2. The Joint Commissioner of Income Tax, Range 1, Patna.
3. The Principal Commissioner of Income Tax-1, Patna 2nd Floor, Central Revenue Building Bir Chand Patel Marg, Patna-800001.

... ... Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 22225 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate Ms. Smriti Singh, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi (Sr. Standing Counsel, Income Tax) Mr. Sanjeev Kumar, (Jr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 22327 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 22389 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 22552 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 22674 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 22735 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 22825 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 22948 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 23019 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 23091 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 23392 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

(In Civil Writ Jurisdiction Case No. 23562 of 2018)

For the Petitioner	:	Mr.Ajay Kumar Rastogi, Advocate
For the Respondents	:	Mrs.Archana Sinha @ Archana Shahi, (Sr. Standing Counsel, Income Tax)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 14-11-2019

The aforementioned cases involve more or less identical facts and issues of law. Hence, they are being dealt with and disposed of by this common order.

2. In all the writ petitions, a challenge has been made to the respective impugned orders dated 26.10.2018 as contained in Annexure-1 passed by the Deputy Commissioner of Income Tax, Circle-1, Patna (for short 'DCIT, Circle-1, Patna') under Section 143(3) read with Section 260A of the Income Tax Act, 1961 (for short 'the Act') whereby and whereunder assessment order demands have been raised against the respective petitioners for the Assessment Year 2015-2016.

3. The petitioners, in all the cases, are individual assessees to tax at Patna and have been assessed by the DCIT, Circle-1, Patna. They were regularly filing their returns under the Act. They filed their return of income for the Assessment Year 2015-16 on 27.08.2015 declaring income from salary,

income from other sources and income from long term capital gains on sale of shares of different companies. They declared their income and paid tax for the relevant year after permissible exemptions. Assessing Officer passed respective assessment orders under Section 143(3) on 31.12.2017 and separate demands were raised against the petitioners. The assessment orders in case of each of the petitioners were challenged in CWJC No. 1391 of 2018 and analogous cases before this Court. This Court, vide its common order dated 25.01.2018, allowed the writ petitions by quashing the respective assessment orders as the same were passed in violation of principle of natural justice. The matter was remanded by this Court to the Assessing Officer for taking up the assessment proceeding afresh. However, the respondent authorities challenged the common order dated 25.01.2018 passed by this Court in CWJC No. 1391 of 2018 and analogous cases before the Supreme Court. The Supreme Court, vide its order dated 09.07.2018, while condoning delay in filing the application stayed the operation of the order of this Court dated 25.01.2018. The said appeal is still pending before the Supreme Court. In the meantime, the DCIT, Circle-1, Patna has passed the respective assessment orders in case of the petitioners under Section 143(3) read with Section

260A of the Act on 26.10.2018.

4. Mr. Ajay Kumar Rastogi, learned counsel appearing for the petitioners submitted that in view of the interim order of stay of the order passed by this Court granted by the Supreme Court, the assessment proceedings ought not to have been taken by the Assessing Officer in case of the petitioners afresh. He submitted that the impugned orders as contained in Annexure-1 to each of the writ petitions dated 26.10.2018 are illegal and unsustainable in law. He contended that there cannot be two assessment orders for the same year in the case of the assessees.

5. Mrs. Archana Sinha, learned counsel appearing for the respondents has conceded that the impugned orders dated 26.10.2018 have been passed by the Assessing Officer inadvertently as he was unaware of the fact of stay order granted by the Supreme Court. She submitted that the respondents are not in a position to defend the impugned assessment orders.

6. The respondents have filed counter affidavit in each writ petition. Paragraph 2 and 6 of the respective counter affidavits filed on behalf of respondents are common.

7. They read as under:-

> “2. That the petitioner by filing a writ petition has invoked the writ of certiorari for

> quashing the order dated 26.10.2018. **It is humbly submitted that the order dated 26.10.2018 was passed mistakenly as the Assessing Officer was unaware of the fact of stay of operation of the Hon'ble Apex Court of the impugned order of the honorable Patna High Court dated 25.01.2018. The fact that Hon'ble Apex Court has stayed the operation was not known to the Assessing Officer and, hence, the mistake was committed**.
>
> 6. That in reply of paragraph number 9, 10 of the writ petition it is stated that the assessing officer was not aware of the order dated 20.07.2018 of the Hon'ble Apex Court. **The assessing officer was also not aware of order dated 09.07.2018 passed by the Hon'ble Apex Court by which the Hon'ble Court has stayed the operation of the impugned Hon'ble High Court order dated 25.01.2018. Hence, inadvertently mistake of passing the assessment order was committed.**" (emphasis mine)

8. The effect of the order of the Supreme Court whereby the order dated 25.01.2018 passed by this Court in CWJC No. 1391 of 2018 and analogous cases has been stayed is that the earlier Assessment Order dated 31.12.2017 passed by the Assessing Officer for the Assessment year 2015-16 in case

of each petitioner is intact till the matter is finally decided by the Supreme Court. Hence, there could not have been another Assessment Order for the Assessment Year 2015-16 in case of the petitioners.

9. Moreover, since the respondents have themselves admitted that the orders impugned dated 26.10.2018 were passed by the Assessing Officer mistakenly due to inadvertence and lack of knowledge of the order of the Supreme Court, they cannot be sustained.

10. Accordingly, the respective Assessment Orders dated 26.10.2018 passed by the DCIT, Circle-1, Patna under Section 143(3) read with Section 260A of the Act as contained in Annexure-1 to the respective writ petitions whereby demands have been raised against the petitioners are hereby set aside.

11. The writ petitions stand allowed.

12. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

(Anil Kumar Sinha, J)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.11.2019
Transmission Date	NA