IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2552 of 2019

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Mr. Uday Kumar Verma, S/o Late Uma Prasad, C/o Vinay Kumar Verma, B-79, P.C. Colony, Lohia Nagar, P.O. and P.S. Kankarbagh, Patna- 800020.

... ... Petitioner/s

Versus

1. Principal Chief Commissioner Of Income Tax, C.R. Building, Birchand Patel Path, Patna- 800001.
2. Commissioner of Income Tax, C.R. building Birchand 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
6. Income Tax Officer Ward 6(5), Lok Nayak Bhawan, Dakbanglow Road, Patna- 800001.
7. Union of India through Principal Chief Commissioner of Income Tax, Birchand Patel Marg, Patna 800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prakash Sahay, Advocate
For the Respondent/s	:	Mr.Rishi Raj Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

9 16-01-2020 Heard learned counsel for the petitioner and the respondents.

The present petition has been filed for issuance of appropriate writ/writs, order/orders, direction/directions towards cancellation/quashing the order dated 28.12.2018 passed by respondent no.6. Respondent authority has ignored the operative part of the act under which the calculation of capital gain is to be decided. Section 48 explanation iii and Section 54 F of the Income Tax Act has been left aside and has taxed the petitioner on hypothetical income. The order of the respondent directly affects the fundamental right of the petitioner and liability has been imposed on hypothetical income which could not be taxed under Section 45 and 48 of the Act. Petitioner is not a financial good condition.

Having heard the learned counsel for the petitioner, we are not inclined to entertain the present petition, more so, for the reason that the petitioner has concealed the relevant material information from the Court with regard to the status of the project. It is only after repeated queries were put to the learned counsel, that the learned Additional Solicitor General invited our attention to the fact that post execution of agreement dated 30.04.2010, subject matter of lis, the construction is carried out in part and a tenant inducted into the property, from whom huge amount of rent is being charged by the present petitioner.

Learned counsel for the petitioner invites our attention to the provisions of Sub-Section 5(a) of Section 45 of the Income Tax Act.

Well, we are of the considered view that this Court is not a fact finding authority. As such, any order passed by the Assessing Officer, so assailed being erroneous one question of facts, has to be adjudicated not by a writ Court but by an appropriate authority constituted under the Statute.

As such, on this short ground alone, we dismiss the present petition.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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