IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3665 of 2020

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Sapta Panchait Kirshk Seva Swablambi Sahkari Samiti Limited a co-operative Society, having its Office at Village Laheriyaganj PO and P.S. Madhubani, District Madhubani, through its Secretary Ranjeet Kumar, aged about 40 Years (male), Son of Late Gokul Prasad Sah, Resident of , Village Ward No.1, Laheriyaganj Po and P.S. Madhubani, District Madhubani.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Revenue, Ministry of Revenue, North Block, New Delhi-110001.
2. The Commissioner, Office of the Income Tax Commissioner, Income Tax Office, Bela Kothi, Industrial Estate, Ramkrishna Ashram Road, Muzaffarpur-842005.
3. The Income Tax Oficer, Ward 3(5), Office of the Income Tax Officer, Income Tax Department, Madhubani

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suraj Samdarshi, Advocate Mr.Avinash Shekhar, Advocate
For the Respondent/s	:	Mr.Dr.K.N.Singh,ASG Mr.Anshuman Singh, CGC Mr.Rishi Raj Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-10-2020

Petitioner has prayed for the following relief(s):-

> "(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing assessment order no.ITBA/AST/S/143(3)/2019-20/1023552535(1) dated 31.12.2019 passed by the Respondent Income Tax Officer, Ward 3(5) Madhubani, whereby and where under

Rs.95,50,000/- has been treated to be unexplained income under section 69 (A) of the Income Tax Act 1961 and added back to the total income of the petitioner and a penalty proceeding under section 271AAC of the Income Tax Act 1961 has been initiated against the petitioner.

(ii) To issue a further appropriate writ, order or direction in the nature of certiorari for quashing order no.ITBA/AST/S/156/2019-20/1023552571 (1) dated 31.12.2019 passed by the Respondent Income Tax Officer, Ward 3(5) Madhubani whereby and where under a demand of Rs.1,01,82,951/- has been raised against the petitioner under Section 156 of the Income Tax Act 1961.

(iii) To issue a further appropriate writ, order or direction in the nature of certiorari for quashing notice no. ITBA/PNL/S/271AAC (1) 2019-20/1023555273 (1) dated 31.12.2019 issued by the Respondent Income Tax Officer, Ward 3(5) Madhubani under section 274 read with 271 AAC (1) of the Income Tax Act 1961, where by and where under a penalty proceeding has been initiated against the petitioner for income determined to be chargeable.

(iv) To issue a further appropriate writ, order or direction in the nature of mandamus commanding the Respondents to refrain from taking any coercive action against the petitioner pursuant to a) order no. ITBA/AST/S/143(3)/2019-

20/1023552535(1) dated 31.12.2019; b) order no. ITBA/AST/S/156/2019-20/1023552571 (1) dated 31.12.2019; and c) notice no. ITBA/PNL/S/271AAC(1)2019-20/1023555273(1)dated 31.12.2019.

(v) This Hon'ble Court may further adjudicate and hold that the action of the Respondent Income Tax Officer in rejecting the explanation offered by the petitioner is a completely arbitrary exercise of authority/power vested in the Respondents.

(vi) This Hon'ble Court may further adjudicate and hold that the Respondent Income Tax Officer should have considered this aspect of the matter that the petitioner deposited the case originating from business activity during the demonetisation period.

(vii) This Hon'ble Court may further adjudicate and hold that the presumption under section 69A of the Income Tax act can be drawn only when assessee is found to be in possession of money, bullion, jewellery, etc., not recorded in his books of account.

(viii) This Hon'ble Court may further adjudicate and hold that since the cash deposited in the bank account has been duly accounted for in the books of accounts, the Respondent ITO could not have treated the alleged deposit in Specified Bank Notes during demonetisation period as unexplained.

(ix) To grant any other relief or reliefs for which the petitioner is found entitled in the facts and the circumstances of the case."

One of the impugned orders is reproduced hereunder:-

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
ITO WARD 3(5), MADHUBANI

To,
SAPTA PANCHAIT KIRSHK SEVA SWABLAMBI
SAHKARI SAMITI LIMITED
0 SAPTA, MADHUBANI,MADHUBANI
MADHUBANI
MADHUBANI 847211,Bihar
India

PAN:	AY:	DIN & Order No:	Dated:
AAEAS8920Q	2017-18	ITBA/AST/S/143(3)/2019-20/1023552535(1)	31/12/2019

Name of the assessee	SAPTA PANCHAIT KIRSHK SEVA SWABLAMBI SAHKARI SAMITI LIMITED
Address of the assessee	0 SAPTA, MADHUBANI, MADHUBANI MADHUBANI, MADHUBANI 847211, Bihar, India
Status	AOP(ASSOCIATION OF PERSONS)
Range/Circle/Ward	ITO WARD 3(5), MADHUBANI
Resident/Resident but not Ordinary resident/ Non-resident	Resident
Date of Hearing	01/11/2018, 26/09/2019, 07/11/2019, 10/12/2019, 18/12/2019
Section/Sub-section under which assessment is made	143(3)
Date of Order	31/12/2019

ASSESSMENT ORDER

The assessee runs business of fertilizers and seeds in the name and style of **'M/s Sapta Panchayat K. S. S. Ltd.' whose secretary is Ranjeet Kumar.** Return of income was e-filed on 28.03.2018 showing total income of Rs.43430/-. The case was selected in CASS for complete scrutiny on the issue of cash deposit during demonetisation. Accordingly, notice under section 143(2) of the Act was issued on 23.09.2018 for compliance on 01.11.2018. Further notice u/s 142(1) of the act was also issued on 17.09.2019 for compliance on 26.09.2019 and subsequent notices were also issued. In compliance, response has been filed through e-filing account.

The assessee's turnover was Rs 16000989/- in the F.Y. 2016-17. The assessee had deposited Rs 9300000/- in SBN denomination in its bank account during the demonetisation periods as under-

Sl. No.	Bank	Branch	Account No.	Amount

Note: If digitally signed, the date of digital signature may be taken as date of document.
INCOME TAX OFFICE, OPP. OLD BUS STAND, P.O LALBAGH, DARBHANGA, DARBHANGA, Bihar, 846004
Email: MADHUBANI.ITO3.5@INCOMETAX.GOV.IN

A.Y. 2017-18

1	Bank of Maharashtra	Madhubnai	60241963232	9550000/-

The assessee's representative Sri Digamber Kumar Thakur appeared on 24.12.2019 with submissions, VAT return, bank accounts, sale register, stock register. it was also claimed that the assessee is a dealer of fertilizer and seeds. As required by notice u/s 142(1) of the Income Tax Act'61 no cash book was produced. The check list sent for caparison for last year cash deposits and sale was also sent to be submitted by the assessee. The check list submitted by him shows there was total cash balance as on 08.11.2016 Rs 1101247 only whereas the deposits as explained above was Rs 9550000/-/- during the demonetization period in SBN denomination. Regarding sources it was claimed that the deposits during the demonetization period were form the sale proceeds. As discussed above the assessee' had only Rs 1101247/- as on 08.11.2016 and no cash book was presented therefore the entire deposits in SBN form during the demonetization period is treated as unexplained under the provisions of section 69A of the Income Tax Act'61 and the same is added back to the total income (Penalty proceedings u/s 271 AAC of I. T. Act 1961 is being initiated separately for addition of Rs. 9550000/- as discussed above).

In view of the above, total income of the assessee is determined as under:

Income as per return of income	Rs 43430/-
Add: As discussed above Para- U/s 69 A	Rs. 9550000/-
Total assessed income	**Rs. 9593430/-**

INCOME TAX DEPARTMENT

Assessed under section 143(3) of the Income Tax Act, 1961, on a total income of **Rs. 9593430/-** Interest, if any applicable as per rule is to be charged further. Penalty proceedings u/s 271 AAC of I. T. Act 1961 is being initiated separately for addition of Rs. 9550000/- as discussed above.

Computation of tax:

Net tax payable – As per separate sheet attached with this order. Demand notice issued accordingly.

SANJEEV KUMAR
ITO WARD 3(5), MADHUBANI

Copy to:

Assessee

Shri Avinash Shekhar, learned counsel for the petitioner, argues that the order passed is cryptic in nature as also the Officer has not assigned any reason for carrying out re-assessment in the case of the petitioner.

Having perused the same, we are of the considered view that all material facts necessary for adjudication were recorded and considered by the Officer and as such the order cannot be said to be in violation of principles of natural justice, even though it may be short in nature.

Since disputed questions of fact are raised before us, we refrain from adjudicating the same, reserving liberty to the petitioner to prefer a statutory appeal which is an equally efficacious remedy.

As such, present petition stands disposed of.

At this stage, learned counsel for the petitioner submits that limitation may not come in the way of adjudication of the appeal.

Shri Rishi Raj Sinha, learned counsel for the Income Tax Department, states that if an appeal is preferred within a period of four weeks from today, the issue of limitation shall neither be raised nor allowed to come in the way of adjudication of the appeal on merits, more so keeping in view current Pandemic Covid-19.

Statement is accepted and taken on record.

Shri Rishi Raj Sinha, learned counsel appearing for the Income Tax Department, states that as on date no coercive action stands taken against the petitioner in terms of the demand raised pursuant to the passing of the impugned order and that position would be allowed to be maintained if the petitioner were to file an appeal within a period of four weeks from today.

Statement accepted and taken on record.

No other submission is raised by either of the parties.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

pallavi/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.10.2020
Transmission Date	