IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6511 of 2020

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Sanjeet Kumar Son of Late Gokul Sah, Resident of Vilalge 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 Ofice, Bela Kothi, Bela Industrial Estate, Ramkrishna Ashram Road, Muzaffarpur-842005.
3. The Income Tax Officer, 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.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)/2019-20/1023551170(1) dated 31.12.2019 passed by the Respondent Income Tax Officer, Ward 3(5) Madhubani, whereby and where under Rs.10,01,10,573/- 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/156/2019-20/1023551192 (1) dated 31.12.2019 passed by the Respondent Income Tax Officer, Ward 3(5) Madhubani whereby and where under a demand of Rs.10,52,29,894/- 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) 2019-20/1023555223 (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 certiorari for quashing notice no.ITBA/PNL/S/270A/2019-20/102355 9626(1) dated 01.01.2020 issued by the Respondent Income Tax Officer, Ward 3(5) Madhubani under section 274 read with 270A 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.

(v) 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)/2019-20/1023551170(1) dated 31.12.2019; b) order no. ITBA/AST/S/156/2019-20/1023551192 (1) dated 31.12.2019; c) notice no. ITBA/PNL/S/271AAC(1)2019 - 20/1023555223(1) dated 31.12.2019; and d) notice no.ITBA/PNL/S/270A/2019-20/102355 9626(1) dated 01.01.2020.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) 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.

(x) 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 SANJEET KUMAR 0 M/S SANJEET TRADERS MAHILA COLLAGE ROAD, MADHUBANI,MADHUBANI MAHILA COLLEGE ROAD, MADHUBANI MADHUBANI 847211,Bihar India	

PAN	AY:	DIN & Order No:	Dated:
ARPPK8060J	2017-18	ITBA/AST/S/143(3)/2019-20/1023551170(1)	31/12/2019

Name of the assessee	SANJEET KUMAR
Address of the assessee	0 M/S SANJEET TRADERS MAHILA COLLAGE ROAD, MADHUBANI, MADHUBANI MAHILA COLLEGE ROAD, MADHUBANI, MADHUBANI 847211, Bihar, India
Status	INDIVIDUAL
Range/Circle/Ward	ITO WARD 3(5), MADHUBANI
Resident/Resident but not Ordinary resident/ Non-resident	Resident
Date of Hearing	15/10/2018, 26/10/2018, 26/09/2019, 07/11/2019, 10/12/2019, 16/12/2019, 28/12/2019
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 Sanjeet Traders'. Return of income was e-filed on 14.03.2018 showing total income of Rs.1439680/-. 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 19.09.2018 for compliance on 26.10.2018. Further notice u/s 142(1) of the act was also issued on 22.09.2019 for compliance on 09.04.2018 and subsequent notices were also issued. In compliance, response has been filed through e-filing account.

The assessee's turnover was Rs 20130179 in the F.Y. 2016-17. The assessee had deposited Rs 15463500/- in SBN denomination in his bank account during the demonetisation periods as under-

1	Punjab National Bank	Madhubani	5150021000012842	Rs 11400000/-

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 LAL BAGH, DARBHANGA, DARBHANGA, Bihar, 846004
Email: MADHUBANI.ITO3.5@INCOMETAX.GOV.IN

28

2	Punjab National Bank	Madhubani	2515998700001399	Rs 15765000/-
3	Bank of Maharashtra	Madhubani	60153831794	Rs 68775000/-
4	United Bank of India	Madhubani	1034050000602	Rs 2475000/-
Total				98465500/-

The assessee's representative Sri Digamber Kumar Thakur appeared on 26.12.2019 with submissions, VAT return, bank accounts. It was also claimed that he is a dealer of fertilizer and seeds. He sells under the license no. DFK2004160054OR issued by the district administration. A written submission also explains that government had allowed some essential commodities like petro, diesel, fertilizer, mobile recharge vouchers. There was no bar on these dealers for accepting SBNs. He himself admitted that there were total deposits by him during the demonetisations period was Rs 107498000/- including new and old currencies too. Through notice he was asked to produce any documentary evidence issued by the RBI, Government which permitted him to accept the SBNs in demonetisation period. He failed to produce any document.

1. As required by notice u/s 142(1) of the Income Tax Act'61 no cash book was produced. The check list sent for comparison for last year cash deposits and sale was also sent to be submitted by the assessee. The check submitted by him shows there was total cash balance as on 08.11.2016 Rs.2,00,00,000/- only whereas the deposits as explained above was Rs. 98465500/- during the demonetisation period in SBN denomination. In absence of availability of cash book, cash in hand as on 08.11.2016 could not be ascertained. Apart from these the assessee himself confessing that he had been continuously accepting SBNs during the entire period of demonetisations. That is the reason his statement of bank account indicates that he has been depositing huge amounts till last week of Dec'2016. The assessee's submission regarding his sources of cash deposits as narrated above is hereby rejected. The deposits of Rs 98465500/- (in SBNs) is treated as unexplained in terms in provisions of section 69A of the Income Tax Act'61 and the same is added back to the total income.

2. The assessee's AR Sri Digambar Kumar Thakur also furnished documents like copy of stock register, ledgers, bank statement, audit report etc. which were test checked. It was further submitted that the cash deposits are out of sale proceeds. The assessee was asked to produce the details of expenses debited in the profit and loss account. His income is determined as per explanations mentioned in paras 3 to 7 as below.

3. **Salary to staff**: The assessee has debited Rs 2980030/- under the head. The expenses claimed under head are excessive in comparison with the other assesses in same business with similar or higher turnover. Even the expense under this head is not fully verifiable as it has been incurred in cash and no salary register was produced. Therefore, a sum of **Rs 149000/-** being 5% of the expenses is disallowed and added back to the total income of assessee under the head profit and gains of business or profession.

4. **Electric & Generator**: The assessee has debited Rs 417051/- under this head. Even the expenses claimed under this head are not fully verifiable as it has been mostly incurred in cash and met by internal vouchers. Therefore, a sum of **Rs 20852/-** being 5% of the expenses is disallowed and added back to the total income of assessee under the head profit and gains of business or profession.

5. **Staff Welfare**: The assessee has debited Rs. 121501/- under this head. The expenses claimed under head are not fully verifiable as it has been mostly incurred in cash and met by internal vouchers. Therefore, a sum of **Rs. 6075/-** being 5% of the expenses is disallowed and added back to the total income of assessee under the head profit and gains of business or profession.

6. **Travelling expenses**: The assessee has debited Rs. 335030/- under this head. The expenses claimed under head are not fully verifiable as it has been mostly incurred in cash and met by internal vouchers.

29

On being asked for evidence about such travel to meet business purpose, no such evidence was produced. In the absence of evidence travel for personal purpose may not be denied. Therefore, a sum of **Rs. 16781/-** being 5% of the expenses is disallowed and added back to the total income of assessee under the head profit and gains of business or profession.

7. Misc Expenses: The assessee has debited Rs 253710/- under the head. The expenses claimed under head are not fully verifiable as it has been mostly incurred in cash and met by internal vouchers. Therefore, a sum of **Rs. 12685/-** being 5% of the expenses is disallowed and added back to the total income of assessee under the head profit and gains of business or profession.

8. Hence, the total assessed income in head business & profession is as follows:-

Addition under the head profit and gains of business or profession as discussed in para 3 above.	Rs. 149000/-
Addition under the head profit and gains of business or profession as discussed in para 4 above.	Rs. 20852/-
Addition under the head profit and gains of business or profession as discussed in para 5 above.	Rs.6075/-
Addition under the head profit and gains of business or profession as discussed in para 6 above.	Rs.16781/-
Addition under the head profit and gains of business or profession as discussed in para 7 above.	Rs.12686/-
Total assessed income under head business & profession for A.Y 2017-18	**Rs. 205383/-**

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

Income as per return of income		Rs. 1432680/-
Add	As discussed above in para 1- U/s 69 A	Rs. 98465500/-
	As discussed above in para 8	Rs. 205383/-
Total assessed income		**Rs. 100110573/-**

Assessed under section 143(3) of the Income Tax Act, 1961, on a total income of **Rs. 100110573/-**. 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. 98465500/- as discussed above. Penalty proceeding under section 270A is also being initiated separately for addition of Rs. 205383/- i.e. under reporting of income.

30

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

SANJEEV KUMAR
ITO WARD 3(5), MADHUBANI

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	