IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3903 of 2020

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Save Solutions Private Limited having its registered office at C- 927, 3rd Floor Palam Extension, Dwarka, New Delhi- 110075 through one of its directors namely Pankaj Kumar, Son of Dil Kishor Singh, Resident of Lal Babu Road, Maharani Path, P.O. New Godam, Gaya- 823001

... ... Petitioner/s

Versus

1. The Principal Chief Commissioner of Income Tax Bihar and Jharkhand, Central Revenue Building, Birchand Patel Path,Patna.
2. The Principal Commissioner of Income Tax-1, Central Revenue Building, Birchand Patel Path,Patna.
3. The Commissioner of Income Tax (appeals)-1 Patna Central Revenue Building, Birchand Patel Path,Patna.
4. The Assistant Commissioner of Income Tax, Circle- 1, Income Tax Department, Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Aishwarya Riti, Advocate

For the Respondent/s : Smt. Archana Sinha @ Archana Shahi, Sr. S.C.
Mr. Alok Kumar, Advocate
Mr. Sanjeev Kumar, Jr. S.C.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 06-03-2020 Petitioner has prayed for the following relief(s):

(a) For issuance of a writ or order or direction upon the respondent Commissioner of Income Tax (appeals) – 1, Patna to conduct the hearing and disposal of the appeal preferred by the petitioner on 31.12.2019 against the ex-parte order of assessment dated 30.11.2019 passed by the respondent Assistant Commissioner of Income Tax, Circle -1, Gaya (hereinafter referred to as the assessing authority for short) under Section 144 of the Income Tax Act 1961 (hereinafter referred to as the act for short);

(b) For issuance of a writ or order or direction upon the respondents specially the respondent assessing authority to not resort to any coercive action against the petitioner for recovery of the demand of tax and any other liability created in terms of the ex-parte order of assessment and consequent demand notice during the pendency of the aforesaid appeal preferred by the petitioner;

(c) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

The Assessing Officer, vide his assessment order dated 30.11.2019, has fastened liability of more than Rs. 43 crores on the writ petitioner.

The writ petitioner has preferred an appeal under the provisions of Section 220(6) of the Income Tax Act. Also, he has preferred an application before the Assessing Officer, praying for stay of the demand raised pursuant to the assessment order dated 30.11.2019.

Shri Gautam Kumar Kejriwal, Advocate submits that the appellate authority has yet not commenced the proceeding in the appeal and prays that the appellate authority be directed to hear the appeal on merits as also the issue of waiver of the condition of pre-deposit.

Smt. Archana Sinha, Advocate states that in view of circular dated 31.07.2017, the petitioner is required to deposit 20 per cent of the amount, subject matter of the appeal.

Shri Kejriwal states that the appellate authority itself, in view of several judicial pronouncements, including that of the Apex Court, can hear the appeal without insisting pre-deposit, for he has the power to waive the same.

As such, we dispose of the present petition, as prayed for, with a direction to the appellate authority to positively consider and decide all issues, including appeal on merits, at the earliest and preferably within one month from today.

Shri Kejriwal states that the writ petitioner would make himself available in the office of the appellant authority respondent no.3, namely, the Commissioner of Income Tax, on 12.03.2020.

Leaving all questions open, we dispose of the present petition on mutually agreed terms.

Writ petitioner undertakes to fully cooperate and not take unnecessary adjournments, if the appeal is heard on day-to-day basis.

(Sanjay Karol, CJ)

(S. Kumar, J)

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