

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21466 of 2012

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Bihar Combined Entrance Competitive Examination Board having its Office at IAS Bhawan, Near Airport, P.O. Bihar Veterinary College, P.S. Patna Airport, District - Patna through its Accounts Officer, Vishwa Nath Prasad Mishra, son of late Shri Baboo Nandan Prasad Mishra, Resident of IAS Bhawan, Near Airport, P.O. Bihar Veterinary College, P.S. Patna Airport, District - Patna

... .. Petitioner/s

Versus

Chief Commissioner Of Income Tax 1, having its office at Central Revenue Building, Beerchand Patel Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate

For the Respondent/s : Mrs. Archana Sinha @ Shahi, Advocate

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

Date : 03-12-2020

Petitioner has prayed for the following relief(s):

- i) that the order dated 26.9.2012 for the assessment year 2011 passed by the respondent (as contained in Annexure-4) under Section 10 (23C) (vi) and (via) of the Income Tax Act be quashed.
- (ii) for a direction to the respondent to grant approval under Section 10 (23C) (vi) and (via) of the Income Tax Act.



(iii) for granting any other relief(s) to which the petitioner is otherwise found entitled to.

2. We have heard the learned counsel for the parties at length.

3. The primary issue which arises for consideration is as to whether the present petitioner, namely Bihar Combined Entrance Competitive Examination Board would be entitled for exemption under the provisions of Section 10(23)(vi) which partly reads as under:-

Section 10(23-C) (vi)

10. Incomes not included in total income.- In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

...
(23-C) any income received by any person on behalf of-

...
(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or

4. We notice that vide impugned order dated 26th of September, 2012, the competent authority has rejected the petitioner's claim for grant of such exemption.



5. In support of his submission, Shri Pathy, learned counsel for the petitioner invites our attention to the decision rendered by this Court in C.W.J.C. No. 20296 of 2010, titled as **Bihar State Text Book Publishing Corporation Versus the Commissioner of Income Tax-I, Patna & anr.** on 04.09.2020 as also earlier decision rendered by this Court in M.A. No.425 of 2010 titled as **Bihar State Text Book Publishing Corporation Vs. The Commissioner of Income Tax-I, Patna**, referred to therein. Also reliance is placed upon the decision rendered by the Delhi High Court in **Council for the Indian School Certificate Examinations versus Director General of Income-Tax (Exemptions)**, [2014] 362 ITR 436 (Del).

6. On the other hand, Mrs. Archana Sinha @ Shahi seeks reliance upon the decision rendered by Hon'ble the Apex Court in **Visvesvaraya Technological University versus Assistant Commissioner of Income Tax**, 2016 (12) SCC 258,

7. However, in response thereto, Shri D.V.Pathy, learned counsel for the petitioners refers to and relies upon the other decisions rendered by Hon'ble the Apex Court in **Islamic Academy of Education vs. State of Karnataka**, (2003) 6 697; **Assam State Text Book Production and Publication Corporation Limited versus Commissioner of Income Tax**,



**(2009) 17 SCC 391 ; and in Queen's Educational Society
Versus Commissioner of Income Tax (2015) 8 SCC 47; .**

8. Having perused the impugned order, we are of the considered view that the authority below, while concluding that the petitioner was not an educational institution, did not have complete material, including as to whether it was generating any profit by taking fees for conducting the examination.

9. After the matter was heard for some time, learned counsel for the parties were *ad-idem* that the matter can be remanded back to the authority for consideration afresh, by affording opportunity to the parties to place all material, enabling the authority to arrive at a decision in accordance with law.

10. We have no hesitation in acceding to such request.
As such, dispose of the petition in the following terms:

- (a) The impugned order dated 26.09.2012 passed by Chief Commissioner of Income Tax-I, Patna in F.No.CCIT/Pat/Tech-II/10(23C)(vi) & (via)/12-13, titled as Bihar Combined Entrance Competitive Examination Board, is quashed and set aside;
- (b) The matter is remanded back to the appropriate/competent authority for consideration of the petitioner's application afresh;



Here only Mrs. Archana Sinha clarifies that now the nominated authority is the Principal Commissioner of Income Tax (Exemption) Patna.

(c) The parties are directed to appear before the said authority on 17.12.2020 when a date shall be fixed, enabling the parties to place on record additional material.

(d) Adequate opportunity of hearing shall be afforded with full compliance of principles of natural justice and the authority shall decide the matter afresh by passing a speaking order, copies whereof shall be supplied to the parties.

(e) Proceedings can be got conducted through a digital mode, if so found necessary.

(f) Liberty reserved to the parties to take recourse to such remedies, if so required and desired, as per law.

(g) We only hope and expect the authority to decide the matter expeditiously and preferably within the current financial year and positively before 31st March, 2021.

(h) All issues are left open.



11. The writ petition stands disposed of in the above terms.

12. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.12.2020
Transmission Date	

