IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25561 of 2019

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Mr. Gyan Prakash Son of late Kanahiya Prasad, Flat No. 301 Sharanam Apartment, Nehru Nagar, Patliputra More, P.O. and P.S. Patliputra, Patna, -800013

... ... Petitioner/s

Versus

1. Union of India through Principal Chief Commissioner of Income Tax, Birchand Patel Marg, Patna.
2. Principal Chief Commissioner of Income Tax, C.R. building, Birchand Patel path, Patna- 800001
3. Commissioner of Income Tax, C.R. building, Birchand Patel path, Patna- 800001
4. Joint Commissioner of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna- 800001
5. Deputy Commissioner of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna- 800001
6. Assistant Commissioner of Income Tax, Lok Nayak Bhawan, Dakbanglow Road, Patna- 800001
7. Income Tax Officer Ward No. 6 (4), Lok Nayak Bhawan, Dakbanglow Road, Patna- 800001

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prakash Sahay, Advocate
For the Respondent/s	:	Mr. (Dr.) K. N. Singh, ASG Mr. Rishi Raj Sinha, Mrs. Archana Sinha, Advocates

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

Date : 24-11-2020

Heard the parties.

Petitioner has prayed for following relief:-

"For issuance of appropriate writ/writs, order/orders, direction/directions towards cancellation/quashing the notice dated 21.11.2019 issued by respondent 7 for completing the Assessment proceeding u/s 143(3) of the Income Tax Act, 1961 for the assessment year 2016-17 for capital gain of Rs.6,91,135 on a Hypothetical Income calculated by the respondent. 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 notice 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 Sections 45 and 48 of the Act. There is no construction till date has taken place by the builder on the agreement and nor any plan has been sanctioned till date. Impugned notice dated 21.11.2019 (Annexure-2) may kindly be quashed."

This writ petition was directed to be tagged with C.W.J.C. No.3364 of 2019 (Anant Kumar Verma Vs. Principal Chief Commissioner of Income Tax and others) as issue raised in present writ petition is similar to that of issue raised in C.W.J.C. No.3364 of 2019 (Anant Kumar Verma Vs. Principal Chief Commissioner of Income Tax and others).

It has been brought to the notice of this Court that C.W.J.C. No.3364 of 2019 (Anant Kumar Verma Vs. Principal

Chief Commissioner of Income Tax and others) has been disposed of by order dated 16.01.2020 and present writ petition is squarely covered by said judgment and order and is disposed of in similar terms.

Writ petition is disposed of with liberty to petitioner to file appeal before the appellate authority within two weeks and appellate authority shall decide the appeal within four weeks from the date of filing of such appeal. The delay in filing appeal shall be condoned by the appellate authority as the matter remained pending before this Court and appellate authority shall decide the appeal on its own merit within aforesaid period as indicated above.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2020
Transmission Date	NA