IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9362 of 2021

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Suresh Prasad Sah son of Shyam Lal Sah resident of Village- Phulhara Bazar, P.O.- Bidupur, P.S.- Raja Pakar, District- Vaishali at Hajipur- 844502.

... ... Petitioner/s

Versus

1. The Union of India Department of Income Tax through the Commissioner of Income Tax, Revenue Building, Birchandra Patel Path, Patna (Bihar).
2. The Commissioner of Income Tax, Revenue Building, Birchandra Patel Path, Patna (Bihar).
3. The Income Tax Officer, Ward Circle- 1(3) Vaishali, Dighi Kalan, Vaishali at Hajipur (Bihar)- 844101.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Nitesh Kumar, Advocate Mr. Lakshmi Kant Tiwary, Advocate
For the Respondent/s	:	Mr.Dr.K.N.Singh (ASG) Mrs. Archana Sinha, Advocate

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

(The proceedings of the Court are being conducted by Hon’ble the Chief Justice/Hon’ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 29-07-2021

Petitioner has prayed for the following relief(s):

“For issuance of:

(i) MANDAMUS for direction of respondent no-3 to treat the petitioner as not being in default in respect of the amount in dispute in the appeal which is sub-judice in the appellate court against the assessment order under section 144 of the Income tax Act 1961 dated 05.12.2019 (Annexure-- 1) has passed by him and by which he has assessed the income of the petitioner for Assessment Year 2016-2017 amounting to Rs. 12,70,100.00 (Twelve Lakh Seventy Thousand One Hundred Rupees) as unexplained money under section 69A of the Income Tax Act 1961 and raised huge demand of Rs. 15,89,434.00 (Fifteen Lakhs Eighty Nine Thousand Four Hundred Thirty Four Rupees) and recovered from the bank account of the petitioner amounting to Rs. 79,404.00 (Seventy Nine Thousand Four Hundred Four Rupees) against the aforesaid demand. Hence the rest amount should be stayed till disposal of the appeal;

(ii) Granting any other relief/relieves to which the petitioner may be found entitled to."

It is brought to our notice that vide impugned order dated 5th of December, 2019 passed by the Respondent No. 3 namely the Income Tax Officer, Ward Circle- 9(3) Vaishali the income of the petitioner has been assessed for Assessment Year 2016-2017 amounting to Rs.12,70,100.00 and a demand of Rs.15,89,434.00 has been raised and an amount of Rs.79,404.00 has been recovered against the aforesaid demand.

Learned counsel for the Income Tax, states that he has no objection if the matter is remanded to the Appellate Authority for deciding the case afresh. Also, the case shall be decided on merits. Also, during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

However, having heard learned counsel for the parties as also perused the record made available, we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences. As such, on this short ground alone, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 5th of December, 2019 passed by the Respondent No. 3 namely the Income Tax Officer, Ward Circle- 9(3) Vaishali;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Petitioner undertakes to deposit additional sum of Rs. 1,00,000/- (one lac) with the Appellate Authority. The petitioner undertakes to deposit the amount within one week from today whereafter the appeal shall be decided within two months.

(d) With such deposit, we direct the Appellate Authority i.e. Commissioner, Appeal, Income Tax, to decide the petitioner's appeal on merits. While passing such order, we have taken notice of both the Circlular issued by the Department as also the order passed by Hon'ble Supreme Court in Civil Appeal No.6850 of 2018, titled as Principal Commissioner of Income Tax Vs. L.G. Electronics of India Pvt. Ltd. clarifying the same.

(e) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. However, if it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(f) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(g) Petitioner undertakes to appear before the Appellate Authority on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

(h) The Appellate Authority shall condone the delay in filing the appeal and decide the appeal on merits after complying with the principles of natural justice;

(i) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(j) During pendency of the appeal, no coercive steps shall be taken against the petitioner.

(k) The Appellate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(l) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(m) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(n) Liberty reserved to the petitioner to challenge the order, if required and desired;

(o) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(p) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(q) We have not expressed any opinion on merits and all issues are left open;

(r) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.08.2021
Transmission Date	