

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19158 of 2021

Abhiaya Marketing Private Limited a Private Limited Company incorporated under the Companies Act, 1956, having its office at 2nd Floor, Awadhraj Centre, Mitra Compound, Boring Canal Road, Patna, P.O.- GPO, P.S.- Buddha Colony in the town and District of Patna through its Director, Joydeep Mukherjee, aged about 55 years, male, son of Late Gour Hari Mukherjee, resident of Flat No. 102, Mukherjee Enclave, Road No. 40, Anisabad, Patna- 800 002, PO- Anisabad and PS- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

1. Principal Commissioner of Income Tax (Central), Patna 3rd Floor, Central Revenue Building, Beer Chand Patel Path, Patna- 800 001.
2. The Additional / Joint Commissioner of Income Tax, Central Range, 6th Floor, Central Revenue Building (Annexe), Beer Chand Patel Marg, Patna- 800 001.
3. The Deputy/ Assistant Commissioner of Income Tax, Central Circle-3, 6th Floor, Central Revenue Building (Annexe), Beer Chand Patel Marg, Patna- 800 001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Mr. Sushil Kumar Singh, Advocate Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Sr. S.C. Mr. Sanjeev Kumar, Jr. S.C.

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

Date : 22-11-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“For issuance of writ of certiorari or any other appropriate writ quashing the Notice under section 148 of the Income Tax Act, 1961 ("the Act") dated



31.03.2021, for assessment year 2013-14 issued by the Assistant Commissioner of Income Tax, Central Circle-3, Patna (Respondent No.3) herein and also referred to as the "Assessing Officer" hereinafter) initiating proceedings for reassessment beyond four years from the end of the relevant assessment year against the petitioner as being wholly illegal and without jurisdiction as the same has been initiated without any failure on the part of the petitioner in furnishing fully and truly all material facts necessary for assessment of that year and on mere change of opinion.

ii) For issuance of an appropriate writ quashing the preliminary order dated 18.08.2021 passed in pursuance of the said Notice by Respondent No.3 whereby the petitioner's objection on the issue of assumption of jurisdiction has been rejected by a non-speaking and cryptic order passed only as a formal observance of the procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft (India) vs ITO and Others reported in (2003) 259 ITR 19.

iii) For issuance of an appropriate writ quashing the notices under section 143(2) and 142(1) dated 18.08.2021 by which the petitioner has been directed to furnish certain details along with connected documents as the same is erroneous and without any basis and issued simultaneously with order dated 18.08.2021, by which the objection of the petitioner against initiation was rejected, without



allowing time to the petitioner to avail constitutional remedy against the initiation of proceedings under section 148 in terms of judgment of Apex Court in the case of GKN Driveshaft (India) vs ITO and Others reported in (2003) 259 ITR 19.

(iv) For issuance of writ of certiorari or any other appropriate writ quashing the assessment order dated 13.09.2021 under section 147 of the Income Tax Act, 1961 ("the Act") for assessment year 2013-14 passed by the Assistant Commissioner of Income Tax, Central Circle-3, Patna (the Respondent No.3) herein and also referred to as the ("Assessing Officer" hereinafter) against the Petitioner in a post haste manner in utter violation the Principles of Equity and Natural Justice and without proper and adequate opportunity of being heard.

v) For issuance of direction to the Respondents to stay the recovery of demand pursuant to the said assessment order during pendency of this writ petition.

vi) For issuance of any other writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

It is submitted on behalf of the petitioner that petitioner's objection to the initiation of proceedings under Section 147 of the Income Tax Act, 1961 for the Assessment Years 2013-14, 2016-17 and 2017-18 has been rejected vide order dated 18th of August,



2021 passed by Respondent No. 3, namely the Deputy/Assistant Commissioner of Income Tax, Central Circle-3, 6th Floor, Central Revenue Building (Annexe), Beer Chand Patel Marg, Patna- 800 001 (Annexure-2).

It is further submitted on behalf of the petitioner that the impugned order is cryptic and non-speaking. No reason has been assigned on basis of which impugned order has been passed. There is no consideration of objection raised by the petitioner against initiation of proceeding. The order does not disclose the application of mind by the authority who has passed the order.

As such, we dispose of the present petition in the following terms:-

(a) We quash and set aside the impugned order dated 18th of August, 2021 passed by Respondent No. 3, namely the Deputy/Assistant Commissioner of Income Tax, Central Circle-3, 6th Floor, Central Revenue Building (Annexe), Beer Chand Patel Marg, Patna- 800 001 (Annexure-2) as also the assessment order dated 13th of September, 2021 passed by the Assistant Commissioner of Income Tax, Central Circle-3, Patna (Annexure-4 series);

(b) Matter is remitted to the Assessing Authority;

(c) The Assessing Authority shall pass a fresh order,



dealing with the objections of the petitioner for initiation of proceedings under Section 147 of the Income Tax Act, 1961;

(d) The Assessing Authority shall consider the written objection filed by the petitioner and thereafter pass a reasoned and speaking order, of course after complying with the principles of natural justice, and in accordance with law;

(e) Petitioner undertakes to appear before the Assessing Authority on 29th of November, 2021 at 10:30 A.M.;

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

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

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

(i) The respondent shall consider the issue of maintainability of the application, including that of it being time barred, as a preliminary issue.

(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take



unnecessary adjournment;

(k) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(l) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

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

The instant petition stands 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	23.11.2021
Transmission Date	

