IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.625 of 2022

Dukhan Prasad Singh Son of Late Bhagwat Singh, Resident of Danapur Kant Road, Khagaul, Mustafapur, Khagaul, P.S. Danapur District Patna.

... ... Petitioner/s

Versus

1. The Union of India to the Principal Chief Commissioner of Income Tax having its office at Central Revenue Building, Veerchand Patel Path, Patna.
2. The Principal Chief Commissioner of Income Tax, having its office at Central Revenue Building, Veerchand Patel Path, Patna.
3. The Chief Commissioner of Income Tax having its office at Central Revenue Building, Veerchand Patel Path, Patna.
4. The Joint Commissioner of Income Tax, Jay Prakash Lok Nayak Bhawan, Dak Bungalow Road, Patna.
5. The Deputy Commissioner of Income Tax, Jay Prakash Lok Nayak Bhawan, Dak Bungalow Road, Patna.
6. The Assistant Commissioner of Income Tax, Jay Prakash Lok Nayak Bhawan, Dak Bungalow Road, Patna.
7. The Income Tax Officer, Ward 6 (3), Jay Prakash Lok Nayak Bhawan, Dak Bungalow Road, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mohit Agarwal, Advocate
For the Respondent/s	:	Mr.Rishi Raj Sinha, Advocate

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 : 24-01-2022

Petitioner has prayed for the following relief(s):

"i) For quashing of the final show cause for proposed addition bearing No. ITO/Ward-6(3)/Pat/JAD/2019- 20/1231 dated 23.09.2019, with respect to Financial Year 2014-15, issued under the signature of the Respondent No. 7 whereby an amount of Rs.46,01,025/- was proposed to be treated as Long Term Capital Gain and complete the assessment in the case of the petitioner under Section 144 read with Section 147 of the Income Tax Act, 1961 as the same is on basis of hypothecated assumption of income on mere execution of development agreement;

ii)For quashing of the consequential assessment order issued under the signature of the Respondent No. 7 vide letter bearing No. ITBA/COM/F/17/2019-20/1021167982(1) dated 27.11.2019 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 whereby an amount of Rs. 9,47,811/- was assessed as Long-Term Capital Gain Tax and a further sum of Rs.6,06,599/- and Rs. 6,44,511/- was imposed as interest under Section 234(A) and Section 234(B) of the Income Tax Act, 1961 respectively for being assessed on the basis of hypothecated gain and a pre-mature assessment of tax;

iii) For holding a declaration that the tax on long term capital gain on joint development agreement can only be assessed upon issuance of completion certificate of the said project by the competent authority or in the event when the assessee has transferred his share in the project on or before date of issuance of completion certificate;

iv) For holding that in the facts of the present case of the Petitioner, the passing of impugned assessment order is pre-mature and without authority of law as neither the completion certificate of the project has been issued by the competent authority nor the assessee/petitioner has transferred his share in the project on or before date of issuance of completion certificate;

v) For a declaration that the benefits of incorporation of sub-Section (5A) in Section 45 of the Income Tax Act, 1961 vide amendment of 2018 be made applicable

> upon the projects in which either the completion certificate has not been issued by the competent authority or the land-owner has not executed any transfer deed with respect to his purported share in the project prior to completion of project even though the development agreement has been executed in financial years prior to 2008-19, as is the case of the Petitioner,
>
> vi) For a declaration that in the present case the Respondent Assessing Officer had no jurisdiction to assess tax under Section 147 of the Income Tax Act, 1961 as the event to assess or term the income on capital gain as escaped income has not arisen;
>
> vii) For a declaration that merely on the basis of execution of a Joint Development Agreement dated 03.12.2013 and in absence of completion of the building and handing over the physical possession of the share of the petitioner to him by the developer, the action of the Respondent for assessing Long Term Capital Gain to the tune of Rs. 46,01,025/- is arbitrary as the tax assessed is merely on basis of hypothecated gain assumed to be accrued by the Petitioner; and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts & circumstances of the present case."

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioner, learned counsel for the petitioner, under instructions, submits that petitioner shall be content if the petition is disposed of with a direction to the authority concerned to consider and decide the appeal to be filed by the petitioner within a period of four weeks, within a period of three months from the date of its presentation.

Shri Rishi Raj Sinha, learned counsel for the respondents, states that if the petitioner prefers an appeal within the time stipulated above, limitation shall not come in the way of its consideration and decision on merits in view of the current Pandemic Covid-19 and the pendency of the present petition before this Court.

Statement accepted and taken on record.

Without expressing any opinion on merits of the claim, petition is disposed of with the liberty aforesaid. All issues on facts and law are left open.

Needless to say that while considering such appeal, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.

If aggrieved by the said order, the petitioner shall have liberty to approach this Court by way of separate petition(s), if so required and desired.

Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law.

We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch.

The petition stands disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	28.01.2022
Transmission Date	