IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5081 of 2022

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Madhurima Singh, Wife of Late Dhananjay Kumar Singh, Permanent resident of Main Road, Buddha Colony, Opp. Amitabh Kunj Apartment, Buddha Colony, Patna - 800001, P.O. - G.P.O., P.S.- Buddha Colony, District - Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax Circle - 1, Patna.
2. The Additional/Joint Commissioner of Income Tax, Range- 1, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 5041 of 2022

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Basudeo Narayan Singh, Son of Late Krit Narayan Singh, Permanent Resident of Main Road, Buddha Colony, Opp. Amitabh Kunj Apartment, Buddha Colony, Patna - 800001, P.O. - G.P.O., P.S. - Buddha Colony, District - Patna.

... ... Petitioner/s

Versus

1. The Assistant Commissioner of Income Tax, Circle-1, Patna.
2. The Additional/Joint Commissioner of Income Tax, Range-1, Patna.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 5081 of 2022)

For the Petitioner/s : Mr. Ajay Kr. Rastogi, Sr. Advocate
Ms.Smriti Singh, Advocate

For the Respondent/s : Ms.Archana Sinha @ Archana Shahi, Advocate
Mr. Alok Kumar, Advocate
Mr. Sanjeev Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 5041 of 2022)

For the Petitioner/s : Ms.Smriti Singh, Advocate

For the Respondent/s : Ms.Archana Sinha @ Archana Shahi, Advocate
Mr. Alok Kumar, Advocate
Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2022

Heard learned counsel for the parties.

Petitioners have prayed for following reliefs:-

i) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing notice dated 16.03.2022 ("impugned notice") issued by the Respondent No.1 refusing / denying opportunity of hearing in course of assessment proceedings of A.Y. 2015-16 in deliberate defiance of the direction of the Apex Court vide its order dated 20.09.2021 directing assessment afresh after hearing the parties.

ii) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the consequential assessment order dated 17.03.2022 ("Impugned order") passed by the Respondent No.1 under Section 143(3)/ 262 of the Income Tax Act, 1961 ("the Act") in contravention of Principles of Natural Justice by refusing/denying opportunity of hearing despite specific direction of the Apex Court and passing an arbitrary assessment order thereby *ex facie* raising perverse demand against the petitioner for the assessment year ("A.Y.") 2015-16 by erroneously treating a part of capital gain as income from other sources under Section 56 of the Income Tax Act ("Act") in contravention of the evidence available on record and in colourable exercise of power, as well as in excess of jurisdiction and/or without authority of law.

iii) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the consequential demand notice dated 17.03.2022 issued by Respondent No.1 under Section 156 of the Act.

iv) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the consequential notice of penalty under Section 274 read with Section 271(1)(C) dated 17.03.2022 issued by Respondent No.1.

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

It is not in dispute that during the course of the proceedings, petitioners had made a request in terms of the statutory provisions, i.e., Section 144 B (7) (vii) of the Income Tax Act, which is quoted below:-

> "(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show-cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit;."

for affording an opportunity of physical hearing, which request undisputedly was not considered favourably, prior to the passing of the impugned orders dated 16.03.2022 and 17.03.2022 .

As such, on this short ground alone, the aforesaid orders are quashed and set aside, reserving liberty to the respondents to conclude the proceedings, should they desire, strictly in accordance with law.

Needless to add, petitioners shall fully co-operate and participate in the proceedings with an endeavor of having the same concluded at the earliest.

Date for hearing shall be fixed by the authorities, to be duly intimated, enabling the petitioners to participate therein by way of prescribed mode.

Petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2022
Transmission Date	NA