IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7835 of 2022

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Bihar Yoga Bharati a Society registered under Societies Registration Act, 1860, through its President, Swami Shivadhyanam Saraswati, son of Virendra Thaper, aged 46 years, Male, resident of Bihar Yoga Bharati, Yoga Vidya Campus, Fort Area, Munger, P.O.- Ganga Darshan, P.S.- Kotwali, District-Munger (Bihar), Pin- 811201.

... ... Petitioner/s

Versus

1. The Principal Chief Commissioner of Income Tax Bihar and Jharkhand.
2. The Income Tax Officer, Ward- 4(1), Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Smriti Singh, Advocate
For the Respondent/s	:	Mr. Rishi Raj Sinha, Advocate

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

Date : 21-06-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

i) For issuance of writ of certiorari or any other appropriate writ quashing the Notice under Section 148(b) of the Income Tax Act, 1961 ("the Act") dated 23.03.2022, for assessment year 2015-16 issued by the Income Tax Officer, Ward-4(1),Patna (R-2) herein and also referred to as the "Assessing Officer" hereinafter) initiating proceedings for reassessment against the Petitioner as being wholly without jurisdiction and consequently, is illegal and bad in law as the impugned notice has been issued on incorrect PAN (AADFD0374K) in the status of Firm allotted by the department as against application for

PAN by the petitioner in the status of Artificial Juridical Person (AJP).

Photocopy of the notice issued under Section 148(b) dated 23.03.2022 is annexed and marked as Annexure - '1'.

ii) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the consequential order dated 04.04.2022 ("Impugned order") passed by the Respondent No.2 under clause (d) of section 148A of the Act by erroneously concluding that the petitioner is a firm and has not filed its return and as per information, income chargeable to tax amounting to Rs.84,70,918/- has escaped assessment for the year under consideration in a routine manner and without considering the reply filed by the petitioner and documents available on record and without due application of judicial mind.

Photocopy of order under section 148A (d) dated 04.04.2022 is annexed and marked as Annexure-'2'.

iii) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the notice under section 148 of the Act dated 04.04.2022 issued by Respondent no.2 with previous approval of Pr. Chief Commissioner of Income Tax, Bihar & Jharkhand.

Photocopy of notice under section 148 dated 04.04.2022 is annexed and marked as Annexure-'3'.

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

In the attending facts and circumstances, we are inclined to allow the present petition, more so, on the ground that petitioner was not afforded adequate opportunity inasmuch as no opportunity of filing reply within seven days, as contemplated under Section 148A of Income Tax Act, 1961 (hereinafter referred to as the ‘Act’), is stipulated.

We notice that in the instant case, notice was issued on 23rd of March, 2022, directing the petitioner to respond on or before 29th of March, 2022. No doubt, petitioner did respond but then the obligation cast upon the officer to afford “7 clear days”, as is so stipulated in the section was never afforded to the petitioner. The language of the section is unambiguously clear. There is a mandate to the officer to provide opportunity to the petitioner of filing response and such period being “not less than” seven days.

We notice that the respondent authority passed the order on 04.04.2022 which also only exhibits undue haste in passing the order against the assessee.

We are persuaded by Ms. Smriti Singh, learned counsel for the petitioner, to take the aforesaid view also on the strength of the decision dated 12th May, 2022 rendered by Delhi High Court in W.P.(C) 7385 of 2022, titled as **Shri Sai Co-operative Thrift and Credit Society Ltd. Vs. The Income Tax Officer, Ward 43-6**.

Accounting for all the attending facts and circumstances, the order dated 04.04.2022, passed by respondent no.2, namely, the Income Tax Officer, Ward-4(1), Patna is set aside with the authority to issue a fresh notice within 15 days in terms of Section 148 of the Income Tax Act, 1961 and complete the appropriate proceedings in accordance with law.

Petitioner through learned counsel undertakes to fully co-operate and respond to the notice within the period stipulated under Section 148A of the Act and/or the period specified in the notice.

The officer concerned shall pass an order within a period of two months thereafter.

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	28.06.2022
Transmission Date	NA