IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.115 of 2022

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Mukesh Kumar Jha Son of Sri Jawahar Jha Resident of Lagma, P.S. - Sonbarsa, District- Saharsa (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Commercial and Tax, Bihar, Patna.
3. The Commissioner State Tax, Bihar, Patna.
4. The Additional Commissioner (Appeal) State Tax, Purnea, Division, Purnea.
5. The Joint Commissioner of State Tax, Saharsa Circle, Saharsa.
6. The Assistant Commissioner, State Tax, Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

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(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.)

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Date : 18-01-2022

Heard learned counsel for the parties.

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

i. For quashing the impugned order dated 05.07.2021 passed by the Additional State Tax Commissioner (Appeal), Purnea Division, Purnea in Appeal No. (ARN) AD100321004312A whereby and whereunder the two appeals, filed by the petitioner have been rejected vide memo no. 506 dated 05.07.2021 on exparte hearing without giving opportunity of hearing and without considering the period of Covid-19 and reject the appeal.

ii. Further for quashing the show cause notice/order of demand dated 18.03.2021, 06.01.2020 passed in Reference No. ZA100120001674K and demand dated 27.01.2020 in Reference No. ZA1001200012487E dated 18.02.2020 in Reference No. ZA1002200208288 passed by the Assistant Commissioner of State Tax, Saharsa Circle, Saharsa by which the Tax for the period financial year, 2018-2019 and financial year 2019-2020 have been calculated and imposed tax on gross income rather the taxable in absence of 12% has not been given by the Department alongwith the tender amount as such the impugned show cause notice/assessment/orders of demands are not sustainable in the eye of law.

iii. Further after quashing the impugned orders/memo/show cause/demand, for a direction to the respondent no. 5, the Joint Commissioner, Saharsa Circle, Saharsa to reassess the tax for the period of Oct 2018 - March 2019 of financial year 2018-2019 and further for the period April-2019 - Sep-2019 for financial year 2019-2020.

iv. To grant any other relief(s) for which the petitioner is entitled to get in the eye of law.

It is brought to our notice that vide impugned order dated 05.07.2021 passed by the Respondent No. 4 namely Additional Commissioner (Appeal), State Tax, Purnea Division, Purnea in Appeal Case No. (ARN) AD100321004312A (Annexure-1), the appeal of the petitioner against the order dated 18.02.2020 passed by the Respondent

No. 6 namely Assistant Commissioner of State Tax, Saharsa, in Reference No. ZA1002200208288 and Summary of Order in Form GST DRC-07 dated 18.02.2020 has been rejected. Both the orders were *ex parte* in nature.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Assessing 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 05.07.2021 passed by the Respondent No. 4 namely Additional Commissioner (Appeal), State Tax, Purnea Division, Purnea in Appeal Case No. (ARN) AD100321004312A (Annexure-1), order dated 18.02.2020 passed by the Respondent No. 6 namely Assistant Commissioner of State Tax, Saharsa, in Reference No. ZA1002200208288 and Summary of Order in Form GST DRC-07 dated 18.02.2020, notice dated 06.01.2020 issued in Reference No. ZA100120001674K (Annexure- 2 series) and notice dated 27.01.2020 issued in Reference No. ZA100120012487E;

(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) Further the petitioner undertakes to additionally deposit ten per cent of the amount of the demand raised before the Assessing Officer i.e. the Joint Commissioner of State Tax, Saharsa Circle, Saharsa. This shall be done within four weeks;

(d) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Assessing Officer. 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;

(e) 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;

(f) Petitioner undertakes to appear before the Assessing Authority on 15th of February, 2022 at 10:30 A.M., if possible through digital mode;

(g) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

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

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

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

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

(l) 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;

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

(n) Liberty reserved to the petitioner to challenge the order, before the appropriate forum, 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 stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, 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	19.01.2022
Transmission Date	