IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4303 of 2023

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Kaushal Kishor Bishwambhar Mishra @ Kaushal Kishore Mishra, Son of Bishwambhar Mishra, Resident of Flat No.401, Mahadev Enclave, Road No.6C, Shanti Path, gardanibagh, Patna-800002.

... ... Petitioner/s

Versus

1. The Union of India through the Income Tax Commissioner, Bihar Range at Patna.
2. The Income Tax Officer, Ward 4(1), Patna-Cum-Assessing Authority.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogendra Mishra, Senior Advocate Mr. Gajendra Padey, Advocate Ms. Swati Mishra, Advocate
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Senior Standing Counsel

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-09-2023

The petitioner is aggrieved with the assessment carried out at Annexure-10.

2. Learned Senior Counsel for the petitioner submits that there was no sufficient time granted and only five days were allowed insofar as the show cause notice issued which is produced at Annexure-9. The petitioner had sought for seven days' time which was declined and an order was passed on 03.03.2023 which is produced as Annexure-10. The petitioner only seeks setting aside of the assessment order for the purpose

of objecting to the notice itself.

3. Learned Senior Standing Counsel for the Department, however, specifically refers to the order at Annexure-10 which tabulates various notices issued, which the assessee did not respond to. In fact, the notice under Section 148 of the Income tax Act was preceded by a notice under Section 148A(b) of the Act which was received by the assessee to which also there was no response.

4. Having considered the totality of the circumstances and also the tabulation in the order, we are not convinced that the assessee was not afforded a proper opportunity. In fact, it has to be noticed that though the time granted was of five days till 20.02.2023 and the assessee had asked for seven days, the order was passed only on 03.03.2023. Before that the assessee could have filed an objection and there is no attempt made to file such an objection even after the time provided.

5. In such circumstance, we see absolutely no reason to invoke the extra ordinary jurisdiction for the reason of there being no violation of principles of natural justice. However, we make it clear that the assessee can approach the appellate authority against the order passed, in which event the period between the filing of the writ petition which was on 22.03.2023

till today shall not be considered as delay occasioned and an application for delay shall be considered favourably, at least with respect to that period, especially looking at Section 14 of the Limitation Act; if an appeal is filed within 30 days from today.

6. Writ petition stands dismissed with the aforesaid reservation.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	
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