**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL MISCELLANEOUS No.21895 of 2023**

Arising Out of PS. Case No.-593 Year-2011 Thana- ECONOMIC OFFENCES, BIHAR District- Patna

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RAVI PRAKASH KHETAN Son of Ganga Ram Khetan Resident of Dahi Tola Lane, Sujaganj, Jagdishpur P.S.-Kotwali, Dist.-Bhagalpur

... ... Petitioner/s

Versus

Union of India through Dinesh Thakur, Income Tax Officer, W-1 (2), Bhagalpur

... ... Opposite Party/s

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**Appearance :**
For the Petitioner/s : Mr. Prabhat Ranjan Singh, Advocate
For the Opposite Party/s : Ms. Archana Sinha @ Shahi, Sr. Standing Counsel

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**
**ORAL JUDGMENT**
**Date : 10-11-2023**

Heard learned counsel for the petitioner and Ms. Archana Sinha @ Shahi, learned Senior Standing Counsel assisted by Ms. Prachi Pallavi, learned Advocate.

2. Learned counsel for the petitioner submits that the present quashing application has been filed seeking quashing of the order dated 11.08.2022 passed in Complaint Case No. 593(C) of 2011 by the learned Special Judge, Economic Offence, Patna whereby the petition filed by the petitioner under Section 245 Cr.P.C. seeking discharge has been rejected.

3. Learned counsel for the petitioner submits that petitioner is an income tax assessee. For the assessment year 2009-2010, the last date for filing income tax return was 31.08.2009 in terms of Section 139(1) of the Income Tax Act, 1961. It is further

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submitted that the petitioner for some reason beyond his control was not able to submit his return of income tax for the assessment year 2009-2010 by the last date i.e. 31.08.2009. It is next submitted that since petitioner could not file his return by the last date i.e. 31.08.2009 as such a notice under Section 148 of the Income Tax dated 22.10.2010 was issued to the petitioner recording therein that the authority has reason to believe that income chargeable to tax for the assessment year 2009-2010 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961, accordingly, the petitioner was directed to submit his income for assessment within thirty days of the receipt of the notice dated 22.10.2010.

4. Learned counsel for the petitioner submits that the notice dated 22.10.2010 was received by the petitioner on 16.11.2010 but prior to receiving the notice dated 22.10.2010, the petitioner had already filed his return for the assessment year 2009-2010 on 26.10.2010 with requisite fine. Learned counsel further submits that after the petitioner filed his return on 26.10.2010 though belatedly thereafter he received a notice dated 11.01.2011 under Section 276CC of the Income Tax Act, 1961 asking him to show cause that as to why a criminal prosecution be not launched for not submitting the return for the assessment year

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2009-2010 even after the expiry of the assessment year by 31.03.2010. It is next submitted that the notice dated 11.01.2011 also took note of the earlier notice dated 22.10.2010 issued under Section 148 of the Income Tax Act.

5. Learned counsel for the petitioner submits that the notice dated 11.01.2011 (Annexure-3 to the quashing application) was not replied by the petitioner thereafter he again received a notice dated 07.02.2011 (Annexure-4 to the quashing application) under Section 276CC of the Income Tax Act wherein it was recorded that earlier notice dated 11.01.2011 was sent but no reply of the same was submitted within seven days of the receipt of the said letter as such a second opportunity is being given to submit the reply by 15.02.2011.

6. Learned counsel for the petitioner further submits that the petitioner vide his reply dated 14.02.2011 replied the notice dated 07.02.2011 addressed to the Income Tax Officer, Ward No. 1(2) Bhagalpur wherein he recorded that the delay was a routine delay on account of lack of knowledge and health illness and the delay was not willful.

7. Learned counsel for the petitioner submits that what is not disputed rather stands admitted is that the petitioner for some personal problem could not reply the notice dated 11.01.2011

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but he submitted his reply with respect to the notice dated 07.02.2011 on 14.02.2022 but his reply was not considered and the instant criminal prosecution was launched under Section 276CC of the Income Tax Act.

8. Learned counsel for the petitioner submits that before initiating criminal prosecution, the authority ought to have rejected the reply of the petitioner dated 14.02.2011 but without considering and rejecting the reply of the petitioner, launching of the criminal prosecution cannot be countenanced for the reason that the petitioner had taken a stand in his reply that on account of ill health, lack of knowledge, the return could not be filed on time and non-filing of the return was not willful. Learned counsel next submits that until and unless non-filing of the return is willful and the authorities came to a considered conclusion based on reason that the delayed filing of return was willful then only a prosecution under Section 276CC of the Income Tax can be launched.

9. Learned counsel appearing on behalf of the Income Tax Department draws the attention of the Court to Annexure-5 to the counter affidavit at page 19 to submit that the reply of the petitioner was considered and it was not found satisfactory as would be evident from the order dated 31.03.2011 passed by the Commissioner of Income Tax, Bhagalpur.

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10. Learned counsel for the petitioner rebuts the submission of the learned counsel appearing on behalf of the Income Tax Department and submits that the order dated 31.03.2011 is cryptic and lacks in essential details. It is further submitted that the order dated 31.03.2011 takes note of the notice dated 22.10.2010 issued under Section 148 of the Income Tax Act but then the order does not even remotely reflect that the authority had considered the other two notices as recorded hereinabove was also issued to the petitioner to which the petitioner had replied rather in one line it has been stated that the reply of the assessee is not satisfactory but then does not assign any reason for arriving at a conclusion that as to why and on what basis the authority came to a conclusion that the reply of the petitioner was not satisfactory.

11. The Court concurs with the submission of the learned counsel for the petitioner. The order dated 31.03.2011 though records that the reply of the assessee is not satisfactory but then does not assign any reason for arriving at that conclusion when petitioner had taken stand that on account of his ill health the return was not filed on time and delayed filing was not willful nor intentional.

12. Considering the submission made by the learned counsel for the petitioner, the order dated 11.08.2022 passed in

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Complaint Case No. 593(C) of 2011 by the learned Special Judge, Economic Offence, Patna whereby the petition filed by the petitioner under Section 245 Cr.P.C. seeking discharge has been rejected, is hereby quashed.

13. Accordingly, this application stands allowed.

**(Satyavrat Verma, J)**

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| **AFR/NAFR** | N.A. |
| **CAV DATE** | N.A. |
| **Uploading Date** | 10.11.2023 |
| **Transmission Date** | 10.11.2023 |

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