IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2292 of 2023

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Bright Educational And Welfare Society through its Secretary, Dilip Kumar @ Dilip Kumar Shah.

... ... Petitioner/s

Versus

1. Principal Chief Commissioner of Income Tax, Income Tax Department Patna, Bihar, 1st Floor, Central Revenue Building, Patna- 800001.
2. Principal Commissioner Income Tax- 01, Central Revenue Building, Patna- 800001.
3. Commissioner of Income Tax, Exemption, Central Revenue Building, Patna- 800001.
4. Income Tax Officer, Exemption Ward- 01, Patna, Central Revenue Building, Patna- 800001.
5. Assistant Director, System, Income Tax Office, Central Revenue Building, Patna- 800001.
6. Assistant Commissioner Income Tax/Deputy Commissioner Income Tax, Circle- 01, Patna, under Principal Commissioner, Patna Loknayak Bhawan, Dak Bungalow Road, Patna- 800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar, Advocate
Mr. Praveer Kumar, Advocate

For the Respondent/s : Mrs. Archana Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-05-2023

The petitioner in the above writ petition is aggrieved with the assessment made against the petitioner and the revisional order passed. The learned counsel for the petitioner argues that the petitioner is a registered society having been so registered on 10.09.2004 and applied for a Permanent Account Number (hereinafter referred to as "PAN") with the Income Tax Department, as a charitable educational institution. The Income Tax Department allotted PAN No. AAGFB5910L, on which the petitioner had been filing returns regularly. Later, when the department commenced online mode of filing returns, the petitioner could not upload the returns online as an Association of Persons (hereinafter referred to as "AOP"). On inquiry it was found that the petitioner was issued with a wrong PAN No. as a firm and not as an AOP. It is also submitted that the department realizing the mistake asked the petitioner to file a *de novo* application for PAN upon which the petitioner was issued with PAN No. AACAB6790M as an AOP in the Assessment Year (hereinafter referred to as "AY"), 2017-2018. The petitioner claims that two different Assessing Officers made assessment against him which are dated 28.03.2019, 04.10.2019 and 28.03.2023. One of the assessments was made as an AOP but on the ground that the bank account maintained was disclosed as an account of the firm relatable to the earlier PAN number issued, an assessment was made under that earlier PAN number, which is challenged in the present proceedings.

The learned Senior Counsel for the Income Tax Department, however, points out that the assessee had earlier registered as a firm and the said firm had subsequently registered as an AOP with a Certification of Exemption obtained under Section 12 AA of the Income Tax Act, 1961. The attempt in change of the registration was only to get the benefit of a charitable institution.

We have gone through the records of the case. The assessee in the writ petition specifically states that they had applied for initial registration under the Income Tax Act, 1961 as an AOP and the PAN Card was issued bearing No. AAGFB5910L. It is also stated in Paragraph 7 that the bank account was opened in the name of the AOP and the assesse had been filing the income tax return as an AOP with audit report in Form No.10B prescribed for the purpose of accounting of charitable organization. The assessee also has produced Annexure-3 series which as per the memorandum is a return filed in the Financial Year 2013-2014 relatable to the AY 2014-

2015. A mere glance at Annexure-3 would indicate that it is a return filed on 08.09.2022 in the name of the petitioner with PAN No. AACAB6790M, the new PAN Number obtained as an AOP.

The assessee filed a new application at Annexure-5 allegedly on the instruction of the Assessing Officer, but, however, admittedly without surrendering the earlier PAN issued. We are unable to countenance the contention raised that the Assessing Officer realizing the mistake of the department requested the assessee to file a fresh application for registration and issued a new PAN. It is an admitted fact that from the year in which the new registration was obtained the petitioner filed Income Tax Return under the new PAN and for the AY 2017-2018, Rs. 14,00,000/- (Fourteen Lakhs) was returned on which no tax was payable since it was a charitable institution. The Assessing Officer who had jurisdiction over the firm noticing the deposit, issued the notice for the year 2017-2018 for non-filing of returns and escapement of turnover. Annexure-6 is the assessment order issued for the year 2017-2018 as against the AOP which had the new PAN No. AACAB6790M. We cannot, but notice that the entire assessment order has not been produced along with the memorandum.

The Assessment Order relatable to the firm is found at Annexure - 6A which indicates the PAN No. AAGFB5910L. Therein, the Assessing Officer clearly found that assessee has failed to furnish a return of income for the A.Y 2017-2018. The assesse was found to be a society registered under the Societies Registration Act, 1860 engaged in running an educational institution. The assessment was reopened under the provisions of Section 147 on detection of a deposit of Rs.14,00,000/- (Fourteen Lakhs) in the bank account of the assessee during the demonetization period between 09.11.2016 to 30.11.2016. Notice under Section 148 of the Income Tax Act,1961 was sent to the assessee and the response to the same is extracted in the order produced as Annexure-6A. In fact, the assessee admits categorically that certificate under Section 12AA of the Income Tax Act, 1961 was obtained for PAN No. AACAB6790M (wrongly noted as ‘N’ in the extract). It is also admitted that the society had been allotted a PAN No. AAGFB5910L, in the year 2004. There is a statement that there was a correction of PAN applied which runs contrary to the statement that the Assessing Officer asked the petitioner to apply for a new PAN Number.

On the assessee’s contention that the amounts were already assessed at the hands of the AOP relatable to the new

PAN No.; the Assessing Officer sent a communication to ITO (exemption) Ward 01, Patna, the response to which was that the earlier PAN number was not disclosed to the said Assessing Officer. A fresh show cause notice was issued to the assessee specifically pointing out the proposal to include Rs.14,00,000/- (Fourteen Lakhs) as escaped assessment. The assessee did not respond to the notice issued under Section 142(1) of the Act. It was found that the assesse had not filed its return of income for the AY 2017-2018 and did not respond to the notice under Section 142(1) issued on various dates. The contentions raised earlier were found to be factually incorrect. There was absolutely no explanation for the deposit of Rs.14,00,000/- (Fourteen Lakhs) into bank accounts between 09.11.2016 to 31.12.2016. There was no explanation of the source of such money or that the same was offered for taxation. It was hence, the Rs. 14,00,000/- deposited in the bank account during the demonetization period was deemed as unexplained money under Section 69A of the Income Tax Act, 1961, adding it to the total income of the assessee which is taxed under Section 150 BBE(1) of the Act @ 60%.

A revision was filed by the assesse which was dismissed as per Annexure-9. The revisional authority in fact found that though the challenge was related to the assessment carried out against the assessee, a firm, who was issued with PAN No. AAGFB5910L but the requisite fee was filed against the new PAN account. The application of the assesse hence was dismissed as not maintainable.

We are not convinced that there is any valid argument against the assessment of the assessee as a firm with PAN No. AAGFB5910L for the year AY 2017-2018. The assessee admits that an application was filed as an AOP but the registration was issued as a firm; which is hard to believe, especially since the assessee claims that from the time of its registration in 2004, the assessee had been regularly filing returns, an authenticated copy of which has not been produced here. The earlier returns filed relatable to the first PAN number issued was as a firm, and not as an AOP. Obviously, in the AY 2015-2016, the assessee filed a fresh application for registering the very same institution as a charitable institution under Section 12AA of the Act, without surrendering the earlier PAN issued in the very same name. This was to avail the benefit of Section 12AA. We are of the opinion that the assessee from the above facts is guilty of misrepresentation and even fraud; *prima facie,* from the above disclosed facts. We do not say anything about the measure employed for obtaining the registration under Section 12AA, but however, leave it to the Income Tax Officer to take appropriate proceedings.

As to the challenge against the assessment made, we are convinced that there is absolutely no reason to interfere with the original order or the revisional order.

The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.05.2023
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