IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1527 of 2022

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Rajiv Lochan Gupta Son of Late Awadhesh Prasad Gupta Resident of Aam Gola Mai Asthan, P.O.- Ramana, P.S.- Kaji Mohammadpur, District- Muzaffarpur, Bihar- 842002.

... ... Petitioner/s

Versus

1. The Principal Director of Income Tax (Inv.) Patna.
2. The Principal Commissioner of Income Tax, Muzaffarpur.
3. The Principal Commissioner of Income Tax-1, Patna.
4. The Assistant Director of Income Tax (Inv.), Muzaffarpur.
5. The Income Tax Officer, Ward-1 (1)/ITO, Ward- 3 (1), Muzaffarpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Parijat Saurav, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha, Advocate

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

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

9 27-03-2024 The original petitioner herein was seeking release of gold from the Principal Commissioner of Income Tax who obtained possession of the gold, pursuant to a search and seizure, conducted in the premises of a partnership firm in the year 1993.

2. The partnership firm consisted of six partners originally. Four partners retired on 01.04.1994 and the remaining two partners were Kaushal Kishore Gupta and Awadhesh Prasad Gupta; the last of whom was the original petitioner in the writ petition.

3. Kaushal Kishore Gupta had filed a writ petition for release of gold, numbered as CWJC No. 5754 of 2014 which was disposed of as per Annexure 7 order, wherein the learned Division Bench found that there was no order passed declining release of gold and hence no cause of action has arisen.

4. Subsequently, the above writ petition was filed by Awadhesh Prasad Gupta, another partner. Awadhesh Prasad Gupta died during the pendency of the writ petition on 14.12.2022. The son of Awadhesh Kumar Gupta has been substituted as the petitioner.

5. The learned Senior Counsel appearing for the petitioner submits that Kaushal Kishore Gupta also retired on 30.09.1997 and the deed of retirement is produced as Annexure 5. Therein clause (v) clearly indicates that as per mutual agreement the business with all its assets and liabilities would be taken over by the first party, who is Awadhesh Prasad Gupta. Awadhesh Prasad Gupta then approached the Commissioner and Annexure 9 order was passed. Based on Annexure 9 order, Awadhesh Kumar Gupta filed the above writ petition.

6. As we notice from Annexure 9, Awadhesh Prasad Gupta had transferred the proprietorship firm to his son Chandra Shekhar Gupta vide agreement dated 15.04.2013. In the said

agreement, as is evident from Annexure 9 itself, it has been stated that the seized gold and ornaments weighing 6440.00gm would remain with Awadhesh Prasad Gupta and he will be the absolute owner of the same.

7. The Principal Commissioner of Income Tax had directed release of the seized gold and ornaments to Mr. Awadhesh Prasad Gupta, the owner of the same.

8. While the matter was pending, Awadhesh Prasad Gupta died on 14.12.2022. In such circumstances, Awadhesh Prasad Gupta’s estate, if he died intestate, has to go by the applicable law of succession. Admittedly, there is another son who is stated to have taken over the business itself as per Annexure 9 order, by an agreement dated 15.04.2013.

9. The learned Senior Counsel, submits that the said son is no more but, there is nothing stated as to who are the legal heirs of Awadhesh Prasad Gupta. In such circumstances, the petitioner would have to take appropriate proceedings in the Civil Court after impleading all the legal heirs or produce the legal heirship certificate before the Commissioner and also an undertaking as to the release being permitted to one of the sons by the other legal heirs. There can be no orders passed in the writ petition.

10. With the above reservation the writ petition would stand closed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

supratim/-

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