IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15002 of 2022

==

Bihar State Hydroelectric Power Corporation Ltd. having it office at 2nd Floor, Sone Bhawan, Bir Chand Patel Path, R Block More, Patna- 800001 through its Chief Engineer, Sri Rajeev Ranjan (Male, aged about 55 years), Son of Govind Prasad Gain, Resident of A-98, Peoples Co-operative Colony, Kankarbagh, Lohia Nagar, Sampatchak, District - Patna - 800020.

... ... Petitioner/s

Versus

National e-Assessment Centre Delhi.

... ... Respondent/s

==

with

Civil Writ Jurisdiction Case No. 14930 of 2022

==

Bihar State Hydroelectric Power Corporation Ltd. having it office at 2nd Floor, Sone Bhawan, Bir Chand Patel Path, R Block More, Patna - 800001 through its Chief Engineer, Sri Rajeev Ranjan (Male, aged about 55 years), Son of Govind Prasad Gain, resident of A- 98, People Co-operative Colony, Kankarbagh, Lohia Nagar, Sampatchak, District - Patna - 800020.

... ... Petitioner/s

Versus

1. Union of India through the Secretary Ministry of Finance, Department of Revenue, North Block New Delhi 110001.
2. National e-Assessment Centre, Delhi.

... ... Respondent/s

==

Appearance :
(In Civil Writ Jurisdiction Case No. 15002 of 2022)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Archana Sinha, Sr. SC. Income Tax Deptt.
(In Civil Writ Jurisdiction Case No. 14930 of 2022)
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Archana Sinha, Sr. SC. Income Tax Deptt.

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-01-2024

The petitioner is aggrieved with the order passed on 20.04.2021, which is an assessment order, impugned in

C.W.J.C. No. 15002 of 2022. In C.W.J.C. No. 14930 of 2022, impugn a penalty order which was passed based on the assessment made. The challenge against the assessment order is that it was an *ex-parte* order passed when the entire country was reeling under COVID-19.

2. The learned counsel for the petitioner also points to paragraph no. 9, where it was contended that the COVID-19 pandemic was raging all over the country. It is to be specifically noticed that having stated so, the petitioner only states '*that due to certain reasons beyond its control*' (sic) it could not take effective steps against the order of assessment without specifying whether how the COVID-19 pandemic or the lockdown had affected it. In fact, complete lockdown was only in the year 2020, and later the lock down was localized which orders were also passed by the district administration. Nothing to that end is produced before this Court and in that circumstance, we do not find any reason to interfere with the order on the basis of the pandemic.

3. As far as the challenge to Annexure-3 order, there are two remedies of appeal provided under the Income Tax Act, 1961; (i) before the first Appellate Authority, the Commissioner and then (ii) the Income Tax Appellate Tribunal. Admittedly, the

provision provides a time of thirty days for filing the appeal and also provides for condonation of delay on satisfactory explanation being provided. This has to be considered along with the contention raised by the petitioner that he was not able to challenge the order of assessment '*due to certain reasons beyond its control*' (sic) and the further time granted by the Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020.** The Hon'ble Supreme Court had suspended the limitation in all cases during the COVID-19 period and finally had passed an order dated 10.01.2022 directing that limitation would revive and any order passed in the meanwhile can be challenged within 90 days from 28.02.2022. Hence, the petitioner could have filed an appeal from the assessment order on or before 28.05.2022 i.e., three months, even without a delay condonation application. Though, the Hon'ble Supreme Court had provided 90 days across the board, to all proceedings, the petitioner did not take up the challenge even then.

4. The petitioner has filed the above writ petition itself on 02.11.2022 almost 5 months after the time granted by the Hon'ble Supreme Court expired. There is also no explanation as to why, the petitioner did not approach the Appellate Authority within the time provided by the Hon'ble

Supreme Court.

5. In the above circumstances, we find absolutely no reason to interfere with the assessment order in the writ petition filed.

7. In C.W.J.C. No. 14920 of 2022, the order impugned is one in which penalty was imposed which is dated 07.02.2022.

8. The learned counsel for the petitioner submits that these is no cause for penalty and if there is excessive quantum fixed than that provided in the statute. Again these are matters which could be agitated before the Appellate Authority, which the petitioner has not done even within the time permitted by the Hon'ble Supreme Court. What was observed about the assessment order equally applies to the penalty orders.

9. Having said that there could be no interference caused in the writ petitions, we notice that the provision under the Income Tax Act, 1961, does not provide for any specific period within which a delayed appeal has to be filed. The statute provides the power on the Commissioner Appeals to look into the grounds for delay and if satisfied admit the appeal and consider it on merits.

11. In such circumstances, it is only proper that we direct the petitioner to file an appeal with a delay condonation

application, the delay having to be explained from 28.05.2022.

12. We also make it clear that, since, the writ petition was filed on 01.11.2022, the petitioner would not be called upon to explain the delay after 01.11.2022, which is only because of the pending writ petition. We make it clear that we have not said anything about the merits of the matter nor on the delay, the satisfaction of which is exclusively with the Commissioner of Appeals.

13. The writ petitions are disposed of with the above directions.

14. The petitioner would file an appeal within three weeks' from today in which case, the above directions would apply squarely.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/sudha

AFR/NAFR	
CAV DATE	
Uploading Date	26.01.2024
Transmission Date	