IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22207 of 2018

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Principal Commissioner of Income Tax (Central), Patna

... ... Petitioner/s

Versus

1. The Income Tax Settlement Commission, Addl. Bench, Kolkata, 10C Middleton Road, 2nd Floor, Kolkata.
2. M/s National Paper House,Kadam Kuan Patna-3
3. M/s Excel Enterprises, Kadam Kuan,Patna-3

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs.Archana Sinha, Sr. SC. Income Tax Dept.
For the Respondent/s	:	Mr. Ajay Kumar Rastogi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-02-2024

The Department has filed the above writ petition against the order of the Settlement Commission. The prayer made by the learned Senior Standing Counsel appearing for the Department is also for a remand, to conduct an enquiry under Section 245D(3) of the Income Tax Act, 1961 (for brevity, the Act), with respect to the properties referred to in the sale deeds seized at the time of search conducted, in the business and residential premises of Shri Pashupati Nath Prasad and his family members, who together have also floated three partnership firms, M/s

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National Paper House, M/s National Ply Product, and M/s Excel Enterprises; two of whom are the applicants before the Settlement Commission and are impleaded as respondent nos. 2 and 3.

2. Admittedly, the search and seizure operation was conducted on 02.03.2016 in the business and residential premises. Before the Settlement Commission, the Principal CIT Central, Patna had submitted Rule 9 report on 22.09.2017 and in the said report, there was a prayer made to permit further enquiries on certain issues under Section 245D(3). However, in haste, the Settlement Commission had passed the order on 11.05.2018 is the specific contention.

3. The enquiry as is clear from the memorandum of the writ petition, was with respect to the investment in certain properties which came to be noticed during the search operation. Though orally it was directed to carry out an enquiry under Section 245D(3), there was no written order passed. It is hence prayed that there may be a remand so that a proper enquiry can be conducted and the report filed before the Settlement Commission.

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4. Learned Senior Counsel appearing for the assessee-party respondent specifically took us through the order of the Settlement Commission to argue that there is no reason why there should be a remand since there was nothing brought on record to show any involvement of the firms, which were the applicants before the Settlement Commission, with respect to the properties, the sale agreements of which were recovered from the premises.

5. We have looked at the Settlement Commission order and found that there was certain agreements to sell immovable properties recovered at the search conducted, which search itself was on 02.03.2016. The applicants contended that the said agreements either did not culminate in the sale of properties, and in some cases, the parties in the agreement were not in any way connected with the respondent firms, and they were merely proffered before the partners, as properties up for sale.

6. It was the specific contention of the reply filed by one of the partners that brokers who intend to sell plots of land, approach them with agreements for sale, as an invitation to purchase the properties covered under the said

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agreements. It was specifically stated that the purchase has not been made, and if it were so purchased, then the same would have been available in the website of the Government of Bihar; called the '*www.bhumijankari.bihar.gov.in.'* There is no enquiry conducted by the Department on the website, and no materials were produced before the Settlement Commission.

7. The Settlement Commission, in its order, specifically referred to seven deeds of registration recovered in the search. It was specifically found that three of those properties were purchased in the individual names of the partners and not in the names of the party respondent-assessees. Proceeding under Section 153A of the Act was initiated against the said persons, in which orders were passed, wherein no adverse inference was drawn.

8. As far as the sale agreement is concerned, the only contention of the Department was that though notices were issued to the parties mentioned in the deeds, none appeared, and hence they are bogus persons, and the agreements were set up to conceal the investments made.

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But for the bland assertion of concealment of income, there is nothing coming out as to how the mere agreement of sale between two persons can lead to concealment of income.

9. The Department also was faulted for not having conducted any enquiry but for issuing letters to the registered addresses of the persons mentioned in the deeds and on receiving no response, styling them as bogus, summarily. It is on the above findings that the Commission rejected the prayer for a further inquiry, which we are of the opinion, is perfectly in order.

10. We find no reason to entertain the writ petition, and the same stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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