IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17003 of 2023

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Bihar State Minorities Financial Corporation Limited Haz Bhawan, Ali Imam Path 34, Harding Road, Mithapur, S.O (Patna), Phulwari, Patna 800001 (Bihar), through its Deputy Director - Rashmi, Female, aged about 40 years.

... ... Petitioner/s

Versus

1. Principal Commissioner of Income Tax - 1 Patna
2. Joint Commissioner of Income Tax, Range - 1, Patna
3. Income Tax Officer, Ward-2(1), Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Aman Raja, Advocate Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Mrs.Archana Sinha @ Archana Shahi, Advocate Mr. Alok Kumar Shahi, Advocate Mr. Swarna Roy, Advocate

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

Date : 16-04-2024

The petitioner a Corporation incorporated by the State for upliftment of the minorities is aggrieved with the assessment made against it despite complete exemption being available under Sections 26BB of the Income Tax Act.

2. Learned Counsel for the petitioner submits that the petitioner had been granted such exemption in the year 2016-17, 2018-19 and 2021-22 under 10(26BB) of the Income Tax Act. Only for the year 2015-16, the assessment was made in excess of almost Rs 48 Crores when the income earned by the

petitioner is totally exempted from tax. It is admitted that there was some defect on the part of the petitioner due to the organizational restructuring which resulted in an *ex parte* order being passed. The petitioner took the matter in Appeal but when no notice was issued and there were coercive steps taken to recover the amounts; the petitioner approached the income tax authorities with a rectification application under Section 154 of the Income Tax Act. The said rectification application was also rejected against which the present writ petition has been filed.

3. Learned Senior Counsel for the department specifically took us to the assessment order and pointed out that the petitioner had failed to respond to the various notices issued and even the question of exemption was never raised before the Assessing Officer. It is also pointed out that the petitioner had filed an appeal on 07.04.2022, without paying the 20% dues and after one and a half years filed the rectification application on 18.09.2023. The rectification application was rightly rejected as is the case in ***Commissioner of Income Tax (CNTL Ludhiana) Vs. Here Cycles Private Ltd.,; (1997) 8 SCC 502***.

4. We have anxiously considered the contentions raised. Annexure-P/2 is the assessment order passed on 21.03.2022. As has been pointed out by the learned Counsel for the petitioner, in

the subsequent assessment years 2016-17, 2018-19 and 2021-22, the petitioner was granted exemption under Section 10(26BB) of the Income Tax Act. One of the orders, relating to assessment year 2016-17 is produced before us, which is dated 26.11.2019.

5. The counter affidavit does not oppose the contention of the petitioner that it is a Corporation incorporated for the upliftment of the minorities and that it comes squarely under the ambit of Section 10(26BB) of the Income Tax Act. The various paragraphs in the counter affidavit are those extracted from the assessment order. It is also stated that when the Appeal was filed there was no deposit of 20% which was demanded and obtained from the Bank, in which the petitioner maintains an account.

6. As we observed, there was nothing stated as to the petitioner's exemption not been permissible. Admittedly, the petitioner had been granted such exemption under Section 10(26BB) for other years also. The issued raised by the petitioner is one going to the very jurisdiction of the assessing officer to make an assessment ignoring the exemption. That the assessing officer has the jurisdiction to make an assessment cannot at all be doubted, but, however, while proceeding with the enquiry for assessment, the assessing officer went beyond

the jurisdiction conferred on him by assessing an entity which is entitled to complete exemption.

7. We are of the opinion that the order has to be set aside and we do so. The amounts recovered on the basis of the Appeal filed will also be refunded with statutory interest.

8. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2024
Transmission Date	NA