IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2355 of 2020

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Rajendra Prasad Shah @ Rajendra Prasad Son of Late Hari Charan Prasad Sah C/o Shubhendra Mani Tripathi (Sunil Sharma) B-8, Sector- 9, New Vijay Nagar, Ghaziabad, Uttar Pradesh (201 009).

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Secretary, Ministry of Finance, Government of India, New Delhi.
3. The Director, Central Board of Director Tax, Department of Revenue, Ministry of Finance, Government of India, New Delhi.
4. The Chief Commissioner, Income Tax, Bihar Region, Government of India, Department of Revenue, Patna.
5. The Commissioner of Income Tax, Government of India, Motihari.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 4821 of 2020

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Rajendra Prasad Sah, Son of Late Hari Charan Prasad Sah, C/o Shubhendra Mani Tripathi (Sunil Sharma) B-8, Sector-9, New Vijay Nagar, Gaziabad, Uttar Pradesh (201 009).

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Governor, Reserve Bank of India, Mumbai.
3. The Director Central Board of Direct Taxes, Government of India, New Delhi.
4. The Income Tax Department through the Commissioner, Income Tax, Muzaffarpur.
5. The Deputy Commissioner, Income Tax, Range-Muzaffarpur.
6. The Income Tax Officer, Ward- Motihari.
7. The Tax Recovery Officer, Muzaffarpur.

... ... Respondent/s

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Appearance :

((In Civil Writ Jurisdiction Case No. 2355 of 2020)

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the U.O.I.	:	Mr. Amish Kumar, CGC
For Income Tax Deptt.	:	Mrs. Archana Sinha, Sr. Advocate

(In Civil Writ Jurisdiction Case No. 4821 of 2020)

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the U.O.I.	:	Mr. Amish Kumar, CGC
For Income Tax Deptt.	:	Mrs. Archana Sinha, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date - 24-02-2025

Reg:- C.W.J.C. No. 2355 of 2020

Grievance of the petitioner is that he is entitled to refund of Rs. 73,78,220/- in addition to a sum of Rs. 38,30,345/- which has been paid in the form of refund. In paragraph nos. 3 and 4 of the counter affidavit to I.A. No. 01 of 2023, official respondents have stated as under:-

> *"3. That the brief facts of the case is this that the petitioner (Sri Rajendra Prasad Sah) has been filing/making his grievances in the form of RTI, CPGRAMs etc from time to time, which have been reported/replied and attended to on the basis of available documents and information available. Each time, the claimant is seen to have come up with new set of grievances and thereby complicating the issues further. Inevitable difficulties have been faced in the instant case due to the fact that the case has become very old and also due to non-availability of many of original records and even available ones are not readily legible. This case has also passed through family litigation among the coparceners of the erstwhile Haricharan Prasad Sah(HUF) for the proportional claim over the refund arising out of appeals orders etc.*
>
> *The refund claim made by the petitioner is very old, repetitive and each time new claims have been surfaced. As directed, in order to submit the statement of facts and comments, the same is being submitted on the basis of analyzing and co-relating the documents available in this office.*
>
> *There were two major issues to be examined and considered in the matter-*
>
> *i) to ascertain the correct amount of refund amount together with the interest*

component payable, if any, after adjustment of all the due taxes.

ii) in case the refund becomes payable, then to be paid to whom and, if, excess refund is made or some demands are still due, then to be recovered from whom?

Initially, the petitioner had claimed only his share (one of the co-parceners of the HUF) of refund amount. Afterwards, the petitioner claimed to be the sole heir to the full amount of refund belonging to the said HUF. As per available record, out of total refund amounting to Rs. 38,40,499/- paid by the department to the HUF from time to time, Sri Rajendra Prasad Sah(the petitioner) alone has been paid Rs. 37,79,575/-. Further, on the direction of Honorable High Court, Patna, one of the co-parceners, Sri Vishwanath Prasad Sah filed a suit No- 517/1995 for allocation of share among the co- parceners and the matter was subjudice before the Sub-Judge IX, Patna. From the available record, it has been found that the Sub-Judge IX, Patna has dismissed this petition on the grounds that the petitioner did not pursue the matter and respond to the Court's notices from time to time and did not appear before the honourable court. Any other co-parcener has filed any petition before any court in respect of refund amount's share has not come to the light of this office. Therefore, it appears to be settled that Sri Rajendra Prasad Sah is entitled to get/pay any amount becoming refundable/payable based on calculation of demands outstanding, demands realised, refunds made subsequent to appellate orders and any amount refundable/payable as a result.

The records available in this office has been perused and analysed. Original old assessment records containing the demand notice etc. are readily not available in the office. The ITI and Sr. Tax Assistant have been directed to search those files along with office copy of demand notice and copy of challan(s) towards payment of taxes after realization of money in auction of properties of the estate belonging to Haricharan Prasad

Sah(HUF). The records available are in a miscellaneous folder. A consolidated list of demand and details of payment of taxes are not found in any of the records presently maintained and, hence, not traceable readily. Some of the records are soiled, defaced and not legible. It is seen from the records that in quest to settle this matter for once and all, Shri Rajendra Prasad Sah, the petitioner, had been time and again requested by then assessing officers to assist by making himself available in person or through his authorised representatives and co-ordinate in reconstructing the records in the exercise of ascertaining the correct amount of refund, if any, payable together with the interest component. But, as it appears, in response to replies each time and the request made for co-operation, the petitioner has come up with some other issues instead of making himself available or through his authorised representatives and place the documents/records etc. before the Income tax authorities for reconciliation and resolution of the matter. The perpetuity of grievance raised by the petitioner through RTI, CPGRAMS, legal notice through his counsel etc. coupled with change of incumbents in department and a long history of case involving income-tax and wealth tax assessment orders from the AY 1970-71 to AY 1981-82, amount of demand raised for respective assessment years, amount of penalties imposed for the respective assessment years, realisation of demands through attachment of immovable and movable properties by the department in different years, appeal by the assessee, relief allowed to the assessee by CIT(A)/ITAT/HC during different periods of time and insufficiency of documents either on the part of the department or the assessee/petitioner owing to its being an old case comes in the way of determining the correct amount of refund in spite of best efforts being put in with genuine intentions by the officers/officials on various occasions. Therefore, the assessee HUF/petitioner co-operation with the department for early and satisfactory settlement of the issue is highly *solicited. From the perusal of available documents/applications from the record, the petitioner is found to have single handedly claiming and pursuing this matter throughout. This admission on the part of the petitioner goes on to buttress the point that the petitioner must have been in possession of all the relevant documents with him right from the Income tax and wealth tax assessment orders, attachment orders and amount of realisation date wise, appeal orders and subsequent refunds made from the office of the Tax Recovery officer, Muzaffarpur/ITO, Ward- Motihari which are very necessary to arrive at the exact amount of refund still pending, if any. The petitioner himself or his authorised representative may co-operate with the department in reconciling the demand/recovery/refund matter for summary disposal of the claim of the petitioner.*

4. That in reply of paragraph no 1, 3 of the IA petition it is stated that on perusal of the records available with this office in respect of the petitioner, it is seen that in the writ petition bearing number 2355 of 2020, the assessee has claimed a loss of Rs. 73,78,220/- up to 3rd July, 2023 payable in terms of order dated 28.08.1989, passed by ITAT Kolkata. In annexure-13, the petitioner has provided an interest calculation on cash deposit (as per TRO's record) and has claimed total interest of Rs. 42,27,413/-which is inclusive of interest amount of Rs. 27,97,554/-up to 30/09/1991@ 1.5% P.M. and interest amount of Rs. 14,29,859/-from 01/10/1991 to 31/12/1995 @ 1% P.M. The petitioner has calculated interest on realised amount of Rs. 28,03,639/-

From this chart, it is seen that the petitioner has calculated interest as under:

<u>TABLE-1</u>

Total interest up to 31.12.1995	42,27,413/-
Add: **<u>Interest from 01/01/1996 to 31/03/2021</u>**	
(a) Interest from 01/01/1996 to 31/05/2001@1% pm	18,22,365/-
(b) Interest from 01/06/2001 to 31/05/2002@ 0.75% pm	2,52,328/
(c) Interest from 01/06/2002 to 07/09/2003@ 0.67% pm	2,81,766/-
(d) Interest from 08/09/2003 to 31/03/2021@ 0.50% pm	29,57,839/-

(e)Interest from 01/04/2021 to 31/07/2023@0.50%pm	3,92,509/-
Total receivables	99,34,220/-
Less: Already received	25,56,000/-
Balance receivable of interest	**73,78,220/-**

From the analysis of records vis-a vis the claim of the petitioner, the amount of Rs. 28,03,639/- (cash deposit as per TRO's record) does not commensurate with the cash Book summary available with this office record. As per office of the Tax Recovery Officer's office letter No. 137 Dated, Muzaffarpur, the 04-12-1992 communicated with Shri Rajendra Pd Sah, S/o- Late Haricharan Pd. Sah(Motihari), sector-20, House No.113, Indra Nagar, Lucknow, the actual figure of deposit in the case of M/s Haricharan Pd. Sah & Others (H.U.F.) has been mentioned at Rs. 27,98,381/-only as collected from auction sale of properties in the case of the above mentioned assessee H.U.F.

From the above, it can be concluded that the petitioner has shown an amount of Rs. 28,03,639/- which differs from the amount of Rs. 27,98,381/- mentioned in the letter of the then Tax recovery Officer by Rs. 5,258/-. The source of this amount and the consequent reason for this difference is best known to the petitioner himself. Further, the office of the Commissioner of Income-Tax, Patna vide office letter dated 26-11-1991 addressed to the Deputy Commissioner of Income-tax, Muzaffarpur Range, Muzaffarpur had requested "to send a comprehensive report indicating what are the outstanding demands pending against the assessee-HUF. You may also verify the payment of Rs. 20,05,187/-as claimed by the applicant." This letter clearly indicates that the petitioner at that time(26-11-1991) had accepted that payments amounting to Rs. 20,05,187/ only had been made/recoveries made. This fact is also corroborated from the contents of the ITO, Ward-1(3), motihari vide letter dated 12-12-1991 in which he has mentioned "the assessee claims that total collections through auctions and other methods were made at Rs. 20,05,187/-by the T.R.O, Muzaffarpur whereas as stated above the T.R.O, Muzaffarpur has intimated me that total collections of Rs. 16,85,817/-has been made by him." This establishes the fact that the *assessee/petitioner had been claiming Rs. 20,05,187/- only to have been collected by the department through auction sale of properties and other methods. It is only after the TRO, Muzaffarpur letter No.137 dated 04-12-1992 mentioning therein that Rs. 27,98,381/- has been collected from auction sale of properties, the assessee started claiming Rs. 27,98,381/- as payments made to the department. Furthermore, the relevant portion of the issued letter (dated 01-03-2016) by the then Income Tax Officer, Ward-1(3), Motihari to Sri Rajendra Pd. Sah, S/o- Late Haricharan Pd. Sah, C/o-Sri Mahendra Singh, B-5/379, sector-3, Rohini, New Delhi-110085 is reproduced as under-*

"As directed by the Joint Commissioner of income of Te, Range-1. Muzaffarpur on 24.02.2016. The case records of M/s Haricharan Pd. Sah & Others, Motihari, available at the office of the TRO, Muzaffarpur were inspected by Sri Sanjeev Kumar, TRO, Muzaffarpur, Sri R.D. singh, ITO, Bettiah, Sri Satish Chandra Thakur, ITO(Tech), O/o the Pr.CIT, Muzaffarpur and myself i,e, ITO, Ward- 1(3), Motihari on 29.02.2016 and it was found that auction sale of the properties of M/s Haricharan Pd. Sah & Others, Motihari were conducted on the following dates:

(i) Auction conducted on 18.04.1985	Rs.11,86,100 was recovered
(ii)Auctionconductedon28.02.1986,1.3.198	Rs.4,99,670/-was recovered
Total	Rs.16,85,770/-was recovered

Moreover, heavy refund has already been issued to you. No refund is due to you as per our case records. However, if any amount is refundable to you, as per your records, you are requested to inspect the relevant records in the O/o the TRO, Muzaffarpur, either personally or through your authorised representative to ascertain the amount payable by you/refundable in the light of the documentary evidences to avoid any future litigation in this case."

From the analysis of the above data, it is seen that there appears to be discrepancies in the amounts of recoveries made through auction sale and other methods. Accordingly, this office vide *letter No. 1047 dated 27/02/2024 addressed to the Tax Recovery Officer, O/o the Pr. Commissioner of Income Tax-1, Patna, requesting him to make available office records in the case of Sri Haricharan Prasad Sah(HUF) for A.Y. 1970-71 to 1981-82 for submission of Para-wise comments. Vide his office letter No. 408 dated 04/03/2024, the Tax Recovery officer replied that "no such case exists in the register of Recovery Certificates of Tax Recovery Officer O/o the Pr. Commissioner of Income Tax-1, Patna." Therefore, this issue of discrepancies in reported recoveries could not be verified.*

As it emerges from the letter addressed by the then ITO, Ward-1(3), Motihari addressed to the Commissioner of Income-tax, Muzaffarpur vide letter No.201 dated 25/05/2016 wherein it has been mentioned that from the perusal of available records it appears that consequent to the judgment of Hon'ble Court, following refunds were issued in the case as per detail mentioned below:

TABLE-2

Sl. No.	Beneficiary (Paid to)	Reference No.	Refund Amount (in rupees)
1	All Co-parceners of HUF(10,15 4 x 6)	RV No. A-178630 to 35	60,924/-
2	Rajendra Prasad Sah (Elder son of Late Haricharan Prasad Sah)	RV No. A-178636, Dated- 19/01/1993	1,85,427/-
3	Rajendra Prasad Sah (Elder son of Late Haricharan Prasad Sah)	RV No. A-178637, Dated- 24/02/1993	1,66,526/-
4	Rajendra Prasad Sah (Elder son of Late Haricharan Prasad Sah)	RV No. A-178638, Dated- 08/06/1993	3,07,230/-
5	Rajendra Prasad Sah (Elder son of Late Haricharan Prasad Sah)	RV No. A-178640, Dated- 08/06/1995	31,20,392/-
Total Refund issued till date			**38,40,499/-**

Out of total refund paid by the department, Sri Rajendra Prasad Sah alone has received refund amounting to Rs. 37,79,575/-. As per available records, the last refund amounting to Rs.

31,20,392/- has been made to Sri Rajendra Prasad Sah vide R.V. No. A-178640 dated 08.06.1995 which has been also confirmed by Sri Rajendra Prasad sah also in his earlier submissions.

On the basis of findings from then incumbent Income-tax Officers, three set of amounts of recoveries from auction of sales have emerged which are being mentioned as under:-

TABLE-3

(i) Vide ITO, Ward-1(3) letter dated 01/06/2016 (On the basis of records available at the office of TRO, Muzaffarpur inspected by Sri Sanjeev Kumar, TRO, Muzaffarpur, Sri R. D. Singh, ITO, Bettiah, Sri Satish Chandra Thakur, ITO(Tech), O/o, the Pr. CIT, Muzaffarpur and Sri A.K.Ansari, ITO, Ward-1(3), Motihari.

Auction conducted on 18/04/1985	-----	*Rs. 11,86,100/-*
Auction conducted on 28/02/1986 & 01/03/1986	-----	*Rs. 4,99,670/-*
Total:		***Rs. 16,85, 770/-***
(ia) Reported vide letter No. 163 dated 05.10.1990	-----	***Rs. 16,85,817/-***
(ii) As per claim made by the petitioner himself: (As revealed from the letter dated 12/12/1991 of then ITO, Ward-1(3), Motihari]		***Rs. 20,05,187/-***
(iii) Vide TRO's Misc. Letter No. 137 dated 04/12/1992 (As revealed from the the then ITO, Ward, 1(3), Motihari letter to the DCIT, Range, Muzaffarpur dated 07.12.1992		***Rs. 27,98,381/-***

On comparison of (i), (ia), (ii) and (iii) above, it is clear that actual amount of recoveries made through auction sales of properties differ and the actual amount payable/refundable to the petitioner is not ascertainable. Vide letter dated 07.12.1992 and working sheet of refund, the then ITO, Ward-1(3) has determined Rs. 11,12,564/- as amount refundable to the assessee HUF/petitioner taking into account Rs. 27,98, 381/- as total recoveries made and reported by the Tax Recovery officer, Muzaffarpur. The last refund amounting to Rs. 31,20,392 has been made to the petitioner vide R.V. No. A-178640 dated 08.06. 1995. The total refunds amounting to Rs. 38,30,345/-has been made to the Coparceners of the HUF out of which Rs. 37,79,575/- has been refunded to the petitioner himself. Refunds to the petitioner has been made as *per Table-1 above. The dates on the R.V. Nos. Pertain to the year 1995. Keeping these facts and complexities in mind, this office letter dated 27/02/2024 addressed to the Tax Recovery Officer, O/o the PCIT-1, Patna was sent requesting him to provide complete details/documents pertaining to Haricharan Prasad Sah (HUF) to substantiate the claim of the petition. In response a reply dated 04/03/2024 was received mentioning therein that no records are available at the end of the office of TRO, O/o PCIT-1, Patna (erstwhile TRO, Muzaffarpur).*

Under the circumstances, an effort has been made towards computation of amount refundable to the petitioner (though not exhaustive) on the basis of existing records at the end of this office. It requires reconciliation with the petitioner along with relevant documents in support of his claim, if any.

Calculation of total amount payable/refundable to Shri Rajendra Prasad Sah in the case of Haricharan Prasad Sah(HUF)

Calculation of total amount payable/refundable to Shri Rajendra Prasad Sah in the case of Haricharan Prasad Sah(HUF)

As per TRO, Muzaffarpur's letter No. -137, dated-04/12/1992 total amount recovered from the assessee			2798381
Less:- Refund issued vide R.V. No. 178639 & 178630(dated 19/01/1993)			236197
Balance principal amount of refund(as on 19/01/1993)			2562184
Add:- Interest u/s. 244A of the Act for the period from 08/10/1983 to 30/09/1991 @ 1.5% P.M	1909076		
Add:- Interest u/s. 244A of the Act for the period from 01/10/1991 to 31/01/1993 @ 1% P.M	378345	2287421	
Brought forward balance principal amount of refund (as on 01/02/1993)			2562184
Less: Refund issued vide R.V. No. 178637(dated-24/02/1993)			166576
Balance principal amount of refund(as on 28/02/1993)			2395658
Total interest u/s. 244A as on 31/01/1993	2287421		
Add:- Interest u/s. 244A of the Act for the period from 01/02/1993 to 28/02/1993 @ 1% P.M	25622	2313043	
Brought forward balance principal amount of refund (as on 01/03/1993)			2395658
Total interest u/s. 244A of the Act as on 28/02/1993	2313043		
Add:- Interest u/s. 244A of the Act for the period from 01/03/1993 to 30/06/1993 @ 1% P.M	92974	2406017	
Less:- Refund issued vide R.V. No. 178638 & 178640 (dated-08/06/1993)			3427622
Balance principal amount of refund(as on 30/06/1993)			-1031964
Add: Brought forward of total interest u/s. 244A of the Act (as on 30/06/1993)			2406017
Balance amount of refund payable to the assessee (as on 31st May,2024) (after adjustment of excess principal amount paid against the accumulated interest)			1374053

While going through the above refund

computation (Table-1), the assessee-HUF/petitioner claim for more refund is not found to be correct. It appears that the petitioner has calculated interest without making adjustments of refunds having been paid to the assessee from time to time.

However, the reconciliation exercise is important so that with assistance of the concerned persons especially the petitioner himself or his authorised representative to reconstruct the records for examining the entire matter as several refunds have already been granted in this case. There is also ambiguity so far as the amounts recovered by the department are concerned which emanate from Table-1, 2 &3 above.

In view of the above facts of the case, it would not be prudent to issue further any refund to the petitioner Shri Rajendra Prasad Sah without any proper calculation that may become more than his actual entitlement. Moreover, the petitioner has not provided the details of his permanent Account Number linked with Aadhar which is required for issue of refund, if any, which may arise in due course of time after reconciliation of relevant documents/records together with the petitioner or his authorized representative."

2. Official respondents have not demanded what are the requisite documents for the purpose of examining the petitioner's claim of Rs. 73,78,220/-. They have not made known to the petitioner.

3. Be that as it may, the concerned officer-respondent is hereby directed to issue a letter to the petitioner demanding which are the requisite and necessary documents for the purpose of examining the petitioner's claim of Rs. 73,78,220/- within a period of 4 weeks from today. On receipt of such

communication by the official respondents, petitioner is hereby directed to furnish such of those demanded documents to the official respondent, if he has those documents. In the event of not possessing certain documents he must assign reasons as to why he is not in a position to furnish such of those documents which are not available with him. While furnishing whatever the documents available and explanation in respect of non-availability of documents, petitioner is hereby directed to furnish the aforementioned requirement within a period of 8 weeks from today. On receipt of petitioner's explanation/ reply the concerned official respondent is hereby directed to pass a detailed speaking order in respect of petitioner's claim of Rs. 73,78,220/- and communicate the same within a period of 3 months from the date of receipt of petitioner's explanation.

4. With the above observation, writ petition stands disposed of.

5. Pending I.A.(s), if any, stands disposed of.

6. If the petitioner is not convince with the final order to be passed on his grievance, he is at liberty to invoke appropriate remedy and in accordance with law.

Reg:- C.W.J.C. No. 4821 of 2020

7. Grievance of the petitioner is that he is entitled to

refund of Rs. 81,44,496/- in addition to a sum of Rs. 37,79,575/- which has been paid in the form of refund. In paragraph nos. 3, 4, 5 and 6 of the counter affidavit to I.A. No. 01 of 2023, official respondents have stated as under:-

> *"3. That the brief facts of the case is this that the petitioner (Sri Rajendra Prasad Sah) has been filing/making his grievances in the form of RTI, CPGRAMs etc from time to time, which have been reported/replied and attended to on the basis of available documents and information available. Each time, the claimant is seen to have come up with new set of grievances and thereby complicating the issues further. Inevitable difficulties have been faced in the instant case due to the fact that the case has become very old and also due to non-availability of many of original records and even available ones are not readily legible. This case has also passed through family litigation among the coparceners of the erstwhile Haricharan Prasad Sah(HUF) for the proportional claim over the refund arising out of appeals orders etc.*
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> *The refund claim made by the petitioner is very old, repetitive and each time new claims have been surfaced. As directed, in order to submit the statement of facts and comments, the same is being submitted on the basis of analyzing and co-relating the documents available in this office.*
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> *There were two major issues to be examined and considered in the matter-*
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> *i) to ascertain the correct amount of refund amount together with the interest component payable, if any, after adjustment of all the due taxes.*
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> *ii) in case the refund becomes payable, then to be paid to whom and, if, excess refund is made or some demands are still due, then to be recovered from whom?*
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> *Initially, the petitioner had claimed only his share (one of the co-parceners of the HUF) of*

refund amount. Afterwards, the petitioner claimed to be the sole heir to the full amount of refund belonging to the said HUF. As per available record, out of total refund amounting to Rs. 38,40,499/- paid by the department to the HUF from time to time, Sri Rajendra Prasad Sah(the petitioner) alone has been paid Rs. 37,79,575/-. Further, on the direction of Honorable High Court, Patna, one of the co-parceners, Sri Vishwanath Prasad Sah filed a suit No- 517/1995 for allocation of share among the co- parceners and the matter was subjudice before the Sub-Judge IX, Patna. From the available record, it has been found that the Sub-Judge IX, Patna has dismissed this petition on the grounds that the petitioner did not pursue the matter and respond to the Court's notices from time to time and did not appear before the honourable court. Any other co-parcener has filed any petition before any court in respect of refund amount's share has not come to the light of this office. Therefore, it appears to be settled that Sri Rajendra Prasad Sah is entitled to get/pay any amount becoming refundable/payable based on calculation of demands outstanding, demands realised, refunds made subsequent to appellate orders and any amount refundable/payable as a result.

The records available in this office has been perused and analysed. Original old assessment records containing the demand notice etc. are readily not available in the office. The ITI and Sr. Tax Assistant have been directed to search those files along with office copy of demand notice and copy of challan(s) towards payment of taxes after realization of money in auction of properties of the estate belonging to Haricharan Prasad Sah(HUF). The records available are in a miscellaneous folder. A consolidated list of demand and details of payment of taxes are not found in any of the records presently maintained and, hence, not traceable readily. Some of the records are soiled, defaced and not legible. It is seen from the records that in quest to settle this matter for once and all, Shri Rajendra Prasad Sah, the petitioner, *had been time and again requested by then assessing officers to assist by making himself available in person or through his authorised representatives and co-ordinate in reconstructing the records in the exercise of ascertaining the correct amount of refund, if any, payable together with the interest component. But, as it appears, in response to replies each time and the request made for co-operation, the petitioner has come up with some other issues instead of making himself available or through his authorised representatives and place the documents/records etc. before the Income tax authorities for reconciliation and resolution of the matter. The perpetuity of grievance raised by the petitioner through RTI, CPGRAMS, legal notice through his counsel etc. coupled with change of incumbents in department and a long history of case involving income-tax and wealth tax assessment orders from the AY 1970-71 to AY 1981-82, amount of demand raised for respective assessment years, amount of penalties imposed for the respective assessment years, realisation of demands through attachment of immovable and movable properties by the department in different years, appeal by the assessee, relief allowed to the assessee by CIT(A)/ITAT/HC during different periods of time and insufficiency of documents either on the part of the department or the assessee/petitioner owing to its being an old case comes in the way of determining the correct amount of refund in spite of best efforts being put in with genuine intentions by the officers/officials on various occasions. Therefore, the assessee HUF/petitioner co-operation with the department for early and satisfactory settlement of the issue is highly solicited. From the perusal of available documents/applications from the record, the petitioner is found to have single handedly claiming and pursuing this matter throughout. This admission on the part of the petitioner goes on to buttress the point that the petitioner must have been in possession of all the relevant documents with him right from the Income tax and wealth tax* *assessment orders, attachment orders and amount of realisation date wise, appeal orders and subsequent refunds made from the office of the Tax Recovery officer, Muzaffarpur/ITO, Ward- Motihari which are very necessary to arrive at the exact amount of refund still pending, if any. The petitioner himself or his authorised representative may co-operate with the department in reconciling the demand/recovery/refund matter for summary disposal of the claim of the petitioner*

4. That in reply of paragraph no 1 of the IA it is stated that the petitioner has claimed a loss of Rs. 81,44,496/- as detailed in annexure-12 to the present application. This annexure comprises details of (a) Treasury Saving Certificate (b) Bihar State Development Loan (c) National Plan Loan. In this regard, it is to submit that as per the available record, there is no evidence/information whatsoever regarding these instruments and also whether they have attached and realize or not. Further, a detail of refunds already made to the petitioner is on record which the petitioner has also accepted. Even assuming the contention of the petitioner to be true and correct, the petitioner has not provided any evidence that these instruments, if any, are not part of refunds already made to him. The petitioner has attached no documentary evidence in this regard. Hence, the issue is unverifiable at this end.

5. That in reply of paragraph no 2,3. of the IA it is stated that it requires no comments.

6. That On perusal of the records available with this office in respect of the petitioner, it is seen that in the writ petition bearing number 2355 of 2020, the assessee has claimed a loss of Rs. 73,78,220/- up to 3rd July, 2023 payable in terms of order dated 28.08.1989, passed by ITAT Kolkata. In annexure-13, the petitioner has provided an interest calculation on cash deposit (as per TRO's record) and has claimed total interest of Rs. 42,27,413/- which is inclusive of interest amount of Rs. 27,97,554/- up to 30/09/1991@ 1.5% P.M. and interest amount of Rs. 14,29,859/-from 01/10/1991 to 31/12/1995 @ 1%

P.M. The petitioner has calculated interest on realised amount of Rs. 28,03,639/- From this chart, it is seen that the petitioner has calculated interest as under:

TABLE-1

Total interest up to 31.12.1995	42,27,413/-
Add: **Interest from 01/01/1996 to 31/03/2021**	
(a) Interest from 01/01/1996 to 31/05/2001@1% pm	18,22,365/-
(b) Interest from 01/06/2001 to 31/05/2002@ 0.75% pm	2,52,328/
(c) Interest from 01/06/2002 to 07/09/2003@ 0.67% pm	2,81,766/-
(d) Interest from 08/09/2003 to 31/03/2021@ 0.50% pm	29,57,839/-
(e)Interest from 01/04/2021 to 31/07/2023@0.50%pm	3,92,509/-
Total receivables	99,34,220/-
Less: Already received	25,56,000/-
Balance receivable of interest	***73,78,220/-***

From the analysis of records vis-a vis the claim of the petitioner, the amount of Rs. 28,03,639/- (cash deposit as per TRO's record) does not commensurate with the cash Book summary available with this office record. As per office of the Tax Recovery Officer's office letter No. 137 Dated, Muzaffarpur, the 04-12-1992 communicated with Shri Rajendra Pd Sah, S/o- Late Haricharan Pd. Sah(Motihari), sector-20, House No.113, Indra Nagar, Lucknow, the actual figure of deposit in the case of M/s Haricharan Pd. Sah & Others (H.U.F.) has been mentioned at Rs. 27,98,381/-only as collected from auction sale of properties in the case of the above mentioned assessee H.U.F.

From the above, it can be concluded that the petitioner has shown an amount of Rs. 28,03,639/- which differs from the amount of Rs. 27,98,381/- mentioned in the letter of the then Tax recovery Officer by Rs. 5,258/-. The source of this amount and the consequent reason for this difference is best known to the petitioner himself. Further, the office of the Commissioner of Income-Tax, Patna vide office letter dated 26-11-1991 addressed to the Deputy Commissioner of Income-tax, Muzaffarpur Range, Muzaffarpur had requested "to send a comprehensive report indicating what are the outstanding demands pending against the assessee-HUF. You may also verify the payment of Rs. 20,05,187/-as claimed by the applicant." This letter clearly indicates that the petitioner at that time(26-11-1991) had accepted that payments amounting to

Rs. 20,05,187/ only had been made/recoveries made. This fact is also corroborated from the contents of the ITO, Ward-1(3), motihari vide letter dated 12-12-1991 in which he has mentioned "the assessee claims that total collections through auctions and other methods were made at Rs. 20,05,187/-by the T.R.O, Muzaffarpur whereas as stated above the T.R.O, Muzaffarpur has intimated me that total collections of Rs. 16,85,817/-has been made by him." This establishes the fact that the assessee/petitioner had been claiming Rs. 20,05,187/- only to have been collected by the department through auction sale of properties and other methods. It is only after the TRO, Muzaffarpur letter No.137 dated 04-12-1992 mentioning therein that Rs. 27,98,381/- has been collected from auction sale of properties, the assessee started claiming Rs. 27,98,381/- as payments made to the department. Furthermore, the relevant portion of the issued letter (dated 01-03-2016) by the then Income Tax Officer, Ward-1(3), Motihari to Sri Rajendra Pd. Sah, S/o- Late Haricharan Pd. Sah, C/o-Sri Mahendra Singh, B-5/379, sector-3, Rohini, New Delhi-110085 is reproduced as under-

"As directed by the Joint Commissioner of income of Te, Range-1. Muzaffarpur on 24.02.2016. The case records of M/s Haricharan Pd. Sah & Others, Motihari, available at the office of the TRO, Muzaffarpur were inspected by Sri Sanjeev Kumar, TRO, Muzaffarpur, Sri R.D. singh, ITO, Bettiah, Sri Satish Chandra Thakur, ITO(Tech), O/o the Pr.CIT, Muzaffarpur and myself i,e, ITO, Ward- 1(3), Motihari on 29.02.2016 and it was found that auction sale of the properties of M/s Haricharan Pd. Sah & Others, Motihari were conducted on the following dates:

(i) Auction conducted on 18.04.1985	Rs.11,86,100 was recovered
(ii)Auctionconductedon28.02.1986,1.3.198	Rs.4,99,670/-was recovered
Total	Rs.16,85,770/-was recovered

Moreover, heavy refund has already been issued to you. No refund is due to you as per our case records. However, if any amount is refundable to you, as per your records, you are requested to *inspect the relevant records in the O/o the TRO, Muzaffarpur, either personally or through your authorised representative to ascertain the amount payable by you/refundable in the light of the documentary evidences to avoid any future litigation in this case."*

From the analysis of the above data, it is seen that there appears to be discrepancies in the amounts of recoveries made through auction sale and other methods. Accordingly, this office vide letter No. 1047 dated 27/02/2024 addressed to the Tax Recovery Officer, O/o the Pr. Commissioner of Income Tax-1, Patna, requesting him to make available office records in the case of Sri Haricharan Prasad Sah(HUF) for A.Y. 1970-71 to 1981-82 for submission of Para-wise comments. Vide his office letter No. 408 dated 04/03/2024, the Tax Recovery officer replied that "no such case exists in the register of Recovery Certificates of Tax Recovery Officer O/o the Pr. Commissioner of Income Tax-1, Patna." Therefore, this issue of discrepancies in reported recoveries could not be verified.

As it emerges from the letter addressed by the then ITO, Ward-1(3), Motihari addressed to the Commissioner of Income-tax, Muzaffarpur vide letter No.201 dated 25/05/2016 wherein it has been mentioned that from the perusal of available records it appears that consequent to the judgment of Hon'ble Court, following refunds were issued in the case as per detail mentioned below:

TABLE-2

Sl. No.	*Beneficiary (Paid to)*	*Reference No.*	*Refund Amount (in rupees)*
1	*All Co-parceners of HUF(10,15 4 x 6)*	*RV No. A-178630 to 35*	*60,924/-*
2	*Rajendra Prasad Sah (Elder son of Late Haricharan Prasad Sah)*	*RV No. A-178636, Dated- 19/01/1993*	*1,85,427/-*
3	*Rajendra Prasad Sah (Elder son of Late Haricharan Prasad Sah)*	*RV No. A-178637, Dated- 24/02/1993*	*1,66,526/-*
4	*Rajendra Prasad Sah (Elder son of Late*	*RV No. A-178638, Dated- 08/06/1993*	*3,07,230/-*

	Haricharan Prasad Sah)		
5	*Rajendra Prasad Sah (Elder son of Late Haricharan Prasad Sah)*	*RV No. A-178640, Dated- 08/06/1995*	*31,20,392/-*
Total Refund issued till date			***38,40,499/-***

Out of total refund paid by the department, Sri Rajendra Prasad Sah alone has received refund amounting to Rs. 37,79,575/-. As per available records, the last refund amounting to Rs. 31,20,392/- has been made to Sri Rajendra Prasad Sah vide R.V. No. A-178640 dated 08.06.1995 which has been also confirmed by Sri Rajendra Prasad sah also in his earlier submissions.

On the basis of findings from then incumbent Income-tax Officers, three set of amounts of recoveries from auction of sales have emerged which are being mentioned as under:-

TABLE-3

(i) Vide ITO, Ward-1(3) letter dated 01/06/2016 (On the basis of records available at the office of TRO, Muzaffarpur inspected by Sri Sanjeev Kumar, TRO, Muzaffarpur, Sri R. D. Singh, ITO, Bettiah, Sri Satish Chandra Thakur, ITO(Tech), O/o, the Pr. CIT, Muzaffarpur and Sri A.K.Ansari, ITO, Ward-1(3), Motihari.

Auction conducted on 18/04/1985	*-----*	*Rs. 11,86,100/-*
Auction conducted on 28/02/1986 & 01/03/1986	*-----*	*Rs. 4,99,670/-*
	Total:	***Rs. 16,85, 770/-***

*(ia) Reported vide letter No. 163 dated 05.10.1990 -----**Rs. 16,85,817/-***

(ii) As per claim made by the petitioner himself: ***Rs. 20,05,187/-***
(As revealed from the letter dated 12/12/1991 of then ITO, Ward-1(3), Motihari]

(iii) Vide TRO's Misc. Letter No. 137 dated ***Rs. 27,98,381/-***
04/12/1992 (As revealed from the then ITO, Ward, 1(3), Motihari letter to the DCIT, Range, Muzaffarpur dated 07.12.1992

On comparison of (i), (ia), (ii) and (iii) above, it is clear that actual amount of recoveries made through auction sales of properties differ and the actual amount payable/refundable to the petitioner is not ascertainable. Vide letter dated 07.12.1992 and working sheet of refund, the then

ITO, Ward-1(3) has determined Rs. 11,12,564/- as amount refundable to the assessee HUF/petitioner taking into account Rs. 27,98, 381/- as total recoveries made and reported by the Tax Recovery officer, Muzaffarpur. The last refund amounting to Rs. 31,20,392 has been made to the petitioner vide R.V. No. A-178640 dated 08.06. 1995. The total refunds amounting to Rs. 38,30,345/-has been made to the Coparceners of the HUF out of which Rs. 37,79,575/- has been refunded to the petitioner himself. Refunds to the petitioner has been made as per Table-1 above. The dates on the R.V. Nos. Pertain to the year 1995. Keeping these facts and complexities in mind, this office letter dated 27/02/2024 addressed to the Tax Recovery Officer, O/o the PCIT-1, Patna was sent requesting him to provide complete details/documents pertaining to Haricharan Prasad Sah (HUF) to substantiate the claim of the petition. In response a reply dated 04/03/2024 was received mentioning therein that no records are available at the end of the office of TRO, O/o PCIT-1, Patna (erstwhile TRO, Muzaffarpur).

Under the circumstances, an effort has been made towards computation of amount refundable to the petitioner (though not exhaustive) on the basis of existing records at the end of this office. It requires reconciliation with the petitioner along with relevant documents in support of his claim, if any.

<u>Calculation of total amount payable/refundable to Shri Rajendra Prasad Sah in the case of Haricharan Prasad Sah(HUF)</u>

Calculation of total amount payable/refundable to Shri Rajendra Prasad Sah in the case of Haricharan Prasad Sah(HUF)

As per TRO, Mzaffarpur's letter No. -237, dated 04/12/1992 total amount recovered from the assessee			2798381
Less:- Refund issued vide R.V. No. 178630 & 178636(dated 19/01/1993)			236197
Balance principal amount of refund (as on 19/01/1993)			2562184
Add:- Interest u/s. 244A of the Act for the period from 08/10/1985 to 30/09/1991 @ 1.5% P.M	1909076		
Add:- Interest u/s. 244A of the Act for the period from 01/10/1991 to 31/01/1993 @ 1% P.M	378345	2287421	
Brought forward balance principal amount of refund (as on 01/02/1993)			2562184
Less: Refund issued vide R.V. No. 178637(dated-24/02/1993)			166526
Balance principal amount of refund(as on 28/02/1993)			2395658
Total interest u/s. 244A as on 31/01/1993	2287421		
Add:- Interest u/s. 244A of the Act for the period from 01/02/1993 to 28/02/1993 @ 1% P.M	25622	2313043	
Brought forward balance principal amount of refund (as on 01/03/1993)			2395658
Total interest u/s. 244A of the Act as on 28/02/1993	2313043		
Add:- Interest u/s. 244A of the Act for the period from 01/03/1993 to 30/06/1993 @ 1% P.M	92974	2406017	
Less:- Refund issued vide R.V. No. 178638 & 178640 (dated-08/06/1993)			3427622
Balance principal amount of refund(as on 30/06/1993)			-1031964
Add: Brought forward of total interest u/s. 244A of the Act (as on 30/06/1993)			2406017
Balance amount of refund payable to the assessee (as on 31st May,2024) (after adjustment of excess principal amount paid against the accumulated interest)			1374053

While going through the above refund computation (Table-1), the assessee-HUF/petitioner claim for more refund is not found to be correct. It appears that the petitioner has calculated interest without making adjustments of refunds having been paid to the assessee from time to time.

However, the reconciliation exercise is important so that with assistance of the concerned persons especially the petitioner himself or his authorised representative to reconstruct the records for examining the entire matter as several refunds have already been granted in this case. There is also ambiguity so far as the amounts recovered by the department are concerned which emanate from Table-1, 2 &3 above.

In view of the above facts of the case, it would not be prudent to issue further any refund to the petitioner Shri Rajendra Prasad Sah without any proper calculation that may become more than his actual entitlement. Moreover, the petitioner has not provided the details of his permanent Account

Number linked with Aadhar which is required for issue of refund, if any, which may arise in due course of time after reconciliation of relevant documents/records together with the petitioner or his authorized representative

It is pertinent to mention here that in this case of HUF, presently, refunds are issued electronically either in the name of HUF or in the name of Karta with PAN and a valid PAN linked with Aadhar. It will not be possible to credit the refund online without a valid PAN linked with aadhar after adoption of new accounting system of Income Tax Department."

8. Official respondents have not demanded what are the requisite documents for the purpose of examining the petitioner's claim of Rs. 81,44,496/-. They have not made known to the petitioner.

9. Be that as it may, the concerned officer-respondent is hereby directed to issue a letter to the petitioner demanding which are the requisite and necessary documents for the purpose of examining the petitioner's claim of Rs. 81,44,496/- within a period of 4 weeks from today. On receipt of such communication by the official respondents, petitioner is hereby directed to furnish such of those demanded documents to the official respondent, if he has those documents. In the event of not possessing certain documents he must assign reasons as to why he is not in a position to furnish such of those documents which are not available with him. While furnishing whatever the

documents available and explanation in respect of non-availability of documents, petitioner is hereby directed to furnish the aforementioned requirement within a period of 8 weeks from today. On receipt of petitioner's explanation/ reply the concerned official respondent is hereby directed to pass a detailed speaking order in respect of petitioner's claim of Rs. 81,44,496/- and communicate the same within a period of 3 months from the date of receipt of petitioner's explanation.

10. With the above observation, writ petition stands disposed of.

11. Pending I.A.(s), if any, stands disposed of.

12. If the petitioner is not convince with the final order to be passed on his grievance, he is at liberty to invoke appropriate remedy and in accordance with law.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

utkarsh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	N/A
Transmission Date	06.03.2025