IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11182 of 2021

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Bihar Abhikaran Pvt. Ltd. Through its Authorised person Rakesh Kumar Gupta, Son of Late Mahabir Prasad Gupta C/o Bihar Abhikaran Pvt. Ltd. Behind Hira Place, Dakbanglow Road, Patna 800001 P.S.- Kotwali, P.O.- GPO, District- Patna. ... ... Petitioner

Versus

1. Union of India through Secretary Finance North Block, New Delhi 110001.
2. Chairman CBDT, North Block, New Delhi 110001.
3. The Principal Chief Commissioner of Income Tax Birchand Patel Marg, Patna.
4. The Commissioner of Income Tax- I Birchand Patel Marg, Patna.
5. The Commissioner of Income Tax TDS Birchand Patel Marg, Patna.
6. The Income Tax Officer ward 2 (I) Lok Nayak Bhawan, Dakbanglow Road, Patna- 800001.
7. Assistant Director of Income Tax Income Tax department, CPC, Post Bag No.1, Electronic City Post Office, Bangalore- 560500.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 12196 of 2021

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Bihar Abhikaran Pvt. Ltd. through its Authorised Person Rakesh Kumar Gupta age 55 year male Son of Late Mahabir Prasad Gupta C/o Bihar Abhikaran Pvt Ltd. Behind Hira Place, Dakbanglow Road, Patna 800001 P.S. Kotwali P.O. GPO, District Patna. ... ... Petitioner

Versus

1. Union of India through Secretary Finance North Block, New Delhi 110001
2. Chairman, CBDT, North Block, New Delhi 110001
3. The Principal Chief Commissioner Income Tax, Birchand Patel Marg, Patna
4. The Commissioner of Income Tax, I, Birchand Patel Marg, Patna.
5. The Commissioner of Income Tax TDS, Birchand Patel Marg, Patna.
6. The Income Tax officer Ward 2(1) Lok Nayak Bhawan, Dakbanglow Road, Patna-800001.
7. Assistant Director of Income Tax, Income Tax Department, CPC, Post Bag No1. Electronic City Post Officer, Bangalore 560500

... ... Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 11182 of 2021)

For the Petitioner : Mr. Prakash Sahay, Advocate

For the Respondents : Ms. Archana Sinha, Sr.SC

(In Civil Writ Jurisdiction Case No. 12196 of 2021)

For the Petitioner : Mr. Prakash Sahay, Advocate

For the Respondents : Ms. Archana Sinha, Sr.SC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

19 23-01-2025 Heard Mr. Prakash Sahay, learned Advocate for the petitioner(s) and Ms. Archana Sinha, learned Senior Standing Counsel, Department of Income Tax.

2. Since both the writ applications involve common questions and issues, on the request of learned counsel for the parties, this Court has taken up both the writ applications simultaneously and those are being disposed of by this common order. The only difference of facts would be the amount of refund claimed by the petitioner(s) and the assessment years.

3. For the sake of gravity, we take the reliefs prayed by the petitioner in CWJC No. 12196 of 2021. The petitioner prays for the following reliefs:

> "(i) For issuance of an appropriate writ/order/direction in the nature of certiorari/mandamus to why not to quash annexure 8 order passed which is without jurisdiction and is in violation to law.
> (ii) For issuance of an appropriate writ/order/direction in the nature of certiorari/mandamus commanding upon the concerned respondents to restrict the demand of Rs. 186430.00 when the refund has already been made for the assessment year 2018-19 along with interest as the order has been passed on repeal rule i.e. Rule 32AB.
> (iii) For issuance of an appropriate writ/order/direction in the nature of

> certiorari/mandamus commanding upon the concerned respondents that notice cannot be issued on repealed Rule.
> (iv) For issuance of WRIT to hold Rule 37 BA to be ultra vires as it is in violation to Article 265 of the Constitution.
> (v) For any other relief or reliefs, to which the petitioner may be found entitled by this Hon'ble Court."

4. Mr. Prakash Sahay, learned counsel for the petitioner(s) submits that he would not press the prayer no. (iv) under paragraph '1' of the writ application. Identical prayer made in CWJC No. 11182 of 2021 is not pressed.

5. In that view of the matter, the issue with regard to Rule 37BA of the Income Tax Rules which has been brought in the Statute Book by virtue of 6th Amendment Rules w.e.f. 01.04.2009 is not pressed. Hence, this Court has not gone into that aspect of the matter.

6. The petitioner(s) are aggrieved by the orders as contained in Annexure '10' and Annexure '8' respectively in the writ applications whereby and whereunder the competent authority of the Department has exercised its power under Section 154 read with section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act of 1961") and has been pleased to hold and declare that in view of Section 199 of the Act of 1961, the deduction of TDS made on payment and paid to the Central Government by principal would be treated as income/receipt of the assessee company and the assessee was liable to show these receipts as income/receipts in the return of income filed for the given assessment year. It has been held that the assessee has not shown/disclosed amount received from principal under Section 194E in its hand. Since the assessee had not shown the said amount of income, it has been held that the assessee would not get credit of the entire TDS rather the credit of TDS has to be restricted only in view of the provisions under Section 199 of the Act of 1961 read with Rule 37BA of the Income Tax Rules.

7. Ms. Archana Sinha, learned Senior Standing Counsel for the Department of Income Tax has informed this Court that the order as contained in Annexure '10' and Annexure '8' respectively in the two writ applications are appealable orders under Section 246A of the Act of 1961 and the petitioner(s) have got an equally efficacious remedy.

8. Mr. Prakash Sahay, learned counsel for the petitioner(s) having understood that the remedy of appeal which is available to the petitioner(s) is an equally efficacious remedy submits that he may be permitted to withdraw these applications with liberty to assail the impugned orders in both the writ applications before the Appellate Authority in accordance with law.

9. Learned Senior Standing Counsel for the Department of Income Tax has no objection to the same.

10. This Court allows learned counsel for the petitioner(s) to withdraw both the writ applications with liberty to prefer a duly constituted appeal before the Appellate Authority within a period of thirty days from today.

11. Since the writ applications were filed on 06.07.2021 and 16.06.2021 respectively as per the date of registration available on the record, we are of the considered opinion that the period spent by the petitioner(s) before this Court would be liable to be taken into consideration for exclusion while counting the period of limitation.

12. Both the writ applications are disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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