IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7846 of 2024

==

Krishna Devi Devi Prasad Kejriwal Matrisadan Trust a registered trust having its office in Juran Chapra, Road Number- 2, Muzaffarpur, Bihar- 842001 through one of its trustees namely Gaurav Goenka Male aged about 43 years, son of Gopal Kumar Goenka, resident of Kalambagh Road, Near Speaker Chowk, Naya Tola, Muzaffarpur, Bihar- 842001.

... ... Petitioner

Versus

1. The Principal Chief Commissioner of Income Tax Income Tax Department, Bihar Patna.
2. The Commissioner of Income Tax (Exemption), Income Tax Department, Bihar Patna.
3. The National Faceless Assessment Centre, Assessment Unit, New Delhi.
4. The Assessment Unit, The National Faceless Assessment Centre, New Delhi.

... ... Respondents

==

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Mukund Kumar, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Akash Kumar, Advocate
Mr. Alok Kumar Jha, Advocate

For the Respondent : Mrs. Archana Sinha @ Archana Shahi, Sr.Adv
Mr. Alok Kumar, Advocate

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

6 15-07-2025 Heard learned counsel for the petitioner and learned Senior Standing Counsel for the respondent-department of Income Tax.

2. The petitioner has preferred the present writ application for the following relief(s) :

> "a) For issuance of a writ or order or direction in the nature of certiorari for

WEB COPY

quashing of the order dated 27.03.2024 and the consequent notice of demand dated 27.03.2024 passed by the respondent number 4 (hereinafter referred to as the assessing authority for short) whereby liability of tax against the petitioner has been assessed with respect to assessment year 2018 2019 in exercise of power under section 143 (3) read with section 263 read with section 144 B of the Income Tax Act 1961 (hereinafter referred to as "the act" for short) in complete departure from the statutory provisions of section 144 B of the act relating to faceless assessment;

b) For further issuance of a writ or order or direction restraining the respondent assessing authority or any other respondent from resorting to any coercive action against the petitioner for recovery of the amount of tax determined in terms of the impugned order;

c) For further holding and a declaration that the impugned order passed by the respondent assessing authority determining liability of tax in exercise of power under section 143 (3) read with section 263 read with section 144 B of the act is violative of the principle of law enshrined in the maxim "expressio unius est exclusio alterius";

d) For grant of any other relief/(s) for which the petitioner may legally be

WEB COPY

found entitled to in the facts of circumstances of the case.”

3. After some arguments upon completion of pleading, learned counsel for the petitioner submits that he may be allowed to withdraw this writ application with liberty to prefer a statutory appeal against the impugned order of assessment as well as penalty order.

4. Learned counsel further submits that the period spent by the petitioner before this Court in pursuing its remedy may be excluded while reckoning the period of limitation.

5. Learned counsel further submits that this Court may while granting liberty to the petitioner to prefer statutory appeal pass an interim order staying recovery of the amount.

6. Learned Senior Standing Counsel for the Department submits that she would have no objection to the extent that the petitioner may withdraw his writ application with liberty to prefer an appeal and if such a plea is preferred, the period spent by the petitioner before this Court may not be taken into consideration for counting the period of limitation. Learned Senior Standing Counsel, however, submits that no stay of the recovery be granted as the petitioner has a remedy available in law to apply for stay before the concerned Assessing Officer who may consider his application at the earliest opportunity.

WEB COPY

7. Having regard to the submissions noted hereinabove, we permit the petitioner to withdraw this writ application with liberty to prefer an appeal within a period of four weeks' from today. If such an appeal is preferred, the period spent by the petitioner before this Court in pursuing the writ remedy shall be excluded in counting the period of limitation.

8. So far as the prayer for stay of the recovery is concerned, since the petitioner has got a statutory remedy as informed to this Court before the Assessing Officer, we would not grant any interim order. The petitioner will be at liberty to apply for the interim order of the stay before the Assessing Officer who will consider the same immediately after filing of the application and shall pass an appropriate order.

9. This writ application stands disposed of.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Shubham/-
Durgesh/-

U		T	

WEB COPY