**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.11566 of 2023**

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Sanjay Kumar, Son of Late Sitaram Prasad Singh, Resident of Village- Orhanpur, P.S.- Mufashil Akauna, District- Nawada, (Bihar) Presently resident of 537 Bellwoood Avenue Sleepy Holow, Newyork 10591, United States of America (USA).

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, MInistery of Finance, Government of India, North Block, New Delhi-110002.
2. The Commissioner of Income Tax, Central Revenue Building, 1st Floor, Birchand Patel Marg, Patna-800001.
3. The Income Tax Officer (ITO), Ward-6 (5), Patna-800001.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Shekhar Singh, Sr. Adv. |
| | : | Mr. Sumit Kumar, Adv. |
| | : | Mr. Avinash Kumar Singh, Adv. |
| For the Respondents No2 & 3 | : | Mr. Archana Sinha, Sr. Adv. |
| | : | Mr. Alok Kumar, Sr. SC |

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**
**and**
**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

16 18-02-2025 Heard Mr. Shekhar Singh, learned Senior Counsel for the petitioner and Mrs. Archana Sinha, learned Senior Counsel for the Department of Income Tax.

2. The writ application has been filed seeking the following reliefs:-

*"a) For quashing of the Assessment Order communicated vide letter No. ITBA / COM/F/17/2019-20/1019559733 (1) dated 30.10.2019, whereby an assessment of total*

*income of the petitioner, made under section 144 read with section 147 of the Income Tax Act, 1961, for Assessment Year 2014-15, on account of capital gain with respect to the land development agreement dated 19.12.2013, been has calculated as Rs. 1,12,56,951/- (one crore twelve lakh fifty-six thousands nine hundred fifty-one only) and it has been directed to issue a demand notice under Section 156 of the Income Tax Act, 1961. It has further been held that it is a fit case for initiation of penalty proceeding under section 271 (1) (c) of I.T. Act, 1961.*

*b) For quashing of the Letter No. ITBA/COM/F/17/2019-20/1019560249(1) dated 30.10.2019, whereby the notice of demand under section 156 of the Income Tax Act, 1961 has been communicated and for the assessment year (A.Y.) 2014-15 sum of Rs. 52,87,165 (Fifty two lakhs eighty seven thousands one hundred and sixty five) has been determined to be payable by the petitioner.*

*c) For quashing of a notice under section 274 read with section 271 of the Income Tax Act, 1961 issued vide Letter No. ITBA / COM /F/17/2019-20 /1019560478 (1) dated 30.10.2019, whereby the petitioner was requested* *to appear on 18.11.2019 and a show cause notice has been issued as to why a penalty should not be made under section 271 of Income Tax Act, 1961.*

*d) For a direction to quash all the consequential Orders/ actions, taken/issued pursuant to the impugned orders/ notices challenged herein in this writ petition, if any.*

*e) For any other relief/reliefs which the Petitioner is entitled to."*

3. The facts are not much in dispute. The petitioner has been born and brought up in India, he, however, subsequently shifted to the Unites States and now he is a USA citizen, having Overseas Citizenship of India (OCI), and is residing in New York, USA.

4. The petitioner acquired a piece of land measuring an area of 5 katha, 10 dhur, 13 dhurki situated in village Jalalpur, Priyadarshi Nagar, P.S.- Danapur, Patna vide a registered Sale Deed No. 5254/98 dated 23.11.1998. The case of the petitioner is that in December 2013, he entered into a development agreement with one Singh Engicon (India) Pvt. Ltd. having its office at Flat No. 502, Om Sai Apartment, Anantpur, P.S.- Chutia, within the Town & District of Ranchi, Jharkhand for the development of the land by way of construction of a residential complex. A copy of the

development agreement has been brought up by way of Annexure-1 to this petition.

5. According to the petitioner, the developer did not take up any construction work and the land, in question, remained as it was prior to the execution of development agreement dated 19.12.2023. The petitioner has categorically stated that in the year 2016 he visited only for three days i.e. from 25.03.2016 to 28.03.2016 and again he visited India in the year 2018 i.e. from 09.03.2018 to 17.03.2018 to meet his parents and relatives. Later on, in the year 2021, he visited India thrice between the month of September-October, 2021 to attend the funeral rituals of his father which was done at Patna, and again he visited in the year 2022, he visited twice i.e. from 21.05.2022 to 23.05.2022 and from 31.05.2022 to 03.06.2022 to attend her ailing mother who is no more now. It is stated that during his visit to India, he could not visit his native village Orhanapur for one or the other reason.

6. The case of the petitioner is that he visited India on 18.06.2023 to sell the land which was subject matter of the land development agreement to the developer and nothing was done pursuant to the said development agreement. During this time the petitioner visited his village where he

found some letters thrown/lying in the residential premises of his village. Out of those letters, he found three letters from the Income Tax Department. The petitioner found the letter bearing Letter No. ITBA/COM/F/17/2019-20/1019559733 (1) dated 30.10.2019 whereby the Assessment Order under Section 144 read with Section 147 of the Income Tax Act, 1961 for the assessment year 2014-15, issued under the signature of respondent no. 3 had been communicated.

7. The petitioner found that the Assessing Authority had assessed total income of Rs. 1,12,56,951/- and passed an order to issue the demand notice under Section 156 of the Income Tax Act, 1961. He also found copy of the notice of demand and a notice under Section 274 read with Section 271 of the Income Tax Act, 1961 whereby the petitioner was called upon to show cause, as to why an order imposing a penalty on him be not made under Section 271 of the Income Tax Act, 1961.

8. Learned Senior Counsel for the petitioner submits that no notice had ever been actually served to the petitioner before issuance of the impugned order. In this regard a specific statement has been made in Paragraph 23 of the writ application. It is pointed out that the assessment

dated 30.10.2019 speaks of 'making several references purportedly made to the assessee, but does not give any detail whatsoever of such references'. In Paragraphs 25 and 26 of the writ application, the petitioner has categorically stated that the impugned assessment order dated 30.10.2019 speaks of service of notice under Section 142(1) of the Act, 1961 upon the assessee, but the petitioner emphatically denies having received any notice and more particularly notice under Section 142(1). It is submitted that the Department has not shown the date of issuance of notice or service of notice under Section 142(1) by producing cogent materials and as the Assessing Officer was under statutory obligation to give the assessee an opportunity of being heard before resorting to *ex parte* assessment under Section 144 of the Act of 1961, the impugned assessment year and notice of demand being in violation of principles of natural justice and fair play in action are liable to be quashed.

9. The learned Senior Counsel for the petitioner has though ventured to make submissions on the merit of the assessment order also on the ground that the respondent no. 3 has failed to appreciate that in the present case, there was no actual transfer of any capital receipt and no profit or gain had

accrued to the petitioner, however, this submission on merit has not been taken too far, at this stage, after noticing that learned Senior Counsel for the Department of Income Tax does not dispute that in this case the Department is unable to establish the date of issuance of notice under Section 142(1) and service thereof from the assessee.

10. In fact, Mrs. Archana Sinha, learned Senior Counsel for the Department has drawn the attention of this Court towards the statements made in the counter affidavit, wherein Paragraph 23 to 26 of writ application have been answered. Learned Senior Counsel submits that in response to Paragraph ‘23’ of the writ application all that is stated is that the assessee had received the assessment order and notice of demand in his native house. However, as regards the issuance of notice and service thereof, it is stated that the case record of the petitioner had not been handed over to the deponent of the affidavit. The case record has been searched in the ward, but it is not traceable, therefore, the deponent was unable to give the reply of date of notices issued, date on which notice was served, identity of the person on whom the notice was served and the mode and manner of service of notice.

11. The learned Senior Counsel for the Department

submits that in the given circumstance, the order of assessment as contained in Annexure-2 and the consequent notices of demand and show cause for imposition of penalty may be set aside by this Court, but the Department would reserves it's right to issue appropriate notices as may be required in accordance with law and take the assessment to a logical end after providing appropriate opportunity of hearing to the petitioner.

12. We have heard learned Senior Counsel for the parties and perused the records. It is now an admitted position that the Department is unable to answer the statements made in Paragraphs 23 to 26 of the writ application. In the kind of stand taken on behalf of the Department, as noted hereinabove, we set aside the order of the assessment as contained in Annexure '2' to the writ application and the consequent notice of demand (Annexure-3) and the notice under Section 274 read with Section 271 of the Act of 1961 (Annexure-4).

13. We are refraining from recording any observation with regard to the stand of the Department in the matter of issuance of fresh notice and would only record, at this stage, that if any such action is taken by the Department,

as has been stated by learned Senior Counsel for the Department, all contentions shall be left open to the parties.

14. The writ application stands allowed to extent indicated above.

**(Rajeev Ranjan Prasad, J.)**

**( Shailendra Singh, J.)**

Jyoti Kumari/-
BKS

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