IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15275 of 2023

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Gayatri Traders through its Properietor, Nitu Devi, W/o Deepak Kumar, aged 40 years, Female, resident of Village- Deepnagar, Post and P.S- Deepnagar, District -Nalanda, Bihar

... ... Petitioner

Versus

1. The Principal Chief Commissioner, Income Tax (Bihar and Jharkhand), Revenue Building, Bir Chand Patel Path, Patna.
2. The Income Tax Officer Ward-2 (3), Biharsharif, Nalanda.
3. The Assessment Unit, National Faceless Assessment Centre, Delhi.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Durgesh Kumar Singh, Advocate
Mr. Abhijeet Kumar Singh, Advocate

For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Senior SC
Ms. Swarna Roy, Advocate

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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)

13 25-02-2025 Heard Mr. Durgesh Kumar Singh, learned counsel for the petitioner and Ms. Archana Sinha, learned Senior Standing Counsel for the Department of Income Tax (hereinafter referred to as the ‘Department’).

2. This writ application has been preferred seeking to challenge the assessment order dated 25.07.2023 (Annexure-10 Series) in respect of Assessment Year 2014-15.

<u>Brief Facts of the Case</u>

3. The assessee had filed her original return of income on 02.03.2015 under Section 139(4) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act of 1961’) declaring her total income as Rs.2,21,900/-. On the basis of certain information available with the Respondents, the case was selected for reassessment proceedings and it was reopened for scrutiny after due verification and belief that there had been an escapement of income chargeable to tax.

4. In earlier round of proceeding, the petitioner challenged the assessment order dated 11.03.2022 passed under Section 147 read with Section 144B of the Act of 1961 and the demand notice dated 11.03.2022 issued by Respondent No. 2. This Court took note of the fact recorded in the impugned order that the petitioner had neither responded to the notice to show cause nor placed on record any material in support of contentions leading to the passing of the impugned order. The Court noticed that this statement recorded in the impugned order was incorrect inasmuch as the petitioner had submitted its response on 05th March, 2022 itself. This Court, therefore, held that perhaps the reply submitted by the petitioner escaped the attention of the Assessing Officer. In such circumstance, the order of assessment and the impugned demand were quashed and it was left open for the Assessing Officer to pass a fresh order in accordance with law.

5. Pursuant to the order dated 20.06.2022 passed by this Court in CWJC No. 6467 of 2022, the Assessing Officer considered the matter afresh. It is recorded that during the course of assessment proceedings, the Assessing Officer provided sufficient opportunities to the assessee to file her submission, however, the assessee did not co-operate and explained the issue satisfactorily.

6. It appears from the fresh assessment order as contained in Annexure-10 Series that in paragraph 4.2, the Assessing Authority has taken note of the synopsis of all the submissions of the assessee relating to the issues. The Assessing Officer has also gone through the documents such as computation of income, ITR, Sales, Purchase Register, Ledger of Indirect Expenses, Cash Book, Audit Report along with Balance Sheet and Profit and Loss Account, details of salary given to employees for the Assessment Year 2014-15. It is also recorded that all the replies of the assessee have been verified. The name of the Sundry Creditors and the purchases made from them during the year have been considered, however, on verification, it has been found that the entire books of sales/purchase and all other books of accounts are not genuine and are fabricated. It also transpires that the then Assessing Officer while conducting the previous reassessment proceeding had issued notices to all the suppliers, however, the suppliers either remained silent by not replying to the notices or had given reply which negates the claim of the assessee of purchases and sales of seeds.

7. It has also been found that most of the suppliers do not have a valid PAN and the assessee had not submitted any supporting documents to prove the genuineness of the purchases. It is stated that the assessee was asked to furnish complete details of her purchase parties as they are farmers and was asked to give details of sales made above Rs.20,000/- and details of suppliers having invoice over and above Rs.40,000/- which she was incapable as she mentioned in her replies dated 04.03.2022 and 19.07.2023. Even in the fresh assessment proceeding, sufficient opportunities were granted to the assessee but it is stated that the assessee completely failed to establish the identity, creditworthiness and genuineness of all the parties under subject and also genuineness of her claim of purchases from these parties.

Submissions on behalf of the Appellant

8. Mr. Durgesh Kumar Singh, learned counsel for the petitioner submitted that all these transactions have been done through the bank account. It is stated that the payments have been made to the parties through her bank account, therefore, the Assessing Officer should have considered this aspect of the matter and there was no reason to take a view that the books of sales/purchase and other books of accounts are not genuine and are fabricated.

Submissions on behalf of the Respondents

9. On the other hand, learned Senior Standing Counsel for the Department would submit that on a bare reading of the impugned assessment order, it would appear that the order has been passed after complying with the principles of natural justice. The Assessing Officer has, on the grounds stated in the impugned order, come to a conclusion that the entire books of sales/purchase and all other books of accounts are not genuine and are fabricated. In such circumstance, it is submitted that this Court sitting under Article 226 of the Constitution of India may not like to delve into an inquiry as to the genuineness of the document and it could best be left for the competent authorities under the statute to deal with the finding of facts.

10. It is pointed out that the appellant has a remedy available under Section 246A of the Act of 1961 by way of filing an appeal against the impugned assessment order.

Consideration

11. Having heard learned counsel for the parties, we have also gone through the impugned assessment order. It is not the case of the petitioner that she has not been given appropriate opportunity of hearing, therefore, in our opinion, this writ application directly filed against the impugned order of assessment cannot be entertained as framed. The Assessing Authority has recorded a finding that the entire books of sales/purchase and all other books of accounts are not genuine and are fabricated.

12. In such circumstance, this Court sitting under Article 226 of the Constitution of India will not take upon itself to go into the genuineness of the documents when the forum of the Appellate Authority is available by way of remedy provided under Section 246A of the Act of 1961. This Court sitting in it's extraordinary writ jurisdiction will go by its self-contained code of restraint and will not delve into an inquiry into the genuineness of the documents at this stage.

13. We, therefore, decline to entertain this writ application leaving it open to the petitioner to seek her remedy in appeal before the Appellate Authority.

14. If an appeal is preferred within a period of eight weeks from today, the Appellate Authority shall consider the same and in case, a question of limitation arises for consideration, the same will be considered keeping in view that this writ application was filed under some bonafide legal advice and it was presented in this Court on 19.09.2023.

15. For a period of eight weeks from today, the respondents shall not take any coercive action.

16. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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