IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16207 of 2022

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Upendra Narayan, Son of Kesho Prasad, Resident of Arya Samaj Mandir Road, RPS More, Flat Number- 202, Shail Regency Apartment, Danapur, Patna, Bihar- 801503.

... ... Petitioner/s

Versus

1. The Principal Chief Commissioner of Income Tax Bihar and Jharkhand, Central Revenue Building, Birchand Patel Path, Patna.
2. The Assistant Commissioner of Income Tax (Tech), Central Revenue Building, Bir Chand Patel Path, Patna- 800001.
3. The Income Tax Officer (TDS), Purnea.
4. The State of Bihar through the Secretary, Department of Rural Works, Government of Bihar, Patna.
5. The Secretary, Department of Rural Works, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Adv.
	:	Mr. Alok Kumar Jha, Adv.
	:	Mr. Mukund Kumar, Adv.
For Income Tax	:	Mrs. Archana Sinha, Sr. Adv.
	:	Mr. Alok Kumar, Adv.
	:	Ms. Swara Raj, Adv.
For the State	:	Mrs. Archana Meenakshee, G.P-6
	:	Mr. Prabhat Ranjan, AC to GP-6
	:	Mr. Harish Singh, AC to GP-6
	:	Mr. Rana Veer Prawar, AC to GP-6
	:	Mr. Rohit Singh, AC to GP-6

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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)

19 17-02-2025 Heard Mr. Alok Kumar Jha, learned counsel for the petitioner, Mrs. Archana Sinha, learned senior counsel for the department of Income Tax and Mrs. Archana Meenakshee, learned GP 6 for the State.

2. In the present writ application, the petitioner is praying for the following reliefs:-

> *" (a) For holding and a declaration that once the respondent Secretary, Rural Works Department, Government Of Bihar vide letter number 589 Patna dated 21.02.2018 has already decided the responsibility of all those officers posted and responsible in the Purnea Works Division Of The Respondent Department Of Rural Works for non-payment of TDS within the time period prescribed in law, the petitioner cannot be picked up individually for prosecution and/or for discharge of liability of compounding fee in terms of section 279 (2) of the Income Tax Act, 1961 (hereinafter referred to as the act for short)*
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> *(b) For holding and a declaration that the petitioner is not the accused in terms of section 278 B of the act and it is the Department of Rural Works who is accused for such purpose and therefore the petitioner cannot be held solely liable on the basis of principle of vicarious liability for the legal wrong having occurred due to composite negligence of all those responsible and already identified by the respondent Secretary, Rural Works Department, Government Of Bihar;*
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> *(c) For issuance of a writ or order or direction upon the respondent number 1 to 3 to accept the fraction of compounding fee from the petitioner in the same terms as the apportionment of late fine and interest directed by the respondent Secretary, Rural Works Department, Government Bihar in his letter number 589 Patna dated 21.02.2018 and also to discharge the petitioner from any further liability of compounding fee or additional compounding fee of 2% per month upon receipt of such payment;*
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> *(d) For further restraining the respondent number 1 to 3 from instituting any criminal prosecution against the petitioner till the adjudication and disposal*

of the issue of proportionate liability of compounding fee payable by the petitioner;

(e) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case."

3. There are some admitted facts of this case.

4. The State of Bihar in it's Rural Works Department, Dhamdaha Works Division, Purnea was found lacking in deposit of the income tax deducted at source within statutory period during the financial year 2012-13. The Income Tax department initiated action in accordance with law and recovered Rs. 34,14,450/- from the bank account of the Division on account of short deduction, interest and late fine. In fact, the said amount has already been recovered.

5. The Rural Works Department found that the Executive Officer being the Drawing and Disbursing Authority of the department was deficient in not depositing the tax deducted at source, the Income Tax Department had initiated action under section 226(3) of the Income Tax Act, 1961 and in the process attached the bank account of the department. Vide letter contained in memo No. 589 dated 21.02.2018 the Secretary, Rural Works Department held that the responsibility to deduct the amount and deposit the same with the Income Tax Department is that of the Executive Officer and he is to be

assisted in this matter by the Divisional Accounts Officer, Accounts Clerk and Cashier, who are deputed for this purpose but they had shown negligence in carrying out their responsibilities, so, they are equally liable to pay the interest and fine amount which have been recovered by the Income Tax Department in the ratio of 25% each. Vide the said letter dated 21.02.2018 (Annexure-4 to the writ application) the Secretary, Rural Works Department held that the Executive Engineer, Divisional Accounts Officer, Accounts Clerk and Cashier will be liable to pay the interest and fine amount in equal proportion of 25% each. This decision of the department had attained finality.

6. The matter did not rest there. It appears that the petitioner was served with a show cause notice by the Income Tax Officer (TDS), Purnea vide letter dated 27.12.2016 as contained in Annexure-'1' to the writ application. The Principal Officer within the meaning of section 235 of the Income Tax Act, 1961 called upon the petitioner to explain as to why a prosecution proceeding under section 276B of the Income Tax, 1961 be not initiated against him and why not proposal for initiation of prosecution under section 276B/ 276BB of the Income Tax Act, 1961 be forwarded to the

Commissioner of Income Tax (TDS), Patna.

7. The petitioner having received the show cause notice submitted his response vide Annexure-5 to the writ application. In his response, the petitioner submitted that he is 60 yeas of age and he is willing to pay the compounding charges, therefore, his request be considered sympathetically and the prosecution proceeding be dropped. On receipt of the letter of the petitioner (Annexure-5), the Income Tax Officer, TDS, Purnea wrote a letter dated 09.07.2018 to the Principal Secretary, Rural Works Department, Government of Bihar wherein he informed the department that Shri Upendra Narayan had written a letter to the Principal Chief Commissioner, Income Tax, Patna showing his consent for paying the compounding charges, hence, the sanction of prosecution under section 197 of the Cr.P.C. may not be required as the payment of compounding charges is under process. Thus, no action was taken against the petitioner, as it appears, the request of the petitioner to deposit the compounding charge has been accepted by the department.

8. At this stage, it has transpired from the materials on the record that the department has calculated a net compounding charge payable at Rs. 14,46,328/-.

9. Having worked out the compounding charge, the department called upon the petitioner to deposit the same but vide a letter dated 11.01.2019 (Annexure-9) the petitioner wrote to the Income Tax Officer, TDS that the Rural Road Development Authority vide notice no. 589 dated 21.02.2018 has held that any interest or liability with respect to the delayed payment of TDS will be borne by four persons equally, who have been held responsible, that is -(i) the Executive Engineer, (ii) the Divisional Accounts Officer (iii) the Accounts Clerk and (iv) the Cashier.

10. Learned counsel for the petitioner submits that the compounding charges are also liable to be apportioned in the same manner, as has been done in Letter No. 589 dated 21.02.2018 with regard to the payment of interest and late fine. It is submitted that since the delay in deposit of TDS took place not only because of the negligence of the petitioner, but the others in the office, who are required to perform their duties towards deposit of TDS and submission of returns etc. in time, it would not be fair play in action to call upon the petitioner alone to bear the brunt of the compounding charges which is of the huge amount.

11. Mrs. Archana Sinha, learned counsel for the

Income Tax Department submits that so far as the Department is concerned, it has to follow the statute and it is only the Principal Officer, who would be liable to be proceeded against by way of prosecution in case of violation of the statutory provisions meant for depositing of TDS and filing of return etc. in time. It is her submission that the petitioner is asking the Income Tax Department to do something which is not permissible in law.

12. Learned counsel for the State has referred the counter affidavit filed on behalf of the State and submits that so far as this aspect of the matter is concerned, the Rural Works Department has not taken any specific plea. It is submitted that *prima facie* it appears that the statute imposes a responsibility upon the Principal Officer of the Department to deduct taxes at source and deposit the same with the Department. In this case, the Secretary to the Department has found that the Divisional Accounts Officer, the Accounts Clerk and the Cashier, who were deputed to assist the petitioner in compliance with these statutory provisions were also negligent, therefore, the interest and fine amount have been apportioned equally among the petitioner, the Divisional Accounts Officer, the Accounts Clerk and the Cashier, whether

the same reasoning and rationale may be followed by the Department in the matter of payment of compounding charges, would require a consideration on the part of the Department.

13. Having regard to the submissions noted hereinabove, we are of the considered opinion that so far as the Income Tax Department is concerned, no *mandamus* can be issued to them to apportion the amount on account of compounding charges among the four persons. The Income Tax Department has to act in accordance with law and realize the compounding charges from the persons who may be liable under the statute, but so far as the Rural Works Department is concerned, it is always open to it to consider the matter and take a view, as to whether the compounding charges would be liable to be apportioned among the four persons i.e.- (i) the petitioner, (ii) the Divisional Accounts Officer, (iii) the Account Clerk and (iv) the Cashier in the same manner, as has been done in the case of payment of interest and fine amount.

14. Learned counsel for the State has informed this Court that the petitioner has yet not paid 25% of the amount, which he is liable to pay under Letter No. 502 Dated 30.03.2022 of Rural Works Department (Annexure-14) if it is so, it is made clear that this Court has been given to understand

that the petitioner is abiding by the said decision and only on that premise this case has been been argued on behalf of the petitioner. The petitioner, therefore, is obliged to abide by his statements made before this Court and deposit the said amount within a period of four weeks from today, only thereafter, the issue of an apportionment of the compounding charges would be considered by the Secretary, Rural Works Department (Respondent No. 5).

15. This Court is not recording any opinion on this issue and leave it open to the Respondent No. 5 to consider it in accordance with law after giving appropriate opportunity of hearing to all the stakeholders.

16. With the aforesaid observations and directions, this writ application is disposed of.

(Rajeev Ranjan Prasad, J.)

(Shailendra Singh, J.)

Jyoti Kumari-BKS

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