IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16228 of 2024

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Takshila Educational Society, Priyadarshi Nagar, West Bailey Road, Patna-801503 through its Administrative Officer, Gopichandra Prasad, aged about 85 years, Male, Son of Late Ram Khelawan Prasad, Permanent resident of Jay Prakash Lane (Machhali Gali), New Jakkanpur, Phulwari, Patna- 800001, P.O.- G.P.O, P.S.- Jakkanpur, District - Patna.

... ... Petitioner

Versus

The Assessment Unit, Income Tax Department, National Faceless Assessment Centre, New Delhi.

... ... Respondent

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Appearance :

For the Petitioner/s	:	Ms. Shilpi Keshri, Advocate Ms. Smriti Singh, Advocate Mrs. Kalpana Rastogi, Advocate
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi,Sr.Advocate Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-01-2025

Heard learned counsel for the petitioner and learned Senior counsel for the Income Tax Department.

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

> "(i) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the order imposing penalty dated 27.09.2024 ("Impugned order") passed by the Respondent under Section 270A of the Income Tax Act, 1961 ("the Act") by overreaching the Judgment of this Hon'ble Court in CWJC No. 6380 of 2024 dated 22.04.2024 whereby the Hon'ble Court has directed exclusion of the period 10.04.2024 to 22.04.2024 while filing appeal before the Appellate Authority and in

passing the order in contravention to the Rule of Principles of Natural Justice and without allowing opportunity of personal hearing as required under Section 274 and imposing penalty under Section 270A of the Act during pendency of appeal in contravention to Section 275(1)(a) of the Act and raising *ex facie* perverse demand against the petitioner for the Assessment Year ("A.Y.") 2022-23 by erroneously holding that there is a delay of four days in filing of appeal and that admission/ validity of appeal is unascertainable that too during the pendency of a legal and valid appeal.

(ii) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the consequential penalty demand of Rs.33.93 crores communicated vide Demand Notice dated 27.09.2024 issued by the Respondent.

(iii) For granting any other relief(s) to which the petitioner is otherwise found entitled for."

3. Learned counsel for the petitioner submits that for the Assessment Year 2022-23, the petitioner had filed its return of income, declaring a total income at Rs. 1,57,734/-. The case of the petitioner was selected for scrutiny under Section 143(3) of the Income Tax Act, read with Section 144(B). An order of assessment determining the income at Rs. 39,77,63,265/- was passed by the assessing authority. The said order of assessment was a subject matter of appeal before the appellate authority. Prior to filing of the appeal, the petitioner had approached this Court in CWJC No. 6380 of 2024 which was disposed of *vide* order dated 22.04.2024 granting liberty to the petitioner to approach the appellate authority and at the same time, the appellate authority was directed that the period between 10.04.2024 to 22.04.2024, during which the writ was pending in this Court, is to be excluded while reckoning the delay in filing the appeal.

4. Learned counsel submits that on filing of an appeal by the petitioner before the appellate authority, the appellate authority has condoned the delay in filing of the appeal and issued notice dated 01.05.2024. After issuance of notice by the appellate authority in the appeal, the respondent issued a show-cause notice under Section 270A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act of 1961') on 14.05.2024 requiring compliance by 28.05.2024.

5. The petitioner submitted its reply in compliance of the said show-cause notice. It was brought to the notice of the respondent that the appeal against the assessment order was pending before the Commissioner of Income Tax, (Appeals), National Faceless Appeal Centre (in short 'NFAC'). Prayer was made to keep the penalty proceeding in abeyance till disposal of the appeal but to the utter dismay of the petitioner, respondent authority passed an order under Section 270A of the Act of 1961 on 27.09.2024 imposing a penalty of Rs. 33.93 crores and issued a demand notice on the same date. The order under Section 270A of the Act of 1961 and the demand notice have been annexed with the writ application as Annexure 'P1' and 'P2' respectively. The petitioner has assailed Annexure 'P1' and 'P2' on various grounds including that of violation of principles of natural justice. It is submitted that in all fairness, equity and justice, the penalty proceedings should have awaited the outcome of the appeal which had already been entertained and the appellate authority was in seisin of the matter.

6. Learned counsel further submits that on a bare perusal of Annexure 'P1' it would appear that the respondent authority of the Assessment Unit while considering the show-cause of the petitioner in the penalty proceeding went into the delay aspect of the appeal which was pending before the appellate authority. It would have been fair on the part of the authority dealing with the penalty proceeding to refrain itself from going into the issue of delay in filing of the appeal. In the process, the order of the High Court passed in CWJC No. 6380 of 2024 has been completely lost sight of.

7. Mrs. Archana Sinha, learned Senior counsel representing the Department, submits that in course of the penalty proceeding, the competent authority was not informed that the appeal preferred by this petitioner before the appellate authority has been entertained and notice has been issued after condonation of delay. Had this been brought to the notice of the competent authority, who was in seisin of the penalty proceeding, that would have been definitely considered and an appropriate view would have been taken.

8. Be that as it may, learned Senior counsel for the Department submits that in view of the pleadings available on the record, a fresh view is required to be taken by the Assessment Unit, therefore the impugned order dated 27.09.2024 as contained in Annexure 'P1' and the demand notice *vide* Annexure 'P2' may be set aside without going into the merit of the contentions and the matter be remitted to the competent authority in the Assessment Unit to take an appropriate view.

9. Having regard to the aforementioned submissions on behalf of the petitioner as well as the Department, we set aside the Order under Section 270A of the Act of 1961 (Annexure 'P1') and the notice of demand under Section 156 of the Act of 1961 (Annexure 'P2'). The matter is remitted to the National Assessment Unit, NFAC for passing a fresh order.

10. At this stage, learned counsel for the petitioner invites our attention towards Section 274 of the Act of 1961 to submit that the said Section mandates that no order imposing a penalty under this chapter shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard.

11. Learned Senior counsel for the Department does not dispute that in terms of Section 274 of the Act of 1961, the petitioner shall get an opportunity of hearing through faceless facility before the competent authority.

12. This Court understands that the Department will take appropriate steps to comply with the mandate of law as contained in Section 274 of the Act of 1961. The petitioner is at liberty to approach the Department seeking hearing through the faceless facility.

13. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	22.01.2025
Transmission Date	