IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19413 of 2014

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Union Bank Of India, having its local Branch at Ground Floor, Abhay Bhawan, Frazer Road, Patna-800001, P.O.-G.P.O, P.S. Kotwali through its Chief Manager, Sri Vinay Kumar Srivastava, S/O R.A. Lal Srivastava, aged about 46 years, resident of 102, Satyam Apartment, near Alpana Market, Patliputra Colony, Patna- Post Office, Patlilputra Colony, Police Station-Patliputra, District-Patna.

.... Petitioner/s

Versus

1. The Tax Recovery Officer (Central), Range- I, Patna
2. The Manager, Reserve Bank of India, having its office at Banking Department, Reserve Bank of India, South Gandhi Maidan, Patna- 800001
3. The Income Tax Department through the Commissioner of Income Tax (Central), Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18743 of 2014

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1. United Bank of India, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 having its Regional Office at 2nd Floor, Abhay Bhawan, Frazer Road, Patna, PO- G.P.O., P.S.- Kotwali through its Deputy General Manager and Chief Regional Manager Sri Dhananjay Pratap Singh, S/o Late Bishwa Nath Singh, aged about 53 years, Resident of Road No. 10A, Rajendra Nagar, Patna- 800016, P.O.- Rajendra Nagar, P.S.- Kadamkuan, District- Patna

.... Petitioner/s

Versus

1. The Tax Recovery Officer (Central), Range- I, Patna
2. The Manager, Reserve Bank of India, having its office at Banking Department, Reserve Bank of India, South Gandhi Maidan, Patna- 800001
3. The Income Tax Department through the Commissioner of Income Tax (Central), Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 18742 of 2014

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1. State Bank of Bikaner and Jaipur, having its Regional Office at 6th Floor, Abhay Bhawan, Fraser Road P.O. GPO P.S. Kotwali District Patna through its Assistant General Manager, Chitta Ranjan Parida, son of Late Vishnu Chalam Parida, resident of Flat No. 305, Amar Kunj Apartment, Vivekanand Marg, Boring Road, PO and PS Shree Krishna Puri District, Patna

.... Petitioner/s

Versus

1. Commissioner of Income Tax (Central), Patna having its office at 3rd Floor, Central Revenue Building, Birchand Patel Marg, Patna
2. Tax Recovery Officer, Income Tax Department, Central Range-I, Patna
3. The Manager, Reserve Bank of India, having its office at Banking Department, RBI, Patna

.... Respondent/s

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Appearance :
(In CWJC No. 19413 of 2014)
For the Petitioner/s : Mr. A.K. Rastogi
Mr. Manish Rastogi
For the Respondent/s : Mrs. Archana Sinha
Mrs. Suman Kumar Mishra
(In CWJC No. 18743 of 2014)
For the Petitioner/s : Mr. A.K. Rastogi
Mr. Manish Rastogi
For the Respondent/s : Mrs. Archana Sinha
Mr. Suman Kumar Mishra
(In CWJC No. 18742 of 2014)
For the Petitioner/s : Mr. D.V.Pathy
Mr. Abhi Sarkar
For the Respondent/s : Mr. Archana Sinha @ Archana Shahi

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)
Date: 16-01-2015

Heard learned counsels for the petitioners and learned counsel for the Income Tax Department.

All the three writ applications raise common issues and accordingly they have been heard together and are being disposed of by this common order.

All the writ petitioners are aggrieved and they seek quashing of the show cause notices all dated 28.07.2014 issued by the Tax Recovery Officer, Patna, by which the respective petitioners have been called upon to show cause as to why they should not be treated as "assessee in default" under Section 226 (3) (ix) of the Income Tax Act, 1961. They have further challenged the orders dated 29/30.9.2014 passed by the Tax Recovery Officer, by which he has enhanced the rent of the premises of which they are tenants. They further seek quashing of the notices dated 31.10.2014 under Section 26 (3) of the Act issued by the Reserve Bank of India by which directions have been issued by the Tax Recovery Officer to the Manager, Reserve Bank of India to make payment of Rs.1,41,50,196/-, Rs.98,13,588/- and Rs.1,19,12,963/- respectively with respect to the three petitioners and the consequential letters dated 31.10.2014 issued by the respondent No.2, Reserve Bank of India.

The short facts of the present cases are that all the three petitioners are Public Sector Banks, being Government of India Undertakings, who are tenants of premises located on Fraser Road, Patna, of which the present owner is M/s. Sabicon Estates Pvt. Ltd.

It is not in dispute that the petitioners were regularly paying rent to the said landlord and after the premises were taken over by the Income Tax Department by issuing notices dated 28.07.2014 under Section 26 (3) of the Act, they have been paying rent to the Tax Recovery Officer. By the aforesaid action, the Tax Recovery Officer has sought to unilaterally enhance the rent payable by the petitioners manifold and to recover the same from the respective accounts of the petitioners maintained by the Reserve Bank of India, pursuant to which the aforesaid notices were issued and action taken.

The simple submission of learned counsel for the petitioners is that the Tax Recovery Officer has no jurisdiction under the law of the land to unilaterally enhance the rent being paid by the petitioners and any such revision/enhancement/determination of rent can be made in accordance with the procedure prescribed by law.

It is urged by learned counsel for the petitioners that in the present matters there is no agreement between the petitioners and the original landlord or the Income Tax Department regarding the enhancement of rent and thus, it was not open to the Tax Recovery Officer to fix higher rent or rate of rent and realize the same by invoking his coercive powers under the provisions of the Income Tax Act.

Learned counsel for the Income Tax Department, on the other hand, submits that there have been a series of correspondences between the landlord of the premises and the tenants Banks for renewal of the lease as also for enhancement of the rent of the premises but the petitioners not having come forward in the matter, the Tax Recovery Officer has been compelled to take action in the matter by applying the provisions of Section 23 (1) (a) of the Income Tax Act under which the Tax Recovery Officer has powers of the landlord for the purpose of enhancement of rent.

On a consideration of the rival submissions of learned counsels for the parties, this Court does not find any force in submission of learned counsel for the Income Tax Department. The provisions of Section 23 (1) (a) of the Act relied upon by learned counsel relate to the determination of income from house property for the purpose of filing of I.T. returns and assessment thereof and the same has no relevance at all so far as fixation of rent payable by a tenant to the landlord is concerned. Any such fixation of fair rent or higher rent can only be either on the basis of agreement between the parties or by the exercise of powers in areas covered by the provisions of the Bihar Buildings (Lease, Rent and Eviction) Control Act,1982 by the competent authorities therein and not unilaterally by the Tax Recovery Officer or any other Officer of the Income Tax Department.

In the light of the aforesaid discussions, we find that the entire action of the Tax Recovery Officer and the consequential action taken by the respondent No.2, Reserve Bank of India, are de hors the powers conferred upon them by the law of the land and they are, accordingly, quashed. Any amount, which may have been recovered from the accounts of the petitioners, shall be refunded to the petitioners forthwith.

The writ applications are accordingly allowed with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Vikash Jain, J)

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