

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24983 of 2019

Bhola Ram Steels Private Limited Company incorporated under the Companies Act, 1956, having its office at Nashri Ganj, Danapur, Patna- 800012, Bihar through its Accounts Incharge, Sunil Kumar Thakur, S/o Late Shashikant Thakur, Resident of Mithila Colony, Nasriganj, P.O.- Bataganj, P.S.- Danapur, Patna- 800018.

... .. Petitioner/s

Versus

1. Principal Commissioner of Income Tax-1 Patna, 2nd Floor, Central Revenue Building, Beer Chand Patel Path, Patna.
2. The Additional/Joint Commissioner of Income Tax, Range-1, 3rd Floor, Lok Nayak Jai Prakash Bhawan, Dak Bungalow Chowk, Patna.
3. The Deputy/Assistant Commissioner of Income Tax, Circle-2, 4th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bungalow Chowk, Patna.
4. The Income Tax Officer, Ward 2(1), Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajay Kumar Rastogi, Advocate

For the Respondent/s : Mr.Archana Sinha @ Archana Shahi, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 06-01-2021

Petitioner has prayed for the following relief(s):-

“i) For issuance of a writ of certiorari or any other appropriate writ quashing the Notice u/s 148 of the Income Tax Act, 1961 (‘the Act’) dated 30.03.2019 (Annexure-’1’), for assessment year 2012-13 issued by the Assistant Commissioner of Income Tax, Circle-2, Patna (the Respondent No. 3 herein and also referred to as the “Assessing Officer” hereinafter) initiating proceedings for reassessment against the Petitioner as being wholly arbitrary, illegal, without jurisdiction as the same has been initiated in absence of any finding attributing failure on part of the petitioner in disclosing fully and truly all material facts necessary for assessment and on mere change of opinion.

ii) For issuance of an appropriate writ quashing the preliminary order dated 13.11.2019 (Annexure-’2’) passed in pursuance of the said Notice by Respondent No. 4 whereby the petitioner’s objection on the issue of assumption of his jurisdiction has been rejected on the ground of being wholly arbitrary, illegal and without jurisdiction.

iii) For issuance of an appropriate writ quashing the notice u/s 142(1) dated 23.10.2019 (Annexure-’3’) by which the petitioner has been directed to furnish certain details along with connected documents as the same is erroneous and without any basis.



(iv) For issuance of any other writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

2. Mrs. Archana Sinha, learned counsel for the Revenue, invites our attention to the judgment dated 18.06.2019 passed by a Coordinate Bench of this Court in **CWJC No. 17412 of 2017, titled as Satyendra Kumar Construction Pvt. Ltd. Vs. Commissioner of Income Tax-II & Ors.** She points out that in somewhat similar circumstances, the Court has directed the writ-petitioner to appear before the authority, highlighting all the issues raised in the present petition, leaving for the authorities to decide the matter, per law.

3. The Judgment dated 18.06.2019, in toto, is extracted as under:-

“Mr. D.V. Pathy, learned counsel for the petitioner while questioning the proceedings initiated under Section 148 of the Income Tax Act, 1961 by service of notice dated 31.03.2017 impugned at Annexure 10 series submits that the issue which is raised in the writ petition is covered by the judgments of this Court and Supreme Court and which does not permit the Statutory Authority to reopen the matter repeatedly. According to Mr. D.V. Pathy, it is for the third time that the assessment has been reopened in the present case.



Having heard learned counsel for the parties and considering that it is at the very stage of issuance of notice that the petitioner has rushed to this Court on the grounds noted above, we are certainly not persuaded to express ourselves at the notice stage rather would leave the matter open for discussion before the Statutory Authority who shall apply his mind to the objections raised by the petitioner on the reopening of the proceeding in the backdrop of the legal position settled and take the matter to its logical end within three months from the date of receipt/production of a copy of this order.

With this observation, this writ petition is disposed of.”

4. On the other hand, Shri A.K. Rastogi, learned counsel for the petitioner refers to and relies upon several decisions rendered by Hon’ble the Apex Court as also different constitutional Courts of the land.

5. Having gone through the record, and more specifically the notice dated 5th of September, 2019, we are of the considered view that interest of justice would be best met if the issue, more so, in view of certain disputed questions of fact, is left to be best decided by the authority in terms of the view already



taken by a Coordinate Bench of this Court in **Satyendra Kumar Construction Pvt. Ltd.** (supra).

6. As such, we dispose of the present petition in the following terms:

(a) petitioner shall appear before the appropriate authority on 21st of January, 2021, when a date shall be fixed for further hearing of the matter;

(b) parties shall place the entire material before the appropriate authority on the next date of hearing;

(c) since the matter pertains to the Assessment Year 2012-13 and the petitioner has been assessed twice i.e. in the year 2016 and 2018, we direct that the proceedings be positively concluded within a period of two months;

(d) however, we clarify that preliminary objection on the jurisdictional issue, more so in view of first proviso to sub-section (1) of Section 147 of the Income Tax Act, 1961 shall be decided first;

(e) needless to add, opportunity of hearing in person shall be afforded to all concerned;

(f) liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law



including filing a fresh petition before this Court on the same and subsequent cause of action.

7. The petition stands disposed of in the aforesaid terms.

8. Interlocutory Application(s), if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(Anjani Kumar Sharan, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.01.2021
Transmission Date	

