

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17472 of 2023

SIS Prosecur Holding Pvt. Ltd. a Private Limited Company incorporated under the Companies Act, 1956 having its office at Annapoorna Bhawan, Patliputra Telephone Exchange, Kurji, Patna 800010, District Patna through its Director Pramod Kumar Verma (Male, aged about 54 years), son of Late Jagannath Prasad residing at 123B, Road No.2, Rajendra Nagar, Sampatchak, Patna Bihar -800016.

... .. Petitioner/s

Versus

1. Principal Commissioner of Income Tax 1 having its office at Central Revenue Building, Bir Chand Patel Marg, Patna 800001.
2. National Faceless Assessment Centre, having its office at 6th Floor, Mayur Bhawan, Connaught Lane, Barakhambha, New Delhi 110001.
3. National Faceless Appeal Centre, having its office at 6th Floor, Mayur Bhawan, Connaught Lane, Barakhambha, New Delhi 110001.
4. Income Tax Officer, Ward 2(1) Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-03-2024

The appellant is aggrieved with the assessment order passed by the second respondent; after which the Tribunal directed to make inquiries as directed by the Principal Commissioner of Income Tax regarding the correctness of the valuation report of the accountant, and if necessary, call for an independent report from an expert to confront the assessee and thereafter pass a speaking order in accordance with law.



2. The challenge to the assessment order passed prior to the Tribunal's order dated 18.05.2023 is that neither the said directions nor the directions of the Principal Commissioner were complied with.

3. On facts, suffice it to notice that for the assessment year 2015-16, the assessee sold 90 lakh shares of Rs.10 face value to its own holding company. The Assessing Officer passed Annexure-1 order, which was interfered with by a *suo motu* revision under Section 263 of the Income Tax Act. By Annexure-2 order, the Commissioner found that valuation of shares was not carried out in accordance with law. The assessment order passed under Section 143 of the Income Tax Act, 1961 was cancelled and set aside with a direction to the Assessing Officer to frame the assessment *de novo* by making fresh inquiries and verification regarding the accuracy or completeness of such information provided by the management of the Company for the purpose of valuation of shares as per Discounted Cash Flow (DCF) method and finalize assessment in accordance with the provisions of law.

4. An appeal was taken to the Tribunal which ended in Annexure-4 order. Before Annexure-4 order was passed, the Assessing Officer passed Annexure-3 order dated



29.03.2022. The petitioner's contention is that the directions of the Tribunal were not carried out in the order of assessment passed on remand; nor were the directions issued in the order under Section 263 complied with.

5. Learned Senior Standing Counsel for the Department submits that there is now an appeal filed in the National Faceless Appeal Center which has to be considered. In the circumstance of the appeal having been filed, the procedure followed by the Appellate Authority is to get a report from the Assessing Officer, in accordance with the directions in the Tribunal's order. It is also submitted that in the appeal filed when the appellant submits the Tribunal's order, the Tribunal order will be sent to the Assessing Officer and a report called for. The appellant would then be permitted to file objections to the report of the Assessing Officer; after supply of the report to the appellant, before a final adjudication is made after hearing the appellant.

6. In such circumstances, we are of the opinion that the recovery should await the disposal of the appeal especially since the demand raised is based on an assessment order, which was passed prior to the Tribunal's order. It is submitted that 20% of the amounts have already been recovered



and hence, there would be no recovery carried out based on the assessment order at Annexure-3.

7. The appeal filed is numbered as No.NFAC/2014-15/10145369 as submitted by the learned counsel for the petitioner. It is submitted by the learned counsel for the petitioner that amounts were recovered from the cash credit account and this created huge liability on the petitioner especially since the interest would run on the debit made. The petitioner, hence, seeks refund of the amounts already attached and recovered from the petitioner's account. The petitioner also relies on judgment at Annexure-9 of another Division Bench of this Court.

8. Annexure-9 decision was in a batch of three writ petitions where attachment of the bank accounts of the assesses were made, when the assessment orders which created the demand were challenged in appeal after depositing 20% of the disputed tax amount under the Value Added Tax Act. Identical to the case herein, the attachment order was made of a cash credit account, which is a credit facility offered to the customer by the bank subject to a limit; which even if not overdrawn to the limit, would still not have any money belonging to the assessee as distinguished from a credit balance in a current account. But



therein the demand was not met, which was met in the present case; which detains us from directing a refund.

9. We make it clear that if the assessment is set aside, the assessee would be entitled to the refund along with interest payable as per the statute or that paid by the assessee in the cash credit account; whichever is higher and if not, the assessee would be saved from the interest on the amount recovered in the intervening period. In that circumstance, we are of the opinion that there is no requirement to direct the assessee to be refunded the 20% already recovered. There shall be no further recovery based on the impugned assessment till the appeal is disposed of.

10. The writ petition stands disposed of with the above observations but without anything said about the merits of the assessment made.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

sharun/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.04.2024.
Transmission Date	

