

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7018 of 2024

Bihar Industrial Area Development Authority, a statutory authority registered under the Bihar Industrial Area Development Act, 1974, having its registered office at BIADA Udyog Bhawan, Gandhi Maidan, Bankipur, Patna- 800001 through its Manager Finance, Mr. Prakash Singh, son of Late Shri Ramjee singh, aged 46 years, Male, resident of C/o Sharan Niwas, Behind Rahual Masala Mills, Budha Colony, P.S.- Budha colony, P.O.- Shri Krishna Nagar, Kidwaipuri, Patna- 800001.

... .. Petitioner/s

Versus

The Deputy Commissioner/ Assistant Commissioner, Exemption Circle, Income Tax Deptt., Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate Mrs. Kalpana Rastogi, Advocate
For the Respondent/s	:	Mrs. Archana Sinha, Sr. SC. I.T. Dept.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-10-2024

The petitioner, a creature of statute is aggrieved with the assessment carried out for the assessment year 2019-20, in its old PAN with the status of 'Firm' while the status was changed to an 'Artificial Judicial Person' (for brevity, AJP) in which renewed status there was already an assessment carried out; of the same assessment year.

2. The petitioner was issued with a notice on 20.03.2023 for the assessment year 2019-20, as per



Annexure-P/4 in its earlier PAN No.- AAIFB2859C; under Section 147 read with Section 148 of the Income Tax Act, (for brevity, the Act). Simultaneously, another notice dated 31.03.2023 (Annexure-P/5) was issued in its present PAN No- AAAJB1508L by the ITO, Ward 1(1) Patna, the Jurisdictional Assessing Officer, for the very same assessment year. The notice under the old PAN was issued by the Deputy Commissioner/Assistant Commissioner, Exemption Circle Patna. The subsequent notice issued resulted in an assessment order, passed as per Annexure-P/6, against which an appeal was filed before the Commissioner of Income Tax Appeals, National Faceless Appeals; the acknowledgment of which is produced as Annexure-P/7. Despite the earlier assessment passed at Annexure-P/6 and the appeal filed, having been intimated in the reply to the notice issued at Annexure-P/4; un-deterred, the assessment was completed in the non-existent PAN by Annexure-P/1.

3. Shri. Ajay Kumar Rastogi, learned Senior Counsel appearing for the petitioner argued that there cannot be two assessment orders for the same assessment year. Two PAN cannot be existing simultaneously for the very same entity, especially considering the express bar under Section



139(A)(7) of the Act. Reliance is also placed on Section 124 of the Act. It is pointed out that for the very same assessment year, two different Assessing Officers have exercised jurisdiction over the petitioner, which is also not legally permissible. Reliance is placed on **Kai Balkrishna R. Gawade Mandi Vyapari Premises Sahakari Sanstha Maryadit v. Income-Tax Officer and Ors; (2023) 457 ITR 41 (Bom)** and **Shree Ramkrishna Sishu Tirtha & Anr. v. Income Tax Officer and Ors; (2023) 457 ITR 729 (Cal)**.

4. The contention in the counter affidavit of the Department is that the petitioner had failed to correct the PAN, in its bank accounts which resulted in the above situation. It is submitted that if at all transactions were found in the old PAN, the correct procedure would be for the Commissioner to invoke Section 263 of the Act and not proceed for assessment by a different Assessing Officer for the very same assessment year, against the assessee, on a non-existent PAN. It is also pointed out from Annexure-P/10 that even for the earlier assessment year, 2018-19, the petitioner was assessed as an AJP in the new PAN. The Department cannot say that the PAN has not been validly changed.



5. Smt. Archana Sinha, learned Standing Counsel for the Department seeks to uphold the order on the ground that there were transactions found in the earlier PAN, which was not disclosed or assessed under the new PAN. The transactions in the form of time deposit and rental receipts were not disclosed by the assessee in the returns and there has been no response and notice was issued under Section 148 of the Act.

6. **(2023) 457 ITR 41 (Bom)** held that it was the duty of the Income Tax Officer to examine and verify the contention of the assessee, with respect to cancellation of old PAN and the returns filed under the new PAN, before issuance of the order and notice. Therein, the assessee, a registered cooperative credit society was assessable as an 'association of persons' but the present in-charge had applied for a PAN, as a trust. Later the mistake was realised and application was made for a new PAN, which was allotted with the change of status. Despite repeated requests for cancelling the old PAN, the respondent-Department failed to do the needful. A notice came to be issued on the basis of a time deposit with the Punjab National Bank. The assessee informed the Department that there is no new time deposit in the relevant assessment



year and all the deposits and interest thereon were disclosed in the return of income under the new PAN. The said contentions were rejected and a notice was issued for reopening the assessment under Section 148 of the Act. The learned Judges of the Bombay High Court noticed that the respondents were unable to point out any regulation, circular or a procedure by which the PAN could be cancelled by the assessee. It was also revealed from the records that the assessee had filed their return under the new PAN. In the above circumstances the Court cancelled the impugned order under Section 148(A)(d) as also directed cancellation of the old PAN in accordance with law and directed assessment or reassessment of the petitioner for the assessment year 2019-20.

7. **(2023) 457 ITR 729 (Cal)** was again a case in which the order under Section 148(A)(d) was challenged on the ground that the order was passed in a PAN which was already surrendered by the assessee. Therein again the order impugned was set aside also on the ground of being a non-speaking order and the matter was remanded to the Assessing Officer.

8. The cited decisions indicate facts identical to



the present one, with the only difference that here the assessee was earlier issued a PAN in the status of a 'Firm' and the same was surrendered while obtaining a new PAN in the status of 'AJP'. In fact, for the year 2018-19, as we noticed, the assessment was completed in the new PAN and even in the assessment year 2019-20, which is the subject matter of the above writ petition, the assessment was completed as per Annexure-P/6.

9. When a notice under Section 142(1) was issued as is indicated in Annexure-P/1 impugned order, the assessee had specifically brought to the notice of the Assessing Officer that, there was a new PAN issued. In fact, it is also pertinent that the assessment was completed by an Officer; as distinguished from a faceless assessment, to whom the matter was assigned as the Jurisdictional Assessing Officer under Section 144B(8); transferring it out of faceless assessment, since it was a case of duplicate PAN.

10. We cannot but notice that this is not a case of duplicate PAN, as the earlier PAN was surrendered and a new PAN was issued with a renewed status. Even if some transactions were noticed in the earlier PAN, it was perfectly



within the competence of the Jurisdictional Assessing Officer to proceed with the re-assessment under the new PAN, finding the transactions carried out in the earlier PAN; if at all so carried out in the assessment year and not disclosed in the returns, as having escaped assessment.

11. On the above reasoning, we find Annexure-P/1 to be untenable and we set it aside only on the issue of the assessment having been made in a PAN which was already surrendered.

12. However, the department cannot be prohibited from carrying out fresh proceedings. The petitioner in the writ petition itself has stated that the Commissioner could carry out a *suo motu* revision under Section 263 of the Act or the appellate authority could exercise the power under Section 251 of the Act. We would further observe that as of now, even a reassessment could be initiated under Section 148 of the Act after issuance of a notice under Section 148(A) by the Jurisdictional Assessing Officer and the assessment completed through the faceless assessment procedure, in the new PAN, deeming the transactions carried out in the earlier PAN, to be that of the assessee, whose status has been converted and a



new PAN issued; if the same is not disclosed in the returns or assessed to tax and thus escaped assessment of tax in the relevant year.

13. We have only observed on the various options available to the Department and it is for the Department to choose legally permissible options to be exercised and in any event, the assessee would not be entitled to raise the question of limitation and any proceeding taken would be relatable to the date on which the notice was issued under Section 148(A) of the Act as against the old PAN.

14. The writ petition is allowed with the above directions.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	24.10.2024.
Uploading Date	30.10.2024.
Transmission Date	

