

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4385 of 2018

Rajendra Singh Son of Late Charan Singh Resident of M/s Bhargo Saw Mill,
Mithapur, P.S. Jakkanpur, District-Patna Proprietor of M/s Bhargo Saw Mill,
Mithapur, P.S. Jakkanpur, District-Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Department of Revenue, North Block, New Delhi -110001
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi-110001.
3. The Director General of Income Tax Investigation, Cental Revenue Building, Birchand Patel Marg, Patna
4. The Director General of Income Tax Investigation, Cental Revenue Building, Birchand Patel Marg, Patna
5. The Additional Director of Income Tax Investigation, Central Revenue Building, Birchand Patel Marg, Patna
6. The Joint Director of Income tax Investigation Patna, Central Revenue Building, Birchand Patel Marg, Patna
7. Sri Vijay Kumar, Additional Director Inv. Income Tax Department, Central Revenue Building, Birchand Patel Marg, Patna
8. Sri Saurav Kumar, Authorised Officer INV., Income Tax Department, Central Revenue Building, Birchand Patel Marg, Patna
9. Sri Surav Kumar Jha, Authorised Officer Inv., Income Tax Department, Central Revenue Building, Birchand Patel Marg, Patna
10. Sri K.L. Kanak, Authorised Officer Inv., Income Tax Department, Central Revenue Building, Birchand Patel Marg, Patna
11. The Divisional Forest officer, Patna Forest Division, Patna, Sanyukt Van Bhawan, Nehru Nagar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Vinay Mistry, Mr. Mrigank Mauli, Advocates
For the Respondent/s	:	Ms.Archana Sinha @ Archana Shahi, Sr. Standing Counsel
		Mr. Alok Kumar, Mr. Sanjeev Kumar
		Junior Standing Counsels

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)



Date : 23-04-2019

Heard Mr. Vinay Mistry, learned counsel for the petitioner and Mrs. Archana Sinha, learned counsel for the Income Tax Department.

Petitioner questions the order dated 05.01.2018 of the Joint Director of the Income Tax Investigation) Patna, whereby allegation of the petitioner that some items of woods/logs seized by the officials of the Department during search and survey operation held from 8.9.2010 until 10.09.2010, has been examined and rejected. The impugned order is at Annexure-9 is put to question.

The exercise of disposal of the grievance raised, was carried out in view of the direction of this Court passed in the earlier round of litigation arising from CWJC No. 2556 of 2016 and the operative portion of which runs as under:-

“However, learned counsel appearing for the Income Tax Department points out that in fact a seizure-list was prepared after the seizure indicating the quantity of wood but it is specifically averred by her that the wood was never taken away after including them in the seizure-list and, therefore, there is no question of returning the wood.

After hearing learned counsel for the parties, we find that in the raid that was conducted between 08.09.2010 to 10.09.2010 certain materials were seized and a seizure-list was also prepared and in Annexure-6 dated 30th of April, 2014 written to the petitioner by the Assistant Income Tax Commissioner, Circle-3, Patna, a copy of the seizure-list was enclosed to him. Now, if the



wood was not seized, the reason for its inclusion in the seizure-list becomes doubtful and a dispute.

That being so, as the grievance made by the petitioner is to return the wood seized, it is thought appropriate to direct Respondent No.4 the Additional Director of Income Tax (Investigation), Patna to look into the grievance of the petitioner, cause an inquiry into the matter and if it is found that the wood in question has been seized and in accordance with law petitioner is entitled to return of the same, he may pass appropriate orders returning the material in question to the petitioner and it shall be incumbent upon the respondents to record reasons for the same and pass a speaking order. Either way, the action be taken and a decision communicated to the petitioner within 60 days from the date of receipt of a certified copy of this order.

With the aforesaid, we dispose of the writ petition.”

It is following this direction that the matter was examined and order was passed on 05.01.2018 which is impugned in this writ petition. The substance of the order rejecting the allegation is that there is no evidence supporting the allegation. While it is the submission of Ms. Sinha, learned counsel appearing on behalf of the Department that the Panchnama which was drawn during the search and survey operation records no such objection, the assessee has countered by stating that it was drawn on blank paper but the inventory list placed at Annexure-I contains the details of 58 items and bears the signature of the representative of the petitioner and neither records any objection nor is on a blank sheet.



In such view of the matter, where the allegation set up by the petitioner is mere a word against a word of the Department, in absence of supporting material which would conform to the allegation, we are not inclined to enter into the disputed facts. It was for this reason, that the Co-ordinate Bench taking note of the grievance of the petitioner on the earlier occasion, relegated the matter for enquiry by the Department allowing the petitioner to establish his allegation but it is not forthcoming.

In such view of the matter and in view of the disputed facts which lie at the foundation of the allegation, we refrain from exercising our extraordinary jurisdiction vested under Article 226 of the Constitution to dispose of the writ petition.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-

AFR/NAFR	NAFR
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