**(2007) 09 PAT CK 0038**

**In the Patna High Court**

**Case No :** Civil Review No''s. 71, 72 and 73 of 2005

M/s Bachan Traders APPELLANT

Vs

The State of Bihar and Others RESPONDENT

**Date of Decision :** 26-09-2007

**Acts Referred:**

Bihar Finance Act, 1981 — Section 17(5), 20(1)
Bihar Sales Tax Rules, 1959 — Rule 3(4)

**Citation :** (2007) 4 PLJR 674

**Hon'ble Judges :** S.N. Hussain, J;Mridula Mishra, J

**Bench :** Division Bench

**Advocate :** Y.V. Giri, S.K. Singh, Jyoti Sharan and Ashish Giri, for the Appellant; Neelu Agarwal and Zaki Haider for the State, for the Respondent

**Final Decision :** Dismissed

## Judgement

1. Heard the counsel for the parties. These review applications have been preferred against the order, dated 16.3.2005, whereby C.W.J.C. No. 11114 of 2004, C.W.J.C. No. 11115 of 2004 and C.W.J.C. No. 11116 of 2004 have been dismissed by a reasoned order on merits.

2. By order, dated 16.3.2005, all three writ applications were dismissed, holding that Assessing Authority had jurisdiction for passing order of penalty u/s 20(1) of the Finance Act, objections relating to want of jurisdiction was not raised by petitioner before the Assessing Authority, but raised at subsequent stage that will amount to waiver and also that case of Prithvi Nath Prasad vs. The State of Bihar & Ors. [2000(3) P.L.J.R., 860] is distinguishable and not applicable in the facts of the present case.

3. Petitioner has sought for review of the order on the ground that the writ Court committed gross error of law and record in not considering this vital aspect of the case that when the matter regarding consolidated registration itself was pending before the High Court and an order of stay was passed on 27.10.1999, in that case respondent no. 4 had no jurisdiction to pass an order imposing

penalty on 20.1.2000, as the order of stay continued till disposal of the writ application on 25.4.2000. Respondent no. 4 on the relevant date had no jurisdiction to pass order imposing penalty on account of existence of order of stay by the High Court.

4. Counsel for the petitioner submits that the petitioner applied for consolidated registration u/s 3(4) of the Bihar Sales Tax Rules before respondent no. 2, which was rejected on 3.8.1999. Against which petitioner preferred C.W.J.C. No. 5288 of 1999 seeking direction to the respondents to grant consolidated registration to petitioner in terms of Rule 3(4) of the Rules and for restraining the respondents from taking any steps including the proceeding u/s 17(5) of the Bihar Finance Act for realisation of Sales Tax. By order, dated 27.10.1999, the Hon''ble High Court passed an order that no coercive action shall be taken against the petitioner. This order was duly communicated by the petitioner to respondent no. 4 on 3.10.1999. In spite of that respondent no. 4 by order, dated 20.1.2000, passed an order imposing maximum 300 penalty though on account of continuation of the stay order no such order should have been passed.

5. I find that this aspect of the matter has been discussed by the Division Bench as it has been observed that permission to file consolidated return although earlier rejected by order, dated 3.8.1999, but later it was allowed on 12.8.2000 to be effective from 1.4.1996 to 31.3.2000. The permission to file consolidated return with regard to period in question was granted though on 12.8.2000, but with effect from 1.4.1996 which covered the relevant period. It has also been considered by the Division Bench that since the petitioner had filed return in Patna City, West Circle, with regard to other places of business even before the permission to file consolidated registration with regard to his business carried out at other places. Petitioner has not included excise duty in his gross turn over between April, 1999, to November, 1999, at Sitamarhi. He has also not paid sales tax on excise duty even at Sitamarhi though realised it from his dealers. Considering all these the penalty was imposed and the Division Bench finding that rejected the plea taken by the petitioner that respondent no. 4 should not have passed any order at the relevant time. The review is not permissible on this ground as there is neither any error of law or record.

6. Another ground taken for review is that it has wrongly been held by the Division Bench that petitioner did not raise objection relating to jurisdiction before respondent no. 4, as such, he has waived his right to raise the question of jurisdiction subsequently. Petitioner''s stand is that so far the question relating to not raising question before respondent no. 4 is concerned, it has no bearing, as at that time the matter was pending before High Court and an order of stay was persisting in favour of the petitioner. I find that this also can not be a ground for review of the order passed by the Division Bench. It is well settled that question of jurisdiction should be raised at the first instance, in case it is not raised it amounts waiver.

7. The petitioner has also taken a ground that the finding recorded by the

 

Division Bench that case of Prithvi Nath Prasad (supra) is not applicable in the facts of the present case needs review of the order. The Division Bench while discussing the case of Prithvi Nath Prasad (supra) has recorded finding that it was on a different footing because in the case of Prithvi Nath Prasad petitioners of that case filed separate returns at Gopalganj and Chapra and deposited consolidated return at Patna Circle, so the amount deposited in excess was directed to be refunded. In the present case the penalty order, dated 20.1.2000, was passed for the reason that petitioner though filed consolidated return at Patna City, West Circle, did not disclose that sales tax had been paid on the excise duty in his gross turn over for the specified period at Sitamarhi. The facts of the present case was totally different from the facts of Prithvi Nath Prasad''s case. The Division Bench has recorded this finding going on merits of the case. This ground is also not available to the petitioner for review of the order passed by the Division Bench.

8. Scope of review is very limited under Order XLVII, rule 1 of the Civil Procedure Code, 1908. There are three grounds available for review, (i) discovery of new and important matter of evidence which after the exercise of due diligence was no within the knowledge of the petitioner or could not be produced by him at the time when the decree/order was passed, (ii) some mistake or error apparent on the face of the record, and (iii) for any other sufficient reasons. None of these grounds are available to the petitioner rather the review petitions have been filed by the petitioner challenging the merit of the order which is only permissible by way of appeal. In the garb of challenging the order passed by the Division Bench the petitioner has filed these objections through review applications which calls for no interference. These review applications are dismissed.

S.N. Hussain, J.

9. I agree.

 