IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8252 of 2026

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Bihar State Power (Holding) Company Limited, a Government Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Vidyut Bhawan, Bailey Road, Patna 800001, through its Manager Finance namely Arvind Kumar, aged about 53 years, Son of Ramanand Mishra, permanent resident of New Colony, Shubhankarpur, P.O. Darbhanga, P.S. Darbhanga Town, District Darbhanga, PIN Code 846 006, Bihar.

... ... Petitioner

Versus

1. The Income Tax Officer, Ward-2(1), Patna having office at Lok Nayak Bhawan, Dak Bungalow Road, Patna - 800001.
2. The Principal Chief Commissioner of Income Tax, Bihar and Jharkhand Region, Central Revenue Building, Bir Chand Patel Path, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Rastogi, Senior Advocate Mr. Anubhav Khowala, Advocate Ms. Smriti Singh, Advocate
For the Respondents	:	Mrs. Archana Sinha @ Archana Shahi, Senior SC Ms. Rani Singh, Advocate Mr. Manish Kumar Parwan, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 22-09-2026

Heard Mr. Ajay Kumar Rastogi, learned Senior Counsel assisted by Mr. Anubhav Khowala, learned counsel for the petitioner and Ms. Archana Sinha, learned Senior Standing Counsel for the Department of Income Tax.

2. The petitioner in the present writ application has prayed for the following reliefs:-

"i) For issuance of an appropriate writ, order or direction the nature of Mandamus directing the Respondent No.1 to consider and dispose of the Petitioner's rectification application dated 02.04.2025 filed vide letter no. 1011 under Section 154 of the Income Tax Act, 1961 ("the Act") for Assessment Year 2012-13 ("the Relevant A.Y.") in accordance with law and after considering the law laid down by the Hon'ble Supreme Court in CIT v. Maruti Suzuki India Ltd. reported in (2020) 416 ITR 613 (SC) and CBDT Circular No.68 dated 17.11.1971.

Copy of the rectification application filed by the Petitioner vide letter no. 1011 dated 02.04.2025 is annexed and marked as Annexure-Pl.

ii) For issuance of an appropriate writ, order or direction restraining the Respondents from taking any coercive steps pursuant to Notice dated 08.05.2026 ("Recovery Notice") issued by Respondent No.1 directing payment of outstanding demand of Rs.29,23,94,340/- for the Relevant A.Y., till consideration of the rectification application filed by the Petitioner under Section 154 of the Act and/or till the next effective date of hearing of the Petitioner's appeal before the learned Income Tax Appellate Tribunal, Patna Bench, Patna ("Ld. ITAT") in ITA No. 14/Pat/2023.

Copy of the Notice dated 08.05.2026 issued by Respondent No.1 is annexed and marked as Annexure-P2.

iii) For issuance of an appropriate writ, order or direction taking note of the substantial jurisdictional issue arising from continuation of proceedings in the name of erstwhile Bihar State

> Electricity Board ("BSEB") after its dissolution w.e.f. 01.11.2012, which issue is presently pending consideration before the learned Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No.14/Pat/2023 as also before Respondent No.1 by way of rectification application dated 02.04.2025 filed vide letter no.1011 under Section 154 of the Act.
> iv) For issuance of any other appropriate writ, order, or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. In course of his submissions before this Court, Mr. Rastogi, learned Senior Counsel for the petitioner submits that the order under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as the 'I.T. Act') dated 10.02.2022 pertaining to the assessment year 2012-13 has been made in the name of M/s Bihar State Electricity Board.

4. Referring to the notification of the Department of Energy, Government of Bihar dated 30.10.2012 as contained in Annexure 'P3', learned Senior Counsel submits that by virtue of the power conferred by Sections 131, 133 and other applicable provisions of the Electricity Act, 2003, the Government of Bihar has made a scheme whereunder the properties, interests, rights, assets, liabilities, obligations, proceedings and personnel of the Bihar State Electricity Board have been transferred to the transferees. The transferees are defined under paragraph '2 (p)' of the said scheme. The Bihar State Power (Holding) Company Limited, Bihar State Power Generation Company Limited, Bihar State Power Transmission Company Limited, South Bihar Power Distribution Company Limited, North Bihar Power Distribution Company Limited are the transferees.

5. Learned Senior Counsel submits on the strength of the judgment of the Hon'ble Supreme Court in the case of **Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki (India) Limited** reported in **(2020) 18 SCC 331** that the assessment order passed by the Assessing Officer in the name of a non-existent entity would be *void ab initio*.

6. It is submitted that the order under Section 154 of the I.T. Act dated 10.02.2022 is under challenge before the learned Income Tax Appellate Tribunal. Earlier, the learned Tribunal had heard the matter but because the judgment could not be delivered within a period of 90 days, the case was released vide order dated 27^{th} February 2026. It is submitted that the hearing of the appeal has again been taken on and it was lastly heard on 25^{th} August 2026.

7. It is submitted that, in the meantime, as advised, the petitioner has filed a petition under Section 154 for the rectification of mistake in assessment order dated 02.02.2015, initiation of proceeding under Section 147/148 vide notice dated 30.03.2017, assessment order under Section 143(3)/147 dated 30.12.2017, order under Section 271(1)(c) dated 15.06.2018 and order under Section 154 dated 24.01.2020, notices dated 28.06.2012, 17.08.2021 and 06.10.2021 under Section 154 and order under Section 154 dated 10.02.2022 for the assessment year 2012-13. The main contention of the petitioner before the Income Tax Officer is that the aforementioned orders have been passed and the notices issued were in the name of the non-existent entity.

8. Prayer of learned Senior Counsel for the appellant is to issue a direction to the Income Tax Officer Ward-2(1), Patna to consider the petition dated 02.04.2025 (Annexure ‘P1’).

9. In course of hearing of the matter, this Court has been informed that the issue raised in the rectification application vide Annexure ‘P1’ have also been raised before the learned Income Tax Appellate Tribunal and the same is pending consideration with other issues raised by the petitioner.

10. It is, however, submitted that during pendency of the matter before the Appellate Tribunal, the petitioner is getting demand notices and coercive action have been threatened. In this connection, attention of this Court has been drawn towards the request for payment of outstanding tax demand vide Annexure 'P2'. There is stipulation in Annexure 'P2' that failure to comply will invite necessary action as per the I.T. Act. It is submitted that even recently, the petitioner has brought to the notice of the Income Tax Officer vide Letter No. 1106 dated 11.05.2026 certain directions of the Central Board of Direct Taxes (CBDT) and has requested for passing the rectification orders.

11. The writ application has been opposed by Ms. Archana Sinha, learned Senior Standing Counsel for the Department of Income Tax. It is submitted that the issues being raised before this Court by the petitioner are pending consideration before the learned Income Tax Appellate Tribunal. The learned Tribunal is *in seisin* of the matter, therefore, at this stage, if the writ application is entertained and an order is passed, it would amount to usurping the role of the learned Tribunal which is not required.

12. So far as the submission of learned Senior Counsel for the petitioner that coercive action is being taken to realise the demand is concerned, learned Senior Standing Counsel for the Department has submitted that the petitioner may apply for an appropriate interim order before the learned Tribunal and also before the Assessing Officer.

13. To this, Mr. Rastogi, learned Senior Counsel has responded saying that there is already an application for interim order before the Assessing Officer but that has not been considered and in the meantime, coercive steps are being taken.

14. Having heard learned Senior Counsel for the parties, this Court is of the considered opinion that sitting in its extraordinary writ jurisdiction, this Court need not entertain a challenge to the rectification order on the ground stated in Annexure 'P1' or in Annexure 'P12' at this stage. It is an admitted position that the legality and validity of the assessment order (Annexure 'P6') dated 10.02.2022 is pending consideration before the learned Income Tax Appellate Tribunal. Any observation of this Court at this stage is likely to interfere with the independent assessment and opinion of the learned Tribunal, therefore, this Court would refrain from doing so.

15. So far as the threat of taking of coercive action against the petitioner for release of the demand is concerned, this Court directs the Assessing Officer/Income Tax Appellate Tribunal, as the case may be, to consider the application of the petitioner for an interim order within a period of six weeks from the date of receipt/production of a copy of this judgment. In the meantime, no coercive action, in any form, shall be taken against the petitioner.

16. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	22.09.2026
Transmission Date	