IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8475 of 2017

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Jawahar Lal Jha Son of late Ram Udar Jha resident of Imlichatti, Amgola, Muzzafarpur at Present residing at 1st Floor Sita Bhawan P.O. GPo P.S. Gandhi Maidan District-Patna.

... ... Petitioner/s

Versus

1. Commissioner of Income Tax Having Its office At Bela Industrial Area, Muzaffarpur
2. Income Tax Officer, Ward 1(1), Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Adv.

For the Respondent/s : Mr. Rishi Raj Sinha. Sr. Counsel, Income Tax
Miss. Shilpi Keshri, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-11-2017

Challenging a show cause notice issued to the petitioner in the matter of reopening of assessment which has escaped assessment under Section 148 of the Income Tax Act, this writ petition has been filed and primarily challenge to the show cause notice under Section 148 is made on the ground that after expiry of the period of four years from the relevant assessment year, unless for reasons to be recorded in writing, approval of the Principal Chief Commissioner or Chief Commissioner is obtained, the assessment is impermissible. However, from the counter affidavit filed by the respondents, it is seen that there are serious disputes with regard to amount escaping assessment and the provisions of law which permit reopening of assessment after six years in case the amount is beyond certain amount,i.e. Rs.20,00,000/-.

In this case, the issue of limitation is not so simple as canvassed by the petitioner as can be decided in a writ petition. On the contrary, the issue of limitation involved in the matter is also co-related to the quantum of income which has escaped assessment, so also the question as to whether any return itself was filed. All these being a mixed question of law and fact and the fact that only show cause notice has been issued to the petitioner, we are not inclined to make indulgence into the matter.

The petitioner may raise all objections as are permissible under law before the authority which has issued the notice and we direct the authority to first consider the objections of the petitioner with regard to maintainability of the show cause notice and thereafter to proceed in the matter in accordance with.

With the aforesaid, this petition stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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