

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.20919 of 2021

M/s. Ambika Iron and Steel Pvt. Ltd.	....	Petitioner
-versus-		
Principal Commissioner of Income Tax and Others	....	Opposite Parties

W.P.(C) No.21480 of 2021

Sunita Dalmia	....	Petitioner
-versus-		
Principal Commissioner of Income Tax and Another	....	Opposite Parties

W.P.(C) No.24589 of 2021

Niru Agarwal	....	Petitioner
-versus-		
Principal Commissioner of Income Tax and Another	....	Opposite Parties

W.P.(C) No.39915 of 2021

SS Mining and Infra Pvt. Ltd., Keonjhar	....	Petitioner
-versus-		
National Faceless Assessment Centre, Delhi and Others	....	Opposite Parties

W.P.(C) No.41242 of 2021

Bidesh Baran Roy	....	Petitioner
-versus-		
Joint Commissioner of Income Tax, Rourkela and Another	....	Opposite Parties

W.P.(C) No.41282 of 2021

Bidesh Baran Roy	....	Petitioner
-versus-		
Principal Commissioner of Income Tax and Others	....	Opposite Parties

W.P.(C) No.1782 of 2022

M/s. The Torque **Petitioner**

-versus-

**Joint Commissioner of Income Tax,
Range I and Others** **Opposite Parties**

W.P.(C) No.1786 of 2022

M/s. The Torque **Petitioner**

-versus-

**Joint Commissioner of Income Tax,
Range I and Others** **Opposite Parties**

W.P.(C) No.41826 of 2021

M/s. Ruby Associates Pvt. Ltd. **Petitioner**

-versus-

**Central Board of Direct Taxes and
Others** **Opposite Parties**

W.P.(C) No.30489 of 2021

Praveen Kumar Pondrati **Petitioner**

-versus-

**The Principal Chief Commissioner of
Income Tax, Odisha and Others** **Opposite Parties**

W.P.(C) No.30499 of 2021

**Bahubalendra Joshwant Narayan
Deo** **Petitioner**

-versus-

**The Principal Chief Commissioner of
Income Tax, Odisha and Others** **Opposite Parties**

W.P.(C) No.26373 of 2021

M/s. Wazir Steel Industries **Petitioner**

-versus-

**The Income Tax Officer, Ward 1,
Cuttack and Others** **Opposite Parties**

W.P.(C) No.28631 of 2021

Savita Jain **Petitioner**

-versus-

**The Deputy Commissioner of Income
Tax, Circle 1(1), Cuttack and Others** **Opposite Parties**

W.P.(C) No.28633 of 2021

Yogesh Kumar Jain ***Petitioner***

-versus-

The Deputy Commissioner of Income Tax, Circle 1(1), Cuttack and Others ***Opposite Parties***

W.P.(C) No.28635 of 2021

Mohanlal Jain ***Petitioner***

-versus-

The Income Tax Officer, Ward 1(1), Cuttack and Others ***Opposite Parties***

W.P.(C) No.28897 of 2021

Savita Jain ***Petitioner***

-versus-

The Deputy Commissioner of Income Tax, Circle 1, Cuttack and Others ***Opposite Parties***

W.P.(C) No.28899 of 2021

Mohanlal Jain ***Petitioner***

-versus-

Income Tax Officer, Ward 1, Cuttack ***Opposite Parties***

W.P.(C) No.34831 of 2021

Sudhir Kumar Agarwal ***Petitioner***

-versus-

DCIT Circle 1(1), Cuttack and Another ***Opposite Parties***

W.P.(C) No.34832 of 2021

Ratan Kumar Agarwal ***Petitioner***

-versus-

DCIT Circle 1(1), Cuttack and Another ***Opposite Parties***

Advocates appeared by video conferencing mode:

For Petitioner(s) : Mr. Sidhartha Ray, Advocate
Mr. R.P. Kar, Advocate
Mr. J.M. Pattanaik, Advocate
Mr. Basudev Panda, Sr. Advocate

Mrs. Kananbala Roychoudhury
Advocate

For Opposite Parties : Mr. S.S. Mohapatra
Senior Standing Counsel
Mr. T.K. Satapathy, Sr. Standing Counsel
Mr. R.S. Chimanka, Sr. Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE S. MISHRA

Order No.

ORDER
24.01.2022

04. 1. These matters are taken by video conferencing mode.
2. In each of these cases, the challenges to a notice issued by the Income Tax Department (hereinafter 'Department') under Section 148 of the Income Tax Act, 1961 (IT Act) as it stood prior to the amendment by the Finance Act of 2021 with effect from 1st April, 2021. In other words, in each of these cases, the notice under Section 148 of the IT Act has been issued prior to 1st April, 2021. In many of them, in fact, the date of the notice is 31st March, 2021.
3. In each of these cases, the relevant assessment year (AY) in relation to which such notice has been issued is more than four years prior to the date of the reopening i.e. it is beyond four years from the expiry of the AY in question and is clearly therefore, time barred in terms of the first proviso to Section 147 of the IT Act.

4. The stand of the Revenue that in view of the notifications issued by the Central Government in terms of the provisions of the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the said time limits stood extended is clearly untenable as those notifications were issued to deal with the situation arising from the amendment to the IT Act by the Finance Act, 2021 with effect from 1st April, 2021 whereas in these cases the notices were issued prior to 1st April, 2021.

5. This Court had an occasion in similar circumstances to quash an identical notice under Section 148 of the IT Act by its order dated 20th November, 2019 in W.P.(C) No.7618 of 2009 and which order stood confirmed by this Court by the dismissal of the Department's review petition i.e. RVWPET No.188 of 2020 by the order dated 3rd December, 2021 which reads as under:

“1. Although the point made by the Revenue in this review petition is that this Court in its order dated 20th November, 2019 erred in drawing a distinction between an Additional Commissioner and Commissioner in terms of their authority, the point involved was that for the purpose of Section 151(1) of the Income Tax Act, 1961 since the reopening of the assessment was beyond 4 years, it had to have the prior approval of the Commissioner of Income Tax, and there was no such approval in the present case.

2. Consequently, no ground is made out for reviewing the order dated 20th November, 2019 in W.P.(C) No.7618 of 2009.

3. The review petition is dismissed.”

6. Indeed in the notice issued under Section 148 of the IT Act on 31st March, 2021 which has been challenged in W.P.(C) No.41826 of 2021 it has been stated that the notices had been issued after obtaining “necessary satisfaction of the Jt. CIT Range-I, Cuttack” whereas the Officer authorized to record the necessary satisfaction had to be the Chief Commissioner of Income Tax / Commissioner of Income Tax.

7. For all the aforesaid reasons, in each of the above cases, the impugned notice under Section 148 of the IT Act is hereby quashed. The writ petitions are allowed, but in the circumstances, with no order as to costs.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court’s website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court’s Notice No.4587, dated 25th March 2020, modified by Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

(Dr. S. Muralidhar)
Chief Justice

(S. Mishra)
Judge