IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7517 of 2023

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Vimlendu Vimal Son of Shri Surendra Prasad Resident of South Church Road, Healing Touch Hospital, Behind Kochar Petrol Pump, Gaya Bihar-823001.

... ... Petitioner/s

Versus

ITO, Ward 3(1), Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate
For the Respondent/s	:	Mr. Archana Sinha @ Archana Shahi, Sr. SC, Income Tax

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-08-2023

The petitioner, an assessee under the Income Tax Act, 1961, is aggrieved with the order issued under Section 148A(d) of the Income Tax Act, 1961; on the ground of limitation having expired for any proceeding under Section 148 to be initiated. The assessment year is 2019-20 and the date of order passed under clause(d) of Section 148A is 21.04.2023.

2. We have heard Sri. D.V. Pathy, the learned counsel for the petitioner and Smt. Archana Sinha, learned Senior Standing Counsel appearing for the Department.

3. Section 148 deals with issuance of notice where income has escaped assessment. It mandates that before making re-assessment on or re-computation under Section 148, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as maybe specified in the notice, return of his income or the income of any other person in support of which he is assessable under the Act during the previous year corresponding to the relevant assessment year.

4. Section 149 provides for the time limit for the notice to be issued under Section 148. Under Clause(a) of sub-section (1), 3 years time is provided from the end of the relevant assessment year unless the case falls under clause(b). Insofar as the clause(b) is concerned, the limitation is 10 years from the end of the relevant assessment year, provided the escaped assessment amounts to or is likely to amount to Rs. 50 lakh or more. In the present case, the order under clause (b) of Section 148A itself is passed on 21.04.2023 after the expiry of the 3 year period and the total amounts likely to have escaped assessment is indicated as Rs. 18,25,500/-.

5. Learned Senior Standing Counsel for the Department argued that in fact Annexure-1 is the initiation of the proceedings, which was on 31.03.2023 on introduction of the faceless assessment by way of Section 148A of the Income Tax Act. There is requirement for issuance of notice under Section 148A(a) and an order under clause(d) prior to the notice issued under Section 148A; which provision (Section 148A) is introduced newly under the I.T. Act. The notice under Section 148A is issued within a 3 year period, is the contention.

6. It is to be noticed that Section 148A was brought in by the Finance Act, 2021 with effect from 01.04.2021 when Section 148 also stood substituted. Section 148A deals with the inquiry and the opportunity being provided before issuance of notice under Section 148. However, under Section 149, which also stood substituted by Finance Act, 2021, the limitation provided is for the notice under Section 148 and not of inquiry or opportunity for hearing under Section 148A.

7. The relevant assessment year is 2019-20 and 3 years end on 31.03.2023. There is no notice issued under

Section 148 as on date. The proceedings, hence, cannot be continued and we find Annexure-3 order under Section 148(d) to be not enabling the Department to proceed under Section 148.

8. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

sharun/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	05.09.2023
Transmission Date	