IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7568 of 2024

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Salik Khan son of Iliyas Khan, resident of Ward No. 6, Dholbaja, P.S. Forbesganj, District-Araria, Bihar-854318.

... ... Petitioner/s

Versus

1. Assessment Unit, Income Tax Department having its office at 6th Floor, Mayur Bhawan, Connaught Circus, New Delhi 110001.
2. Income Tax Officer, Ward 3(1), Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate
For the Respondent/s	:	Ms.Archana Sinha @ Archana Shahi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 06-05-2024

The petitioner is before this Court alleging that the present proceeding under Section 148 of the Income Tax Act, 1961 (for brevity, Act) is hit by limitation.

2. Learned Counsel for the petitioner submits that the issue is already covered by two judgments (CWJC No. 7517 of 2023 and CWJC No. 7573 of 2023) of a Division Bench of this Court produced as Annexure P-12 series.

3. Learned Senior Standing Counsel for the Income Tax Department however submits that there is substantial difference in the above case since notice was issued within four years, as was provided before the amendment on 01.04.2021.

The Hon'ble Supreme Court has also extended the time for issuance of notices especially since the Department had *bona fide* not noticed the amendment brought on 01.04.2021, [(Annexure P-11-judgment), ***Union of India Vs. Ashish Agrawal*** reported in ***(2023) 1 SCC 617***].

4. On facts it is to be noticed that the notice under Section 148 of the Act was first issued by Annexure P-1 on 30.06.2021 for the Assessment Year 2017-18 as Section 148 stood before the amendment. There was a four-year period provided from the last date of the relevant assessment year and the four year period would have expired only on 31.03.2022, while the notice was issued on 30.06.2021. Later to that a notice was issued only as per Annexure P-4 which is dated 26.08.2022. The contention of the Department is also that the notice dated 26.08.2022 was under Section 148 of the Act and before that under Section 148A, a notice was issued on 23.6.2022.

5. As far as the notice under Section 148 and Section 148A is concerned, the issue is covered by the judgments of this Court referred to above. It was categorically found that Section 149 provides for a time-limit for notice to be issued under Section 148 which under clause (a) of Sub-section (1) is three years. A limitation of 10 years is provided only for escaped

assessment where the tax escaped is more than Rs. 50 Lakhs. In the present case admittedly the total assessment is only of Rs. 31 lakhs and the demand now raised is slightly more than Rs. 19 lakhs. Insofar as Section 148A it was brought into the Act by Finance Act, 2021 with effect from 01.04.2021 when Section 148 also stood substituted. Section 148A deals with the enquiry and opportunity provided before issuance of notice under Section 148 but under the very same Finance Act, 2021. The limitation period provided under Section 149 was also amended and it was brought down to three years where the escaped assessment is of less than Rs. 50 lakhs.

6. The Hon'ble Supreme Court in ***Union of India Vs. Ashish Agrawal [(2023) 1 SCC 617]*** dealt with the issue of notices, not in consonance with the amendments brought about by Finance Act, 2021. It was noticed that the Revenue has issued approximately 9000 re-assessment notices to the respective assessees, post 01.04.2021, but under the erstwhile Sections 148 to 151, by relying on the Explanations in the notifications dated 31.03.2021 and 27.04.2021. It was held that the new provisions substituted by the Finance Act, 2021 were remedial and benevolent in nature; substituted with a specific aim and object to protect the rights and interest of the assessees.

The same was also in public interest and by virtue of the judgment of various High Courts, there would be no re-assessment proceedings if the benevolent provisions of Finance Act, 2021 is applied across the board. It was only in such circumstances that the judgments in appeal before the Hon'ble Supreme Court were modified and substituted, specifically providing for the Assessing Officers who had issued notices post 01.04.2021, without following the procedure under Section 148A to provide the respective assesssees information and material relied upon by the Revenue within thirty days so that the assessees can reply to the show cause notices within two weeks thereafter.

7. The judgment of the Hon'ble Supreme Court is dated 04.05.2022 and in that circumstances every noticee/assessee should have been supplied the information and material relied upon by the Revenue within thirty days. Here the notice under Section 148A was issued on 23.06.2022 after almost a year from the date provided by the Hon'ble Supreme Court.

8. In the above circumstances, we do not find a way to permit the re-assessment under Section 148 to be continued. We allow the writ petition interfering with the orders passed beyond

the period of limitation provided and the extended period as provided by the Hon'ble Supreme Court in the cited judgment.

9. It goes without saying that demand notices issued pursuant to the assessment order stands quashed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
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