IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2317 of 2025

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Vandana Kumari @ Bandana Kumari, W/o Shri Laxmi Kumar, Kashipur, R.N.A.R. College Road Near BED College Kashipur, P.O., P.S. and District- Samastipur- 848101 (Bihar).

... ... Petitioner

Versus

1. Principal Commissioner of Income Tax-1, Patna.
2. Income Tax Officer, Ward-3 (3), Samastipur.
3. Assessment Unit, National Faceless Assessment Centre, Delhi.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Jha, Advocate Mr. Sanjeev Kumar, Advocate Mr. Aman Raja, Advocate
For the Respondents	:	Ms. Archana Sinha @ Archana Shahi, Senior SC Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 06-08-2025

Heard learned counsel for the petitioner and learned Senior Standing Counsel for the Department of Income Tax.

2. The petitioner in this case is aggrieved by and dissatisfied with the order issuing notice to the petitioner under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act of 1961'). The reliefs prayed in the writ application are being reproduced hereunder:-

> "(a) For issuance of appropriate writ/direction(s) to prevent the respondents from exceeding its jurisdiction and/or acting contrary to the rule of natural justice, where the defect

of jurisdiction is apparent on the face of the proceedings and/or there is an abuse of power.

b. For issuance of writ of Certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the notice issued by the Respondent No. 2 under the section 148 of Income-tax Act, 1961 (here-in-after called "the Act") dated 28/03/2021 as the notice issued by the Respondent No. 2 is wholly illegal and without jurisdiction in as much as the same has been issued beyond the period of limitation prescribed under the section 149 of the Act.

c. For issuance of writ of Certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the notice issued by the Respondent No. 2 under the section 148 of the Act dated 28/03/2021 as the sanction required to be accorded before the issuance of the notice under section 151 of the Act is conspicuously absent.

d. For issuing the appropriate order, direction or writ in the nature of Certiorari for quashing the Order of Assessment and consequential notice of demand under the section 156 of the Act as the completion of the proceedings under section 147 read with section 144 read with section 144B of the Act in the absence of the mandatory statutory notice under section 143(2) of the Act is illegal and beyond the jurisdiction of

Respondent No. 3.

e. For issuing the appropriate order, direction or writ in the nature of Certiorari for quashing the Order of Assessment and consequential notice of demand under the section 156 of the Act as the passing of the order under 144 instead of 143(3) or the Act is bad in law in as much as the impugned order is beyond the purview of the conditions stipulated under section 144 of the Act.

f. For issuing the appropriate order, direction or writ in the nature of Certiorari for quashing the Order of Penalty passed under section 271F dated 15/09/2022 as the order of assessment in itself is passed after erroneous assumption of jurisdiction by the Ld. Assessing Officer.

g. For issuing the appropriate order, direction or writ in the nature of Certiorari for quashing the Order of Penalty passed under section 271B dated 23/09/2022 as the order of assessment in itself is passed after erroneous assumption of jurisdiction by the Ld. Assessing Officer.

h. For issuing the appropriate order, direction or writ in the nature of Certiorari for quashing the Order of Penalty passed under section 271(1)(c) dated 23/09/2022 as the order of assessment in itself is passed after erroneous assumption of jurisdiction by the Ld. Assessing Officer.

> i. For issuance of other writ/direction(s) while the petitioner may in the fact and circumstances of the case to be found entitled to.
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> j. For grant such other relief(s) as deem fit and proper by issuing an appropriate writ(s), rule(s) or direction(s) as deem fit and proper."

3. It is the case of the petitioner that the return of the petitioner for the assessment year 2013-14 was selected for scrutiny. A notice under Section 148 of the Act of 1961 was issued on 28.03.2021 and the case of the petitioner was reopened on the basis of the reason that as per the information available on the system of the Department, the petitioner had deposited cash of Rs.2,88,85,705/- in her savings bank account during the relevant year.

4. It is stated that subsequent to the notice under Section 148, a notice under sub-section (1) of Section 142 of the Act of 1961 was issued of 30.06.2021 by Respondent No. 2 seeking some information pertaining to the income of the petitioner for the relevant year along with the evidences. It is the submission of learned counsel for the petitioner that there had been some delay in accessing the e-mail, therefore, the petitioner could not respond to the notices issued by the Department but as soon as the petitioner came to know about the initiation of the reassessment proceeding, she immediately filed the due replies. The petitioner filed her return of income for the relevant year on 28.08.2021 vide acknowledgment as contained in Annexure ‘P/3’ to the writ petition.

5. It is further case of the petitioner that a further notice under Section 142(1) of the Act of 1961 was issued on 31.08.2021 seeking compliance of the previous notice issued under sub-section (1) of Section 142 but since the petitioner did not respond to the said notice, it was followed by another notice dated 04.02.2022. It is the specific case of the petitioner that the notices issued subsequently which are Annexures ‘P/4’ and ‘P/5’ respectively called for filing of the return under Section 148 of the Act despite the fact that the return of the income in response to the notice under Section 148 of the Act of 1961 had already been filed on 28.08.2021.

6. This writ application was earlier opposed by learned Senior Standing Counsel for the Department.

7. After hearing learned counsel for the petitioner and learned Senior Standing Counsel for the Department on 30.07.2025, this Court passed the following order:-

> “Heard learned counsel for the petitioner and learned Senior Standing Counsel for the Department of Income Tax.
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> **2.** The petitioner is aggrieved by and

dissatisfied with the order of assessment as contained in the Annexure 'P/11' to the writ application. It has been assailed on the ground that the impugned order suffers from jurisdictional error.

3. Learned counsel for the petitioner submits that in paragraphs '3' and '5' of the impugned order, the Assessing Officer has recorded that "in response to the notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act of 1961'), the assessee has not filed her return of income for the assessment year 2013-14" but this is not a correct fact.

4. It is submitted that the notice under Section 148(1) of the Act of 1961 was issued on 28.03.2021 requiring the petitioner to file her return within a period of 30 days. The petitioner did not file her return within the period of 30 days but well before the passing of the assessment order, the petitioner had already filed her return on 28.08.2021, therefore, it would be taken as a return under Section 139(4) of the Act of 1961.

5. It is submitted that in such circumstance, a notice under sub-section (2) of Section 143 of the Act of 1961 would be mandatory. If no such notice has been issued, the Assessing Officer cannot assume jurisdiction. In his submission, it would be a case of lack of inherent jurisdiction on the part of the Assessing Officer.

6. Learned counsel has relied upon the judgments of this Court in the case of **Chand Bihari Agrawal Vs. Commissioner of Income Tax, Central and Another** in **Miscellaneous Appeal No. 239 of 2011** which has been relied upon by this Court in the case of **Commissioner of**

Income Tax-11 and Another Vs. Nagendra Prasad in **Miscellaneous Appeal No. 662 of 2014**. The basic judgment on which **Chand Bihari Agrawal** (supra) and **Nagendra Prasad** (supra) have formed its opinion is the judgment of the Hon'ble Supreme Court in the case of **Assistant Commissioner of Income-Tax Vs. Hotel Blue Moon** reported in **(2010) 321 ITR 362 (SC)**. Learned counsel has also relied upon a Division Bench judgment of the Hon'ble Delhi High Court in the case of **Shaily Juneja Vs. Assistant Commissioner of Income Tax Circle 34-1 and Another** reported in **2024 DHC 6774-DB**. On these grounds, prayer has been made to set aside the impugned order.

7. On the other hand, Ms. Archana Sinha, learned Senior Standing Counsel for the Department submits that the **Hotel Blue Moon** judgment came in the year 2010 which was prior to insertion of the proviso to sub-section (2) of Section 143 of the Act of 1961. It is submitted that on a reading of the proviso to sub-section (2) of Section 148 of the Act of 1961, it would appear that any return of income required under sub-section (1) furnished after the expiry of the period specified in the notice under said sub-section shall not deem to be a return under Section 139 of the Act of 1961.

8. Learned counsel for the petitioner has, however, contested this submission of learned Senior Standing Counsel for the Department as according to him, proviso to sub-section (2) of Section 148 was inserted only vide the Finance Act 2023 with effect from 01.04.2023 whereas the present matter pertains to the year 2020-2021 as the notice was issued only on 28.03.2021.

> **9.** At this stage, learned Senior Standing Counsel for the Department prays for a short adjournment to enable her to get clarity on the issues with regard to the proviso to sub-section (2) of Section 143 as well as proviso to sub-section (2) of Section 148 of the Act of 1961.
> **10.** Let this matter be listed on 05.08.2025 under the same heading."

8. Today, when the writ application has been taken up for consideration, learned Senior Standing Counsel for the Department has placed before us the proviso to sub-section 2 of Section 143 which was existing in the statute book during the relevant year. We reproduce sub-section (2) of Section 143 with proviso herein for a ready reference:-

> "(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:
> Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished."

9. Learned Senior Standing Counsel has fairly submitted before this Court that in this case, the proviso to sub-section (2) of Section 143 would not be applicable. The petitioner had already submitted her return on 28.08.2021 i.e. within five months from the date of issuance of notice under Section 148 (Annexure 'P/1' to the writ application), in such circumstance, a notice under sub-section (2) of Section 143 of the Act of 1961 was mandatory. It is submitted that admittedly in this case, no notice under sub-section (2) of Section 143 of the Act of 1961 has ever been issued much less served upon the petitioner.

10. In its order dated 30.07.2025, this Court has taken note of the judicial pronouncements on the subject. The stand taken today on behalf of the Department would lead to conclude that the ratio of the judgment of the Hon'ble Supreme Court in the case of **Assistant Commissioner of Income-Tax Vs. Hotel Blue Moon** reported in **(2010) 321 ITR 362 (SC)** would be fully applicable in this case.

11. In result, we are of the opinion that the impugned orders are liable to be set aside for non-observance of the mandatory provision of sub-section (2) of Section 143 of the Act of 1961. Since the writ application succeeds on this solitary ground, this Court need not go into the other contentions raised on behalf of the petitioner.

12. The impugned orders are set aside. The writ application is allowed.

13. There will, however, be no cost.

(Rajeev Ranjan Prasad, J)

(Ajit Kumar, J)

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