

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5202 of 2024

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Ankit Agarwal son of Shri Ganesh Agarwal, presently residing at Flat No. 413, Athena Apartment, Jai Singh Highway, P.S. Bani Park, District Jaipur (Rajasthan).

... .. Petitioner

Versus

1. The Principal Chief Commissioner of Income Tax Bihar and Jharkhand, 1st Floor, C.R. Building, Beerchand Patel Marg, Patna.
2. The Chief Commissioner of Income Tax, Bihar and Jharkhand, 1st Floor, C.R. Building, Beerchand Patel Marg, Patna.
3. The Commissioner of Income Tax, Muzaffarpur, Atithi Bhavan, Sahu Road, Muzaffarpur.
4. The Additional/Joint Commissioner of Income Tax, Range-II, Muzaffarpur Chandralok Bhavan, Chandralok Chowk, Naya Tola, Muzaffarpur.
5. The Income Tax Officer, Ward 2(5) Sitamarhi, Chandrakala Bhavan, Bhawdevpur, Sitamarhi.
6. The Assessing Authority, National Faceless Assessment Centre, Income Tax Department, New Delhi.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Vishal Kumar, Advocate Mr. Akshat Agarwal, Advocate Mr. Lokesh Kumar, Advocate Mr. Vikash Khanna, Advocate
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Sr. SC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-04-2025

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

2. This writ application has been filed seeking the following reliefs:-



“(i) For quashing the Show Cause Notice dated 29.02.2024 bearing DIN: ITBA/ AST/F/144(FCM)/2023-24/1061726288(1) issued by the Respondent Department for being issued without jurisdiction as the very initiation of the impugned re-assessment proceeding was initiated on admitted false premise by issuing false notice under Section 148A(b) of the Income Tax Act, 1961;

(ii) For quashing the order dated 06.04.2022 bearing DIN and ITBA/AFT/F/148A/2022-24/Notice No. 1042559776 (1) passed under Section 148A(d) of the Income Tax Act, 1961 as the same has been passed on false premise that the petitioner is a non-filer of return and has escaped assessment of income for the Assessment Year 2015-16 whereas in the impugned Show Cause Notice it has been admitted that the petitioner had filed its Income Tax Return for the Assessment Year 2015-16;

(iii) For setting aside the entire re-assessment proceeding and inquiry conducted under Section 142 of the Income Tax Act, 1971 with respect to Assessment Year 2015-16 as the same had been initiated on the basis of the impugned order dated 06.04.2022 passed under Section 148A(d) of the Income Tax Act, 1961 which is per se illegal, arbitrary and bad in law;

(iv) For a declaration that if the impugned order dated 06.04.2022 passed under Section 148A(d) of the Income Tax Act, 1961 would not have been passed for being time barred in terms of Section 149 of the Income Tax Act, 1961 if the Respondent Department would had issued notice alleging wrong claim of exempted income under the head of long term capital gain of an amount of Rs. 25,90,000/- as the limitation for issuing notice is such matters are 3 years;

(v) For a declaration that the Respondent Department issued a notice under Section 148A(b) of the Income Tax Act, 1961 on false premise alleging the Petitioner to be a



non-filer of Return and further alleging escaped assessment for the Assessment Year 2015-16 and non-payment of tax on income of Rs. 1,04,90,899/- with sole intention to take benefit of the longer period of limitation prescribed for issuance of notice under Section 149 of the Income Tax Act, 1961 as, if the Notice under Section 148A(b) would have been issued for the alleged claim of bogus Long Term Capital Gain to the tune of Rs. 25,90,000/- after scrutinizing the Income Tax Return filed by the Petitioner for the Assessment Year 2015-16, the same would had been hopelessly time barred as the limitation for issuing Notice under Section 149 of the Income Tax Act, 1961 with respect to amount below Rs.50,00,000/- is 3 years; and/or for any other order/orders as your honour may deem fit in the facts and the circumstances.”

Brief facts of the case

3. Petitioner is a citizen of India who filed his Income Tax Return before the respondent Income Tax Officer, Ward 2(4), Sitamarhi vide PAN: AITPA 5484A for the assessment year 2015-16. He is running a proprietary concern in the name and style of M/s Subhlaxmi Dal Mill situated at Hajarimal Road, Bairgania, Sitamarhi and M/s Agrawal Traders situated at Rajdhani Krishi Upaj Mandi, Sikkar Road, Kukarkheda, Jaipur, Kukarkheda.

4. It is the case of the petitioner that he filed his Income Tax Return for the Assessment Year 2015-16 (Financial Year 2014-15) on 30.03.2016 wherein on the basis of the computation of its return, the petitioner had disclosed the total income to the tune of



Rs.7,99,950/- upon which he paid tax to the tune of Rs. 96,345/-. He had claimed exempted tax to the tune of Rs. 25,04,808/- under 'Other Head' as Long-Term Capital Gain received from sale of shares.

5. The Profit & Loss Account, Balance Sheet and Books of Accounts of the petitioner's proprietaryship firm was audited by a Chartered Accountant who issued Audit Report under Section 44AB of the Income Tax Act, 1961 (hereinafter referred to as the 'Act of 1961'). A copy of the Income Tax Return Acknowledgment and the audit report are enclosed with the writ application as Annexure 'P/1' and 'P/2' respectively.

6. The grievance of the petitioner is that after completion of six years, the petitioner was served with impugned order purportedly passed under Section 148A(d) of the Act of 1961 on 06.04.2022 with respect to Assessment Year 2015-16. A copy of the order dated 06.04.2022 is Annexure 'P/3' to the writ application.

Submissions on behalf of the Appellant

7. Learned counsel for the petitioner submits that reading of the impugned order would show that the Notice under Section 148A (b) of the Act of 1961 dated 23.03.2022 was issued upon the petitioner due to non-filing of return. According to the



said notice, on the basis of the information received from Insight Portal under the Module “Non-filing of Return” the petitioner was served with a notice which wrongly alleged that he had not filed his Income Tax Return for the Assessment Year 2015-16.

8. Learned counsel for the petitioner submits that as per the notice (Annexure ‘P/3’) it is alleged in the impugned order that in the relevant Assessment Year, the petitioner had deposited in cash aggregating to Rs.60,92,995/- in the State Bank of India and has further made transaction of Rs. 43,97,919/-. On the basis of these information, the Assessing Officer was of the view that petitioner being a non-filer of return had total income of Rs. 1,04,90,899/- from different sources but he had failed to offer tax, thus, it is a case of escaped assessment. On these facts, the impugned order dated 06.04.2022 passed under Section 148A(d) of the Act of 1961 and notice under Section 148 of the Act of 1961 were directed to be issued against the petitioner.

9. Learned counsel for the petitioner submits that on receipt of the letter dated 30.01.2023 from the Assessing Officer (Annexure ‘P’4’), he immediately filed a reply and brought it to the notice of the Assessing Officer that the petitioner is a regular assessee of Income Tax, his books of accounts are audited annually and requested the Respondent-Department to drop the impugned



proceeding initiated for assessment/reassessment of the return of the petitioner. It is submitted that despite the specific reply of the petitioner, the Respondent-Department issued Notice for assessment under Section 142(1) of the Act of 1961 dated 07.06.2023 whereby the petitioner was directed to submit certain documents detailed therein with respect to Assessment Year 2015-16. The petitioner complied with the said notice and submitted the requisite documents vide letter dated 19.06.2023 and 07.07.2023.

10. Learned counsel for the petitioner submits that the petitioner submitted compliance of the two notices issued under Section 142(1), still the Respondent-Department issued a third notice under Section 142(1) dated 30.10.2023. The petitioner complied with the notice and submitted all the relevant documents which were best available with him.

11. It is submitted that it is apparent from the materials on the record that on false premise and on the basis of wrong information, just in order to take benefit of longer period of limitation, as prescribed under Section 149 of the Act of 1961, the impugned order dated 06.04.2022 under Section 148A(d) of the Act of 1961 was passed.

12. It is submitted that the petitioner has been issued impugned Show Cause Notice dated 29.02.2024 under signature of



the Assessment Unit, Income Tax Department whereby long term gain to the tune of Rs. 25,90,000/- on account of sale of shares has been alleged to be bogus and the petitioner has been showcaused as to why the said variation be not implicated on the petitioner. The Department has doubted the sale proceeds of sale of 7000 shares of Tarang Project by the petitioner which was purchased by the petitioner on 13.06.2009 from M/s. Tushar (India) Pvt. Ltd. vide Contract No. 13 dated 13.06.2009 which was subsequently sold by the petitioner through Hindustan Tradecom Pvt. Ltd. The sale proceeds of said shares were received in the bank account of the petitioner and also duly accounted in its books of accounts. It is submitted that the long term capital gain claimed as exempted by the petitioner has been arbitrarily denied by the Respondent-Department.

13. During pendency of the writ application, the Respondent-Assessing Authority, Assessment Unit, Income Tax passed assessment order under Section 144, 144(b) read with Section 147 of the Act of 1961 on 18.03.2024 and raised a notice of demand under Section 156 of the Act on 18.03.2024. The petitioner has challenged the assessment order and notice of demand both dated 18.03.2024 by which the department has asked the petitioner to pay a sum of Rs. 19,45,394/-. For this purpose,



I.A. No. 1 of 2024 annexing the assessment order and notice of demand as Annexure 'P/11' has been filed and the writ application has been amended by the said I.A. This Court allowed the amendment application vide order dated 10.02.2025 and the department was given an opportunity to file a consolidated counter affidavit answering all aspects of the matter.

14. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Rajeev Bansal** reported in [2024] 469 ITR 46 (SC) to submit that in the said case the Hon'ble Supreme Court has taken note of the reassessment notices issued between 1st April, 2021 and 30th June, 2021 under the old regime on the ground that (i) sections 147 to 151 stood substituted by Finance Act, 2021 from 1st April, 2021; (ii) In the absence of any saving clause, the Revenue could initiate reassessment proceedings after 1st April, 2021 only in accordance with the provisions of the new regime since they were remedial, beneficial, and meant to protect the rights and interests of the assesseees and (iii) the Central Government could not exercise its delegated authority to reactivate the pre-existing law. The Hon'ble Supreme Court has held that the benefit of the new provisions shall be made available even in respect of the



proceedings relating to past assessment years, provided section 148 notice has been issued on or after 01.04.2021.

15. Learned counsel for the petitioners submits that in this case the Assessing Officer proceeded to issue the order based on “mere information” without there being any evidence of possession of books of accounts or other documents which would have revealed that income chargeable to tax which amounts to Rs. 50 lakhs or more has escaped assessment. Learned counsel has relied upon paragraph ‘7.8’ and ‘8.1’ of the CBDT Instruction No. 01 of 2022 dated 11th May, 2022.

16. It is further submitted that the inflated amounts have been shown in the impugned order to initiate reassessment without any cogent evidence, to escape the threshold of Rs. 50 lakhs which is a prerequisite to initiate reassessment and the ultimate post enquiry figure of income escaping assessment is only Rs. 29 lakhs which admittedly could not have triggered the notice after six years of the end of the assessment year. The very premise of the notice that assessee is a non-filer of return is flawed.

17. Learned counsel submits that lack of jurisdiction goes to the root of the matter and in this case a jurisdictional error has been committed by the assessing authority which will vitiate the whole reassessment proceedings. Learned counsel has relied



upon the judgment of the Bombay High Court in the case of **Inventors Industrial Corporation Ltd. v. CIT** reported in 1991 SCC OnLine Bom 655 : (1992) 194 ITR 548 : (1991) 96 CTR 206.

18. Learned counsel further submits that the speech of the Finance Minister while introducing the amendment in the Income Tax Laws may be found in the judgment of the Hon'ble Delhi High Court in the case of **Ganesh Dass Khanna vs. Income Tax Officer and Anr.** reported in [2024] 460 ITR 546 (Delhi) wherein it is clearly stated that only in serious tax evasion cases where there is evidence of concealment of income of more than Rs. 50 lakhs, can the re-assessment be opened beyond the prescribed limitation period of **three** years. The approval for the same has to be taken from the highest level of the Department.

19. Learned counsel has further relied upon a judgment of learned Division Bench of this Court in **Salik Khan vs. Assessment Unit, Income Tax Department and Anr.** (CWJC No. 7568 of 2024) in which it has been held that while issuing a notice under Section 148A, the Revenue has to supply the information and material relied upon within 30 days. It is submitted that in the present case while issuing notice under Section 148A(b), the assessing authority did not make available any material in support



of the information furnished in the annexure to the notice under Section 148A. Learned counsel has relied upon paragraph '101' of the judgment in the case of **Rajeev Bansal** (*supra*) to submit that it specifically talks of supply of the relevant material to the assessee which forms basis of the deemed notice. Learned counsel has taken this Court through the acknowledgment (Annexure 'P/1') and the copy of the audit report to submit that the petitioner had filed his return well in time and had claimed exempted income of Rs. 25,04,808/-. It is also pointed out that while in the notice under Section 148A, the assessing authority mentions that there were a cash deposit of Rs. 20 lakhs in his bank account, during the proceeding there is no discussion of any cash deposit. This, according to the learned counsel for the petitioner would show that while issuing notice under Section 148A, the assessing authority had inflated the amount.

Stand of the Respondents

20. The writ application has been opposed by learned Senior Standing Counsel for the Department. A counter affidavit has been filed on behalf of the Department in which it is stated that the assessee was served with a notice under Section 148A(b) of the Act of 1961 dated 23.03.2022 calling upon him to show cause as to why a notice under Section 148 of the Act be not issued to him.



The assessee did not submit any reply to the show cause notice dated 23.03.2022, therefore, it was assumed that the assessee has his total income of Rs. 1,04,90,914/- from different sources which had escaped assessment for the Assessment Year 2015-16 and accordingly order under Section 148A(d) was passed on 06.04.2022 after approval of the competent authority.

21. The counter affidavit enlists the details of the opportunity given to the assessee from which it appears that one show cause notice was issued on 23.03.2022 under section 148A(b). It is stated that after receipt of the notice under Section 148 of the Act, the assessee did not file his return of income. Later on, the case was transferred to Faceless Unit for assessment proceedings. It is admitted that during assessment, the Faceless Assessing Officer (FAO) found that the assessee had filed its ITR on 30.03.2016 declaring total income of Rs. 7,99,960/-. The FAO observed that the assessee had purchased 7000 Equity Shares of Tarang Project from one M/s Tushar (India) Pvt. Ltd. on 13.06.2009 which was further sold on 24.03.2015 through some other broker. When the assessee was asked about this, he submitted his inability to provide the details of broker. The reason given by the assessee is that as the data was too old to recover and also did not maintain any Demat or Trading Account with the said broker. He was not having any share transfer slip for transfer of shares in his name. He had not received any



dividend from Tarang Project Scrip from the date of purchase i.e. 13.06.2009 and upto 23.03.2015. The broker companies were issued Notice under section 133(6) of the Act for information about purchase and transfer of shares, but both of them failed to provide the requisite information. In these circumstances, treating it as an unexplained cash credit under Section 68 read with Section 115 BBE of the Act of 1961. The assessee replied on 04.03.2024 and stated that documents in question are quite old and further sought extension for four weeks time. It is stated that as the case was going to be barred by limitation on 31.03.2024, an adjournment letter was issued by the FAO to the assessee on 05.03.2024 requesting the assessee to submit his response to the show cause notice by 08.03.2024. On 08.03.2024, assessee submitted his response in which for the first time, he challenged the proceeding under Section 148A and Order under Section 148A(d) on the ground of false and wrong information.

22. In these circumstances, the assessment proceeding has been concluded.

Submissions on behalf of the Respondent

23. Learned Senior Standing Counsel for the Department has produced the records and while going through the notice under Section 148A when a query was made by this Court with regard to the contents of the annexure to the notice under



clause (b) of Section 148A, learned Senior Standing Counsel for the Department submits that the first paragraph of the annexure to the said notice seems to be incorrect and maybe a result of a cut and paste practice while preparing the annexure to the notice. Learned Senior Standing Counsel, however, submits that so far as the main content of the annexure is concerned, it is correct and based on an information available on the Insight Portal of the Department which was showing a cash deposit aggregating to Rs. 20 lakhs in the State Bank of India and a transaction of Rs. 26,31,400/- and Rs. 43,97,919/- and further it was showing that the assessee had sold equity shares in a recognised stock exchange of Rs. 5,56,584/-.

24. Learned Senior Counsel submits that the notice under Section 148A(b) has been issued with prior approval of the PC CIT, Bihar and Jharkhand. In this regard, the attention of this Court has been drawn towards paragraph '4' of the notice (Annexure 'A' to the rejoinder).

25. Learned Senior Standing Counsel further submits that before issuance of Section 148 notice, the Department has followed the procedures prescribed by law and the reassessment proceeding had been opened only after giving an appropriate opportunity of hearing to the petitioner. Learned Senior Standing



Counsel submits that under the old law, the Department had six years available for issuance of notice under Section 148 of the Act. The period of six years would have lapsed on 31.03.2022 but if the time given to respond is excluded in counting the period of limitation, the notice under Section 148 dated 06.04.2022 would be found within time.

26. It is submitted that in the present case, despite receipt of notice under Section 148 of the Act, the petitioner failed to file his return. Learned Senior Standing Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **GKN Driveshafts (India) Ltd. vs. Income Tax Officer and Ors.** reported in **(2003) 1 SCC 72**.

27. Learned Senior Standing Counsel further submits that at the stage of issuing notice under Section 148A, all that is required is to provide the information on the basis of which the notice has been issued. In case of **Chaturbhuj Gattani vs. Income-Tax Officer and Anr.** reported in **(2024) 468 ITR 295 : 2024 SCC OnLine Raj 3142 : (2024) 336 CTR 369 (Raj)**, the Hon'ble Rajasthan High Court has held that the concept of reasonable opportunity appears to be inherent in the inquiry contemplated under section 148A. However, it has to be seen whether this concept can be stretched to the extent of supplying of



material/evidence in support of the opinion of the Assessing Officer that certain income has escaped assessment. It is her submission that the Hon'ble Rajasthan High Court has held in case of **Chaturbhuj Gattani** (*supra*) that on reading of section 148A it may be found that it does not expressly provide for supply of any material/evidence in support of the show-cause notice under section 148A(b). Learned Senior Standing Counsel has further relied upon a judgment of learned coordinate Bench of this Court in the case of **Chandra Shekhar vs. Principal Commissioner of Income Tax and Anr. (CWJC No. 8351 of 2024)** to submit that in the said case, the Assessing Officer had issued notice under Section 148A clause (b) on 28.03.2024 in respect of the Assessment Year 2020-2021. The petitioner was contending that for the purpose of limitation number of days is required to be counted from the date of notice dated 22.04.2024. The Hon'ble Court found that the notice dated 22.04.2024 was issued pursuant to the petitioner's reply to the notice dated 28.03.2024 i.e. reply dated 31.03.2024. The Hon'ble Division Bench found that the 5th and 6th proviso to Section 149 make it crystal clear that delay is required to be taken note of with reference to notice. Since in the said case notice means first notice issued on 28.03.2024 and it was



found within the time-limit stipulated, it was held that the Assessing Officer had jurisdiction.

28. Learned Senior Standing Counsel submits that the impugned orders are in accordance with law, hence no interference is required by this Court.

Consideration

29. We have heard learned counsel for the parties. In this case, the first and foremost question which would arise for consideration is altogether in terms of Section 149 of the Act of 1961 as amended vide Finance Act 2021 with effect from 01.04.2021, a notice under Section 148 or Section 148A could have been issued by the assessing authority in respect of the Assessment Year 2015-16.

30. Section 149 as amended by Finance Act, 2016 reads as under:

Time limit for notice.

⁵⁵“**149.** ⁵⁶[(1) No notice under section 148 shall be issued⁵⁷ for the relevant assessment year,—

55. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

56. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989

57. For the meaning of the term “issued”, see Taxmann’s Direct Taxes Manual, Vol.3.



⁵⁸[(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b)⁵⁹ [or clause (c)];

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has ⁶⁰escaped assessment amounts to or is likely to amount to one lakh rupees or more⁶⁰ for that year;

⁶¹[(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.]

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of *Explanation 2* of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of ⁶²[six] years from the end of the relevant assessment year.”

58. Clauses (a) and (b) substituted by the Finance Act, 2001, w.e.f. 1-6-2001. Prior to their substitution, clauses (a) and (b), as amended by the Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, read as under: “(a) in a case where an assessment under sub-section (3) of section 143 or section 147 has been made for such assessment year,-

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year;

(b) in any other case,-

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.”

59. Inserted by the Finance Act, 2012, w.e.f. 1-7-2012.

60. For the meaning of the expressions “escaped assessment” and “likely to amount to one lakh rupees or more”, see Taxmann’s Direct Taxes Manual, Vol. 3.

61. Inserted by the Finance Act, 2012, w.e.f. 1-7-2012

62. Substituted for “two” by the Finance Act, 2012, w.e.f. 1-7-2012.



31. The Finance Act, 2021 inserted Section 148A with a heading “Conducting inquiry, providing opportunity before issue of notice under section 148. Section 148A as inserted by Finance Act, 2021 with effect from 01.04.2021 reads as under:-

“148A. The Assessing Officer shall, before issuing any notice under section 148,—

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:



Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]”

32. Further, vide Finance Act, 2021 with effect from 01.04.2021, the time limit for notice under section 148 of the Act was changed. Section 149 as substituted with effect from 01.04.2021 reads as under:-



²⁸⁻³⁶[Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

28-36. Substituted by the Finance Act, 2021, w.e.f. 1-4-2021. Prior to its substitution, section 149, as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 Direct Tax Laws (Second Amendment) Act, 1989, w.e.f. 1-4-1989, Finance Act, 2001, w.e.f. 1-6-2001 and Finance Act, 2012, w.e.f. 1-7-2012, read as under:

*149. Time limit for notice.-(1) No notice under section 148 shall be issued** for the relevant assessment year,-

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has †escaped assessment amounts to or is likely to amount to one lakh rupees or more† for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation. For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”

*For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

**For the meaning of the term “issued”, see Taxmann’s Direct Taxes Manual, Vol. 3.

†For the meaning of the expressions “escaped assessment” and “likely to amount to one lakh rupees or more”, see Taxmann’s Direct Taxes Manual, Vol. 3.



Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.]”

33. In the present case, the assessing authority has issued notice under Section 148A clause (b) of the Act on 23.03.2022 calling upon the petitioner to show cause as to why in view of the details contained in Annexure ‘A’, a notice under Section 148 of



the Act should not be issued. It is important to reproduce annexure to the notice dated 23.03.2022 hereunder for a ready reference:-

“An information in the case of Sri Ankit Kumar Agarwal, PAN-AITPA5485A, (hereby thereafter called as “assessee”), has been received under the module of “Non Filing of Return (NMS)” from the INSIGHT portal. As per the data available on the e-filing portal, the assessee has not filed the ITR for AY under consideration.

As per the information available on record, the assessee, in the FY 2014-15, relevant to the AY 2015-16, has deposited in cash aggregating to Rs. 2000000/- in the State Bank of India. Further, the assessee has also made transactions of Rs. 2631400/- and Rs. 4397919/-. The Assessee has sale of equity share in a recognized stock exchange of Rs. 556584/-.

Thus, on perusal of the information received, it is observed that, despite being a non filer of return, the assessee has income worth of Rs. 9269898/- from different sources, failed to offer tax for the same, is chargeable to tax, has escaped assessment for the AY 2015-16.”

34. It is evident from annexure to the notice dated 23.03.2022 that the Assessing Officer had an information under the module of non-filing of return from the Insight Portal which was a palpably incorrect information in his hand. He has stated that as per data available on the e-filing portal, the assessee had not filed the ITR for the assessment year under consideration. Again, this information is totally incorrect. Learned Senior Standing Counsel



for the Department has submitted that this seems to be a mistake and it may have been committed in course of cut and paste. This Court is afraid that such submissions cannot be taken as an appropriate explanation from the respondents. The name of the petitioner has been mentioned in the first paragraph of the annexure and then the authority issuing the notice has apparently mentioned about a data available on the e-filing portal which is not a correct data. The fact remains that the petitioner has filed its ITR on 30.03.2016 and his audit report was also uploaded.

35. This Court further finds that in the second paragraph of the annexure, it is stated that the assessee had deposited in cash aggregating to Rs. 20 lakhs in the State Bank of India and had also made transactions of Rs.26,31,400/- and Rs.43,97,919/- but all these transactions have not at all been discussed later on and what has ultimately transpired is that the Assessing Officer has disallowed long term capital gain of Rs. 25,90,000/- which was claimed by the petitioner in his Income Tax Return.

36. The contention of learned counsel for the petitioner that in the annexure to the notice issued under section 148A (b) of the Act, the amount of escaped assessment was inflated to bring it over and above Rs. 50 lakhs only to avoid the period of limitation,



has much force and there is no reason as to why this submission of the petitioner be not accepted.

37. This Court finds that under clause (b) of sub-section (1) of Section 149, the period of limitation under the old law i.e. prior to 01.04.2021 was 4 years unless the case falls under clause (b) or (c) if the Assessing Officer would have been in possession of books of account or other documents or evidence which revealed that income chargeable to tax represented in form of (i) an asset (ii) expenditure in respect of a transaction or in relation to any event or occasion; or (iii) an entry or entries in the books of account which has escaped assessment is likely to the extent of Rs. 50 lakhs or more. At the relevant time, when the notice under section 148A (b) was issued, the maximum period within which notice under Section 148 could have been issued was only 10 years if the escaped assessment amount was likely to Rs. 50 lakhs or more than that. However, according to learned Senior Standing Counsel for the Department in this case under the old law under clause (b) of sub-section(1) of Section 149 the notice could have been issued within four years but not more than six years have elapsed from the end of the relevant assessment year. Learned Sr. Counsel would submit that in this case the six years period would have expired on 31.03.2022. The notice was given on



23.03.2022 . Time till 29.03.2022 was granted to submit response to the show cause notice. Thus, the period from 23.03.2022 to 29.03.2022 would be liable to be excluded from the counting of limitation. In such circumstance, the notice dated 06.04.2022 would be taken to have been issued within 6 years.

38. It is further evident that while issuing notice under section 148A(b), the notice issuing authority not only relied upon wrong information but he also failed to submit any material in support of the same to the petitioner. In this regard, the judgment of the learned coordinate Bench of this court in case of **Salik Khan** (*supra*) (paragraph ‘5’) and paragraph ‘101’ of the judgment in case of **Rajeev Bansal** (*supra*) have been relied upon. We reproduced paragraph ‘5’ of **Salik Khan** (*supra*) and paragraph ‘101’ of the judgment in case of **Rajeev Bansal** (*supra*) hereunder for a ready reference:-

“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.

101. Under section 148A(b), the Assessing Officer has to comply with two requirements : (i) issuance of a show-cause notice; and (ii) supply of all the relevant information which forms the basis of the show-cause notice. The supply of the relevant material and information allows the assessee to respond to the show-cause notice. The deemed notices were effectively incomplete because the other requirement of supplying the relevant material or information to the assessee was not fulfilled. The second requirement could only have been fulfilled by the Revenue by an actual supply of the relevant material or information that formed the basis of the deemed notice.”

39. It has been further noticed in the case of **Rajeev Bansal** (*supra*) that in case of **Union of India vs. Ashish Agarwal** reported in **(2023) 1 SCC 617**, the Hon’ble Court had directed the Assessing Officer to provide relevant information and materials relied upon by the Revenue to the assessee within 30 days of the date of the judgment. It has been held that a show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied



along with the relevant information and materials by the Assessing Officer. Due to the legal fiction, the Assessing Officers were deemed to have been inhibited from acting in pursuance of the section 148 A(b) notice till the relevant materials were supplied to the assessee.

40. The above view in case of **Rajeev Bansal** (*supra*) and **Ashish Agrawal** finds support from paragraph '53' of the judgment in **Ganesh Das Khanna** (*supra*) which contains the speech of the Finance Minister with regard to reduction in time for income tax proceedings. Paragraph '53', '53.1', '53.2' and '53.3' of the judgment in case of **Ganesh Das Khanna** (*supra*) are as under:-

"53. Apart from what we have stated above on the language and scheme of the relevant provisions introduced with the enactment of the Finance Act, 2021, one has to bear in mind, in our opinion, the *raison d'être* for forging the new regime. A clue about the same is provided in the Finance Minister's Budget Speech delivered on 1-2-2021 [(2021) 430 ITR (St) 33] and the relevant parts of the Memorandum Explaining the Provisions of the Finance Bill, 2021 [(2021) 430 ITR (St) 214] [hereafter referred to as "memorandum"] which morphed into Finance Act, 2021. For convenience, the relevant parts are extracted below:

"Speech of the Finance Minister

... Reduction in time for income tax proceedings

153. The Speaker, presently, an assessment can be reopened up to 6 years and in serious tax fraud cases for up to 10 years. As a result, taxpayers have to remain under uncertainty for a long time.

154. I therefore propose to reduce this time limit for reopening of assessment to 3 years from the present 6 years. In serious tax evasion cases too, only where there is evidence of concealment of income of Rs 50 lakh or more in a year, can the assessment be reopened up to 10 years. Even this reopening can be done only after the approval of the Principal Chief Commissioner, the highest level of the Income Tax Department....

Memorandum



... Income escaping assessment and search assessments—
Under the Act, the provisions related to income escaping assessment provide that if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or recompute the total income for such year under Section 147 of the Act by issuing a notice under Section 148 of the Act. *However, such reopening is subject to the time limits prescribed in Section 149 of the Act....*

The Bill proposes a completely new procedure for assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in the time limit by which a notice for assessment or reassessment or recomputation can be issued. The salient features of the new procedure are as under:

(iii) Section 147 proposes to allow the assessing officer to assess or reassess or recompute any income escaping assessment for any assessment year (called relevant assessment year)....

(vii) New Section 148-A of the Act proposes that before issuance of notice the assessing officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the assessing office shall decide, by passing an order, whether it is a fit case for issue of notice under Section 148 and serve a copy of such order along with such notice on the assessee. The assessing officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under Section 148 of the Act, shall not be applicable in search or requisition cases.

(viii) The time limitation for issuance of notice under Section 148 of the Act is proposed to be provided in Section 149 of the Act and is as below:

- *In normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.*

- *In specific cases where the assessing officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three years but not beyond the period of ten years from the end of the relevant assessment year.*

- Another restriction has been provided that the notice under Section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1-4-2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the



provisions of clause (b), as they stood immediately before the proposed amendment.

- Since the assessment or reassessment or recomputation in search or requisition cases (where such search or requisition is initiated or made on or before 31-3-2021) are to be carried out as per the provisions of Sections 153-A, 153-B, 153-C and 153-D of the Act, the aforesaid time limitation shall not apply to such cases.
- It is also proposed that for the purposes of computing the period of limitation for issue of Section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under Section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the assessing officer for passing order, about fitness of a case for issue of Section 148 notice, is less than seven days, the remaining time shall be extended to seven days....”

(emphasis is ours)

53.1. As would be evident from the extracts set forth above, both from the Finance Minister's speech and the memorandum, the time limit for reopening under the new regime was reduced from six (6) years to three (3) years and only in respect of “serious tax evasion cases”, that too, where evidence of concealment of income of Rs 50 lakhs or more in a given period was found, the period for reopening the assessment was extended to ten (10) years. In order to ensure that utmost care was taken before invoking the extended period of limitation, the proposal was that approval should be obtained from the Principal Chief Commissioner of Income Tax, at the highest hierarchical level of the Department. Likewise, the memorandum emphasised that the new regime was forged with the hope that it would result in less litigation and would provide ease of doing business to taxpayers, as there was a reduction in the time limit by which notice for assessment, reassessment and recomputation could be issued.

53.2. Thus, as per the memorandum, in “normal cases”, no notice was intended to be issued if three (3) years had elapsed from the end of the relevant assessment year. Notice, beyond the prescribed three (3) years from the end of the relevant assessment year, could be issued only in a few specific cases; one such example which is given in the Bill is where the assessing officer was in possession of evidence that escaped income amounted to Rs 50 lakhs or more.

53.3 In sum, the sense that one gets upon a holistic reading of the backdrop in which the new regime for reopening assessments was enacted is that where escapement of income was below Rs 50 lakhs, the normal period of limitation i.e. three (3) years was to apply. In comparison, the extended period of ten (10) years would apply in serious tax evasion cases where there was evidence of concealment of income of Rs 50 lakhs or more in the given period.”



41. On facts appearing from the records, there is no iota of doubt to this Court that no effective show-cause notice under section 148A (b) of the Act of 1961 was served upon the petitioner. The fact that the petitioner did not respond to the show-cause notice dated 23.03.2022 would not make the show-cause notice good and compliant with the requirement of law. After coming into force of the Finance Act 2021 the respondents could have issued a notice under Section 148 of the Act of 1961, if the condition prescribed under Section 149(1) (b) would have been satisfied.

42. In view of the discussions hereinabove, we are of the considered opinion that the proceeding initiated against the petitioner was based on incorrect information furnished in the notice under section 148(A) (b) which was not supported by any material, therefore, the very initiation of the proceeding by issuing section 148 notice on 06.04.2022 would stand vitiated.

43. In result, the impugned orders and the demand raised against the petitioner stand quashed.

44. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Rishi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	24.04.2025
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