

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8351 of 2024

Chandra Shekhar, son of Shri Anirudh Prasad Yadav, resident of Bhelwa,
Ward No. 3, Matiahi, S. Simraha, Madhepura, Bihar-852121.

... .. Petitioner/s

Versus

1. Principal Commissioner of Income Tax-1 having its office at Bir Chand Patel Path, Central Revenue Building, Patna-800001.
2. Income Tax Officer, Ward 4(1), 4th Floor, Loknayaak Jai Prakash Bhawan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Prachi Pallavi, Advocate Ms. Shivani Dewalla, Advocate Mr. Prashant Bhushan, Advocate
For the Respondent/s	:	Ms. Archana Sinha @ Archana Shahi, Sr. Advocate Mr. Alok Shahi, Advocate Ms. Richa Rajiv Singh, Advocate Ms. Komal, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-02-2025

In the instant petition, petitioner has prayed for
following reliefs:-

- “i) the notice dated 30.04.2024 (as contained in Annexure-P 6) under Section 148 of the Income Tax Act, 1961 issued by the respondent no. 2 for the Assessment Year 2020-21 beyond the time limit and quantum as prescribed in Section 149 of the Act be quashed.



- ii) the order dated 30.04.2024 (as contained in Annexure-P 5) under Section 148A (d) passed by the respondent no. 2 for the Assessment Year 2020-21 without consideration of the reply filed be quashed.
- iii) for granting any other relief(s) to which the petitioner is otherwise found entitled to.”

2. Petitioner is income tax assessee for the assessment year 2020-21. Notice was issued to the petitioner on 28.03.2024 under Section 148 A (Clause b) of the Income Tax Act, 1961 (For short ‘Act’). Petitioner had submitted reply on 31.03.2024. Pursuant to the petitioner’s reply yet another notice was issued on 22.04.2024 to the petitioner and he had submitted reply on 25.04.2024. Consequently, proceedings under Section 148A (d) of the Act was issued on 30th April, 2024. Thus, petitioner is feeling aggrieved by Annexure-P5 dated 30th April, 2024 read with Annexure- P6 dated 30th April, 2024. Impugned order and notice is *prima facie* pre-mature.

3. Learned counsel for the petitioner vehemently contended that Assessing Officer has no jurisdiction insofar as undertaking assessment for the year 2020-21 after 31.03.2024 with reference to second notice issued on 22.04.2024 (Annexure-P3) read with consequential proceedings like petitioner’s reply on 25.04.2024 and order dated 30th April, 2024



followed by notice dated 30th April, 2024 to the extent that it was beyond the time limit stipulated in the light of Section 149 (1)(a) of the Act. In support of the aforementioned submission he is relying on decision of the Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Rajeev Bansal* in *Civil Appeal No. 8629 of 2024* decided on 3rd October, 2024. He is relying on para 46, 49, 52, and 53 of the aforesaid decision. Therefore, from the inception Assessing Officer has no jurisdiction to assess for the assessment year 2020-21. The date of notice is taken as 22.04.2024 followed by further action on 30th April, 2024 (Annexure- P5 and P6). He is insisting upon Section 148A(b) of the Act. Notice dated 22.04.2024 is required to be taken note of read with 5th Proviso and 6th Proviso to Section 149(1) of the Act.

4. Combined reading of the aforementioned clauses read with the facts of the case that from the date of second notice dated 22.04.2024 and not 1st notice dated 28.03.2024 is required to be taken into consideration and it is beyond time limit stipulated.

5. *Per contra*, learned counsel for the respondents- Revenue submitted that time lapses in the present case is on 1st April, 2024. On the other hand, notice was issued on 28.03.2024



and it is within the time limit stipulated. Petitioner had submitted reply on 31.03.2024 seeking certain material information, resultantly, Revenue were compelled to issue one more notice on 22.04.2024, thereafter petitioner has filed reply on 25.04.2024, resultantly, on 30th April, 2024, the impugned action has been taken. Therefore, if the first notice dated 28.03.2024 is taken into consideration in that event there is no time bar so as to contend that Assessing Officer has no jurisdiction.

6. Learned counsel for the respondents relying on Section 149 (1)(a), Proviso 5th and 6th which would aid the decision of the Revenue from the inception, i.e. issuance of notice dated 28.03.2024 and consequential proceedings. Merely issuing second notice on 22.04.2024 it does not mean that for the first time Revenue have taken up the matter on 22.04.2024. On the other hand, as on 22.04.2024 notice has been issued pursuant to certain material information sought by the petitioner vide his reply to the notice dated 28.03.2024 on 31.03.2024. Therefore, first notice issued on 28.03.2024 is a crucial date for the purpose of taking action by the Assessing Officer and it is within the purview of law.

7. Heard learned counsels for the respective parties.



8. Short question for consideration in the present *lis* is whether Assessing Officer has jurisdiction to undertake assessment for the year 2020-21 before 01.04.2024 or not? Perusal of the dates and event it is evident that Assessing Officer had issued notice under Section 148A Clause (b) on 28.03.2024 which is much earlier to the time-limit stipulated, i.e. within three years. Petitioner's contention that for the purpose of limitation number of days is required to be counted from the date of notice dated 22.04.2024. It is to be noted that notice dated 22.04.2024 was issued (Annexure-P3) pursuant to the petitioner's reply to the notice dated 28.03.2024, i.e. reply dated 31.03.2024. It is necessary to re-produce para 3 to 6 of reply dated 31.03.2024 and it reads as under:-

- “3. That the petitioner states that he has not any kind of undisclosed income tune of Rs. 33,95,876/-. The information flagged on the insight portal is not correct.
4. That petitioner states that if the income tax department is in possession of such type of information then it is requested your honour to kindly provide the relevant details. It is also requested your honour to kindly provide the report of DDIT Investigation, Bhagalpur on which enquiry proceeding under section 148A of the Income Tax Act 1961 has been initiated.
5. That it is to further submits that assesee is not in the position to give the appropriate reply in absence of the proper information.



6. Therefore, it is requested your honour to kindly provide the proper information or details as mentioned in para 4 of this reply so that assessee can submit his reasonable reply for your kind consideration.”

9. There was no occasion for the Revenue to issue notice on 22.04.2024, if the petitioner’s contention in reply to the notice dated 31.03.2024, in particular, para 3 to 6, therefore, proceedings have been initiated by issuing notice on 28.03.2024. If proceedings commenced on 28.03.2024 insofar as issuing notice under Section 148A Clause (b) which is the relevant and crucial date for the purpose of taking note of limitation period.

10. Learned counsel for the petitioner relied on the decision in the case of **Rajeev Bansal** (supra), para 46, 49, 52 and 53 read as under:-

“46. The ingredients of the proviso could be broken down for analysis as follows:

(i) no notice under Section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021; (ii) if it is barred at the time when the notice is sought to be issued because of the “time limits specified under the provisions of 149(1)(b) of the old regime. Thus, a notice could be issued under Section 148 of the new regime for assessment year 2021-2022 and before only if the time limit for issuance of such notice continued to exist under Section 149(1)(b) of the old regime.



49. The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under Section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice. This also ensures that the new time limit of ten years prescribed under Section 149(1)(b) of the new regime applies prospectively. For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012-2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses.

52. In **Ashish Agarwal** (supra), this Court held that the benefit of the new regime must be provided for the reassessment conducted for the past periods. The increase of the monetary threshold from Rupees one lakh to Rupees fifty lakh is beneficial for the assesses. Mr. Venkataraman has also conceded on behalf of the Revenue that all notices issued under the new regime by invoking the six year time limit prescribed under Section 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.

53. The position of law which can be derived based on the above discussion may be summarized thus: (i) Section 149(1) of the



new regime is not prospective. It also applies to past assessment years; (ii) The time limit of four years is now reduced to three years for all situations. The Revenue can issue notices under Section 148 of the new regime only if three years or less have elapsed from the end of the relevant assessment year; (iii) the proviso to Section 149(1)(b) of the new regime stipulates that the Revenue can issue reassessment notices for past assessment years only if the time limit survives according to Section 149(1)(b) of the old regime, that is, six years from the end of the relevant assessment year; and (iv) all notices issued invoking the time limit under Section 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.”

Reading of the aforementioned decision, it does not assist the petitioner in view of the fact that there was no interpretation of Section 149(1)(a) which provision is involved in the present writ petition. On the other hand, judgment in the case of *Rajeev Bansal* (supra) is in respect of Section 149(1)(b). It is necessary to re-produce Section 149(1), 5th Proviso and 6th Proviso which are relied on by both the learned counsels and it read as under:-

“149. Time limit for notice.- (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 accounts 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:

5th Proviso

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.

6th Proviso

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.”

11. Combined reading of 5th and 6th Proviso, it is crystal clear that delay is required to be taken note of with reference to notice. In the present case notice means first notice issued on 28.03.2024 and it is within the time-limit stipulated and Assessing Officer has jurisdiction.



12. In view of these facts and circumstances, the present writ petition is pre-mature. Accordingly, the present writ petition stands disposed of reserving liberty to the petitioner to participate in the process undertaken by the Revenue in the light of impugned order and notice and co-operate.

13. C.W.J.C. No. 8351 of 2024 is disposed of.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	15.02.2025
Transmission Date	

