

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19373 of 2024

Healing Touch Hospital a partnership firm having its office at Church Road, Gandhi Maidan near Government Bus Stand Gaya 823001 through its partner Dr Vimlendu Vimal (Male, aged about 55 years) son of Shri Surendra Prasad resident of South Church Road, Healing Touch Hospital, Behind Kochar Petrol Pump, P.O. - Head Post Office, Gaya and P.S. - Civil Line, Gaya Bihar - 823001.

... .. Petitioner

Versus

1. Principal Chief Commissioner of Income Tax having its Office at Central Revenue Building, Bir Chand Patel Path, Patna 800001.
2. Director General of Income Tax (Inv.), having its office at Central Revenue Building, Bir Chand Patel Path, Patna 800001.
3. Principal Commissioner of Income Tax, having its office at Central Revenue Building, Bir Chand Patel Path, Patna 800001.
4. Dy. Commissioner of Income Tax, Central Circle, having its office at Central Revenue Building, Annexe, Bir Chand Patel Path, Patna 800001.
5. Asst. Commissioner of Income Tax, Central Circle, having its Office at Central Revenue Building, Annexe, Bir Chand Patel Path, Patna 800001.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Sr. Advocate Mr. Sadashiv Tiwary, Advocate Mr. Hiresk Karan, Advocate
For the Respondent/s	:	Ms. Archana Sinha @ Archana Shahi, Sr. Advocate Ms. Swarna Roy, Advocate Ms. Richa Rajiv Singh, Advocate Ms. Komal, Advocate

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

Date : 08-08-2025

The present writ application has been preferred seeking the following reliefs:-

“(i) The notice dated 25.09.2024 (as contained in Annexure-P11) under Section 148 of the Income Tax Act, 1961 issued by the respondent no.4 after three years from the end of the Assessment Year 2020-21



without sanction from a specified authority namely, the Principal Chief Commissioner of Income Tax or the Director General of Income Tax (Inv.) mandated in Section 151 of the Income Tax Act, 1961 (hereinafter called the Act); without issue of notice under Section 143(2) within the prescribed time despite availability thereof on the same set of material in the knowledge and possession of the respondent no.3 being wholly without jurisdiction be set aside and quashed.

(ii) The order dated 25.09.2024 (as contained in Annexure-P10) passed by the respondent no.4 under Section 148A(d) without sanction from the specified authority mentioned in section 151 of the Act and without consideration of the reply of the assessee beyond the time limit prescribed in section 148A(d) of the Act being wholly without jurisdiction be set-aside and quashed.

(iii) For granting any other relief(s) to which the petitioner is otherwise found entitled to.”

Brief facts of the case

2. The petitioner is a partnership firm though one of its partners of the firm is the citizen of India, they derived income under the head ‘income from business’. A survey was conducted by the authorized officers of the Income Tax Department (hereinafter referred to as the ‘Department’) in terms of Section 133A of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act of 1961’) in the business premises of the petitioner. Certain documents were seized after preparation of inventories.

3. It is the case of the petitioner that the firm filed its income tax return for the financial year ending 31.03.2020 relevant



to the Assessment Year 2020-21 along with audit report, profit and loss account and the balance sheet.

4. The petitioner was served with a show cause notice under Section 148A(b) of the Act of 1961 on the grounds inter-alia that the Department had information which suggest that the income chargeable to tax for the Assessment Year 2020-21 has escaped assessment within the meaning of Section 147 of the Act of 1961. A copy of the notice dated 29.03.2024 issued under Section 148A(b) of the Act of 1961 has been brought on record as Annexure-P2.

Submissions on behalf of the petitioner

5. Learned senior counsel for the petitioner submits that on receipt of the notice (Annexure-P2), the petitioner found that the notice was not containing any information or any other documents in support of the same. Therefore, a request was made vide Annexure-P3 to the Department to make available the same in order to answer the allegations.

6. It is submitted that the Department issued another notice dated 08.04.2024 (Annexure-P4), thereafter, the notice dated 27.05.2024 (Annexure-P6). The petitioner filed written submissions in which a plea was taken inter-alia that the notice only attaches verification details but the information and the



supporting materials which led to the issuance of notice were not supplied to the petitioner. It is the case of the petitioner that a detail explanation as regards the actual receipts as per material found in course of survey and the disclosure made by the petitioner and its partners Dr. Vimlendu Vimal and Dr. Deepawali Vimal in their respective income tax returns, were filed.

7. The petitioner was served with another notice dated 30.07.2024 under Section 148A(b) of the Act of 1961 granting the firm an opportunity of being heard. A date of hearing i.e. 06.08.2024 at 12.30 PM was fixed. The petitioner filed a detail submission wherein a plea was taken that the notice under reference was fourth notice and that the firm had not asked for any time to reply to the notice. In its written submissions (Annexure-P9), the petitioner submitted that a reference to sub-clause (d) of Section 148 of the Act of 1961 would show that the order under the said sub-clause is to be passed within a period of 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. It is submitted that the exclusions in the proviso appended to section 148A has no application in the present case.



8. Learned senior counsel for the petitioner further submits that the petitioner in the present case had only asked for supply of relevant documents and the materials on the basis of which the notice was issued. The petitioner had not asked for any time to reply to the notice. Therefore, since no extension of time was prayed for by the petitioner, the question of allowing any further time in terms of sub-clause (b) does not arise. According to him, the period of limitation as provided in sub-clause (d) of Section 148A of the Act of 1961 is one month from the end of month in which the reply referred to in clause (c) of the Act of 1961 is received. This clause is to be construed strictly with only exception of “extended time allowed” to furnish a reply as per clause (b) expires. It is his submission that one month from the end of the month in which the reply is received under clause (c) of the Act of 1961 is to be reckoned from 03.06.2024, therefore, the order under sub-clause (d) was to be passed on or before 31.07.2024 but the notice granting an opportunity of hearing was issued on 30.07.2024 by which a date of hearing was fixed on 06.08.2024. This would be a case of assumed extension which cannot be allowed. Learned senior counsel, therefore, submits that the impugned order would be barred by law of limitation and the



continuance of proceeding under sub-clause (d) would be wholly illegal and without jurisdiction.

9. Learned senior counsel for the petitioner further submits that Section 148A of the Act of 1961 provides for the manner of passing an order thereunder. According to him, there should be a clear finding that it is a fit case for issuance of notice under Section 148 of the Act. It is a statutory requirement to step into the arena of reassessment after the amendment by the Finance Act, 2021. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Union of India VS. Ashish Agarwal** reported in **2022 SCC OnLine SC 543** in which the Hon'ble Supreme Court has taken note of the amendment carried out by the Finance Act, 2021.

10. Learned senior counsel for the petitioner submits that in this case the sanction of the specified authority as required under Section 151 of the Act of 1961 for the purpose of Section 148 and Section 148A of the Act of 1961 has not been obtained. According to him, in the cases where more than three years have elapsed from the end of the relevant assessment year the sanction is required to be obtained from the statutory authority i.e. the Principal Chief Commissioner of Income Tax or the Director General of Income Tax (Investigation). It is submitted that in the



present case, notice only mentioned about grant of sanction by the Principal Commissioner, Patna. It is submitted that in view of Section 151(ii) of the Act of 1961, the Principal Commissioner, Patna has no authority to grant sanction in the cases beyond three years. It is, thus, submitted that in absence of sanction by the appropriate authority, the assumption of jurisdiction under Section 148 of the Act of 1961 would be wholly illegal.

11. Learned senior counsel submits that the Principal Commissioner of Income Tax who has granted sanction in the present case has acted mechanically in a routine manner and sanction has been granted without application of judicious mind. For this reason as well, the order under Section 148A (d) of the Act of 1961 would stand vitiated.

Submissions on behalf of the respondents

12. A counter affidavit has been filed on behalf of the Department. It is stated therein that information were received from insight portal uploaded by the ITO, Ward-3(1), Gaya which suggested that income chargeable to tax for the Assessment Year 2020-21 has escaped assessment within the meaning of Section 147 of the Act of 1961. A survey was conducted in the premises of the assessee. The documents found during the said survey reveals the receipt of Rs.1,72,64,207/- for the financial year 2020-2021,



but the assessee has shown receipt amounting to Rs.23,37,200/- only in its corresponding ITR. The assessee was called upon to explain the difference in the said receipt of Rs. 1,49,27,007/- along with corroborative evidence. The show cause notice under clause (b) of Section 148A was issued to the assessee.

13. It is stated that in response to the notice the assessee submitted its replies which were perused. It is submitted that the notice dated 27.05.2024 mentions that as per survey record total receipt has been computed on the basis of receipt from consultancy, HTH (Admin), HTH-01 and HTH-(XRX). The petitioner took a plea that Dr. Vimlendu Vimal is the main force behind the Healing Touch Hospital. In reply to the question put in course of survey, the petitioner categorically stated that the major part of the receipt found in course of survey belong to him and that some part of the OPD/consultancy are of the healing touch hospital. The entirety of the X ray receipts is of Dr. Dipawali Vimal.

14. According to the respondents/department, the description of the gross receipts as stated in the notice dated 27.05.2024 and the actual receipt as worked out from the similar material impounded in course of survey vis-a-vis the disclosure in the return of Dr. Vimlendu Vimal are as under:-



As per Survey Record (F. Year: 2019-20)	Amount Estimated by Department (in Rs.)	Financial year 2019-20	Actual receipt Total (of Seize material)	Receipt as per ITR
HTH (Admin)-57 to 62	1,26,47,207. 00	HTH(Admin)-57 to 62	1,11,13,848.00	1,56,64,513.00 (in ITR of Vimlendu Vimal)
HTH (OPD) – 01 4475(4475 x 500)	17,90,000.00	HTH (OPD)-01 to 28,31,46 to 50 (Total No. of receipt 3375 only)	13,36,200.00	23,37,200.00 (in ITR of Healing Touch Hospital)
HTH (RXR) – Total Receipt 3654 (3654 x 500)	18,27,000.00	HTH(RXR)-26 to 49(Total no of receipts 2342 only)	13,33,500.00	13,66,500.00 (in ITR of Dipawali Vimal)
	1,62,64,207.00		1,37,83,548.00	1,93,68,213.00
(And not Rs. 1,72,64,207/- as alleged in Verification Details annexed with notice u/s 148A(b))				

15. Learned senior Standing Counsel for the Department submits that scheme of Section 148A as amended by the Finance Act, 2021 inter-alia provides for conduct of enquiry, grant of opportunity of being heard in response to the show cause notice, consideration of the reply furnished and most important is a decision on the basis of the materials on record including the reply of the assessee to judge as to whether or not it is a fit case to issue a notice under Section 148 by passing an order with the prior approval of the specified authority.

16. Learned senior counsel submits that from the kind of stand taken by the assessee that “the major part’ of the receipt found in course of survey belong to Dr. Vimlendu Vimal and that



“some part” of the OPD/consultancy are of the Healing Touch Hospital, the firm was required to be assessed properly to find out the correct and true picture. It is the duty of the assessee to maintain complete books of account but in this case there is no such document or books of account maintained by the assessee. In spite of having been provided with sufficient time and opportunity to furnish evidences in support of its claim, the assessee could not submit any corroborative evidence in this regard. It is pointed out that in the written submission dated 03.06.2024 filed by the assessee, an opportunity of hearing was requested and considering its request, the assessee has been granted one more opportunity of being heard in the matter in person by the office DIN vide letter dated 30.07.2024. In response to this letter, the assessee had filed its submission on 05.08.2024. The Department submits that the plea of the assessee that it had not sought any time to reply to the notice is liable to be rejected. The Department has provided the list of the dates showing that how the petitioner requested for providing specific information/ material and acceding the request of the petitioner, the Department gave him opportunity to file his reply and participate in the hearing.

17. It is submitted that the period of limitation for purpose of clause (d) is to be considered from the date of



furnishing of the reply, in terms of clause (c) of Section 148A of the Act of 1961. The words 'furnishing of reply' has a wider meaning. In the present case, the assessee has furnished only part reply on 03.06.2024 as is evident from the fact that in that very submission, opportunity of being heard in person was prayed for. The hearing was provided by fixing a date on 06.08.2024. The written submissions filed by the petitioner on 05.08.2024 is a part submission of his reply and notice issued by the Department on 30.07.2024 is only in continuation of ongoing proceedings under Section 148A of the Act of 1961.

18. As regards the approval under Section 151 of the Act of 1961, it is submitted that approval has been accorded by the specified authority Patna vide DIN No.ITBA/AST/S/126/2024-25/1069094736(1) dated 25.09.2024. Notice under Section 148 of the Act of 1961 has been issued vide DIN & Notice No. ITBA/AST/S/148_1/2024-25/1069097722(1) dated 25.09.2024.

19. Learned senior Standing Counsel for the Department submits that the show cause notice under clause (b) of Section 148A of the Act of 1961 was issued timely to the assessee on 29.03.2024. The case was opened after due process with approval of specified authority. It is submitted that all processes were done



through system which allowed the Department taking approval from specified authority.

20. By filing a rejoinder to the counter affidavit of the Department, the petitioner has once again reiterated its submissions as regards the limitation and sanction.

21. In course of hearing of the writ application on 02.07.2025, learned Senior Standing Counsel for the Department submitted that the second page (page no.67 of the writ application) which is said to be a part of the approval under Section 151 of the Act of 1961 seems to have been wrongly enclosed and it may not pertain to the present case. It was contended that column '17' of the table shows the details of the information which suggests that income chargeable to tax has escaped assessment. It refers Order under Section 148A(d). It was contended that if the order under Section 148A(d) was already available on 17.03.2024, then there would not have been any question to seek sanction for conducting enquiry under Section 148A(d) of the Act Income Tax Act on 25.09.2024, therefore, the second page of the approval sheet under Section 151 of the Act was disputed. Later, in course of hearing of the matter on 10.07.2025, the learned Senior Standing Counsel has submitted on instruction that from Column '12' of the approval sheet under Section 151 it will appear that in answer to the same



the word 'No' has been mentioned. It is submitted that sanction has been obtained at the stage of Section 148A(d) on 25.09.2024 but in Column '20' due to a typographical error it mentions "Section 148A(a)". In fact the approval has been granted for order under Section 148A(d) which will be evident from the proposal of the DCIT and recommendations of the Joint C.I.T. The Principal Commissioner, Income Tax, Patna has granted sanction on 25.09.2024. Notice under Section 148 has been issued after sanction on the same day i.e. 25.09.2024.

22. Learned Senior Counsel has further submitted that in clause (b) of Section 148A for the purpose of providing an opportunity of being heard to the assessee, there would be no need of prior approval of specified authority. The words "prior approval" of specified authority in Clause (b) have been omitted by the Financial Act, 2022 w.e.f. 01.04.2022.

23. It is further submitted that a close reading of clause (b) of Section 148A would show that notice to show cause as to why a notice under Section 148 should not be issued may be based on the information which suggests of income chargeable to tax has escaped assessment and results of enquiry conducted, if any, as per clause (a). According to learned Senior Standing Counsel, the words ".....enquiry conducted, if any, as per clause (a)" would further suggest that an Assessing Officer may go for conducting any enquiry only when it is required. The words "conduct an enquiry, if any required," as



occurring in clause (a) of Section 148A read with the submissions made hereinabove with respect clause (d) of Section 148A would only show that conduct of an enquiry is not mandatory for purpose of issuance of show cause notice under clause (b). A notice may be issued under this clause on the basis of information which suggests that income chargeable has escaped assessment in the relevant year.

Consideration

24. This Court has noted the submission of learned senior counsel for the petitioner who had questioned the notice under Section 148 of the Act of 1961 issued on 25.09.2024, on the ground of limitation as also on the ground that it has no sanction of the competent authority. According to him, the sanction was required at both the stages of Section 148A(a) and at the stage of Section 148A(d) of the Act of 1961 but to this Court it appears that the words "... if required..." occurring under Section 148A(a) are the words of significance. It is only when an enquiry is required then sanction is to be taken under Section 148A(a).

25. At this stage, this Court would take note of Section 147 to 151 of the Act of 1961. Section 147 confers power upon the Assessing Officer to assess or reassess such income in respect of which he has reasons to believe that the same has escaped assessment for any assessment year subject to the provisions and safeguards provided in this Section. The Assessing Officer can reassess income for assessment year irrespective of which whether the original assessment was merely



an intimation under Section 143(1) or the original assessment was a full-fledged scrutiny assessment under Section 143(3) of the Act of 1961. The power to take proceedings under this provision is not confined to the cases where the assessee had concealed his income, but it also extends to cases where the Assessing Officer has reasons to believe, on the basis of some tangible materials in his possession that the income has escaped assessment.

26. On a bare reading of Section 147 of the Act, it would be evident that the action envisaged under Section 147 is subject to the provisions of Section 148 to 153.

27. Section 148 reads as under:-

⁶¹[Issue of notice where income has escaped assessment.⁶²

61. Substituted by the Finance Act, 2021, w.e.f. 1-4-2021. Prior to its substitution, section 148, as amended by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989, Finance (No. 2) Act, 1996, w.e.f. 1-4-1989, Finance Act, 2006, w.e.f. 1-10-1991 and Finance Act, 2006, w.e.f. 1-10-2005, read as under:

*148. ** Issue of notice where income has escaped assessment (1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation-For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.”

*For Notification No. SO 1178, dated 11-2-1982, log on to www.taxmann.com.

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

For meaning of the term “serve”, see Taxmann's Direct Taxes Manual, Vol. 3.

For the meaning of the expression "so far as may be", see Taxmann's Direct Taxes Manual, Vol. 3.

62. See Order F.No. 225/40/2021/ITA II, dated 4-3-2021 (Instruction regarding selection of cases for issue of notice u/s 148) and Order F.No. 225/40/2021-ITA II, dated 15-3-2021 (Instruction regarding selection of Potential cases' for issue of notice under section 148 and rationalisation of workload in International Taxation Charges).



148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within ^{62a}*[a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee]*, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

⁶³**Provided further** that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section:]

^{63a}**Provided also** that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.]

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information ⁶⁴*[***]* in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;*or

62a. Substituted for "such period, as may be specified in such notice" by the Finance Act, 2023, w.e.f. 1-4-2023.

63. Inserted by the Finance Act, 2022, w.e.f. 1-4-2022.

63a. Inserted by the Finance Act, 2023, w.e.f. 1-4-2023.

64. Word "flagged" omitted by the Finance Act, 2022, w.e.f. 1-4-2022.



⁶⁵[(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court.]

Explanation 2.—For the purposes of this section, where,—

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

(ii) a survey is conducted under section 133A, other than under sub-section (2A) ⁶⁶[***] of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) 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 or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or 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,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee ⁶⁷[where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]

65. Clauses (ii) to (v) substituted for clause (ii), *ibid.* Prior to its substitution, clause (ii) read as under

"(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act."

66. Words or sub-section (5)" omitted, *ibid.*

67. Substituted for 'for the three assessment years immediately preceding the assessment year relevant to the previous year in which', *ibid.*, w.r.e.f. 1-4-2021. *"or" should be inserted.



28. According to this provision, before making the assessment, reassessment or computation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice return of his income during the previous year corresponding to the relevant assessment in the prescribed form. If such return is filed, provisions of Act of 1961 shall apply as if such return was a return required to be furnished under Section 139. For the purpose of the present case, we need not go into the provisos to subsection (1) of Section 148 of the Act of 1961. The second proviso to Section 148 inserted vide Finance Act, 2022 with effect from 01.04.2022 shall apply. It is evident that what is required under this section is that a notice containing all or any of the requirements which may be included in a notice shall be served.

29. Section 148A has been inserted in the statute book by the Finance Act, 2021 with effect from 01.04.2021. Section 148A reads as under:-

⁶⁸**[Conducting inquiry, providing opportunity before issue of notice under section 148]**

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,

68. Inserted by the Finance Act, 2021 w.e.f. 1-4-2021



⁶⁹[***] 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, ⁷⁰[relate to, the assessee; or

69. Substituted for “relate to, the assessee.” by the Finance Act, 2022, w.e.f. 1-4-2022.

70. Inserted, *ibid*.



(d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]

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

30. A reading of Clause (a) of Section 148A makes it clear that the Assessing Officer shall before issuing any notice under Section 148 can conduct any inquiry, if required, with the prior approval of the specified authority with respect to which the information which suggests that the income chargeable to tax has escaped assessment, thus an approval of the specified authority is required for purpose of conducting any inquiry with respect to the information. Clause (b) talks of providing an opportunity of being heard to the assessee by serving upon him a notice to show cause within such time as may be specified in the notice but the statute clearly provides that such time could not be less than seven days and shall not exceed thirty days from the date on which the notice is issued. This time to show cause may be extended on the basis of an application in this behalf. It is evident that this opportunity of being heard is to be provided to show cause as to why a notice under Section 148A should not be issued.

31. It is further evident from Clause (c) of Section 148A that the Assessing Officer has to consider the reply of the assessee pursuant to the show cause notice referred to in Clause (b).



Thereafter, Clause (d) of Section 148A provides for a decision on the basis of the material available on the record including reply of the assessee. The Assessing Officer has to decide as to whether or not it is a fit case to issue a notice under Section 148 by passing an order with the prior approval of a 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 the time or extended time allowed to furnish a reply as per Clause (b) expires.

32. In the present case, a notice dated 29.03.2024 was issued under Section 148A (b) to the petitioner. It is the case of the petitioner that the notice was not containing any information so he made a request vide Annexure 'P/3' to the department to make available the same in order to answer the allegations. On perusal of the records, we find that Annexure 'P/2' which is the notice under Clause (b) of Section 148A Annexure was enclosed. The annexure attached to the notice says *inter alia* that "the details of the information/inquiry conducted on which reliance is being placed, along with supporting documents, are enclosed with this notice...." In response to this notice, the petitioner has stated in his reply (Annexure 'P/3') that "the notice also mentions that the details of information/inquiry conducted on which reliance is



being placed along with supporting documents are enclosed with this notice but the assessee does not find any such enclosure along with notice.” The petitioner, therefore, requested the Assessing Officer to supply the documents/information/inquiry reports referred to and relied upon in the annexure to the notice.

33. This Court further finds that vide Annexure ‘P/4’ dated 08.04.2024, the Assessing Officer provided the details of the information on which reliance has been placed along with the supporting documents. This Court has noticed that Annexure ‘P/3’ is the same and one as that of Annexure ‘P/2’. Annexure to the notice (P/3) once again mentions that the details of information/inquiry conducted on which reliance is being placed along with supporting documents, are enclosed with this notice. The petitioner once again wrote to the Assessing Officer that the relevant materials available on the record which has led to the issuance of notice have not been supplied. The words ‘information/inquiry’ has been used interchangeably.

34. Thereafter, the Assessing Officer issued a letter dated 27.05.2024 (Annexure ‘P/6’) by which the information in possession of the Assessing Officer has been made available to the petitioner which we reproduce hereunder for a ready reference:-

**“GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT**



OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
DCIT/ACIT CEN CIR 1, Patna

To, HEALING TOUCH HOSPITAL PARTNER DR VIMLENDU VIMAL SOUTH CHURCH ROAD, GANDHI MAIDAN NEAR GOVERNMENT BUS STAND GAYA 823001, Bihar India	
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PAN: AAIFH8721M	Assessment Year: 2020-21	Dated: 27/05/2024	DIN & Letter No. ITBA/COM/F/17/202 4-25/1065139800(1)
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Sir/Madam/ M/s
Subject: Online service of Orders – Letter
Sub- Notice under clause(b) of section 148A of the Income-tax Act, 1961-reg.
Ref. Your letter dated 22/04/2024.
Kindly refer to the above.
In connection with the above, documents/information is being provided to you as requested.
It is pertinent to mention here that in this case information has been received from Insight portal uploaded by ITO, Ward 3(1), Gaya (Concerned verification details is attached here).
Besides, as per the survey record, total receipt has been computed on the basis of receipt found and register of indoor patient, details of X-ray receipt which are as under-

(i) Receipt from consultancy (OPD)- HTH(Admn) -57 to 62	Rs. 1,26.47.207/-
(ii)HTH-01 (OPD) -4475(4475x500) -	Rs. 17,90,000/-
(iii) HTH(RxR) Total Receipt 3654 (3654x500)	Rs. 18,27,000/-

You are requested to furnish your submission in this regard on or before 03.06.2024.

AAIFH8721M-HEALING TOUCH
HOSPITAL
A.Y.2020-21
ITBA/COM/F/17/2024-
25/1065139800(1)
Swati Kumari Sujata
DCIT/ACIT CEN CIR 1, Patna

35. It is evident from the letter dated 27.05.2024
(Annexure ‘P/6’) that the petitioner was given opportunity to file
his submissions on or before 03.06.2024. Thus, seven days were



given to the petitioner to show cause as required under Clause (b) of Section 148A of the Act of 1961.

36. It is evident from the records that the petitioner submitted his response/show-cause on 03.06.2024. In his response the petitioner also prayed for grant of opportunity of being heard in the matter in person. One of the contentions of Mr. D.V. Pathy, learned Senior Counsel for the petitioner is that in terms of Clause (d) of Section 148A, the Assessing Officer was obliged to take a decision as to whether or not it is a fit case for issuance of notice under Section 148 within one month from the end of the month in which the reply referred to in Clause (c) is received by him. According to him, the reply was submitted on 03.06.2024, therefore, the Assessing Officer was statutorily bound to pass order under Clause (d) of Section 148A within one month from the end of the month of June 2024. Thus, according to the learned Senior Counsel, the decision was to be taken latest by 31st of July 2024. While considering this submission of learned Senior Counsel for the petitioner, we have noticed that while submitting his response dated 03.06.2024, the petitioner prayed for grant of an opportunity of being heard in the matter in person. This prayer of the petitioner has been accepted by the Assessing Officer and vide Annexure 'P/8' dated 30.07.2024, the petitioner was informed of a date i.e.



06.08.2024 for personal hearing. The petitioner was given opportunity to furnish evidences/documents, if any, in support of its claim on the said date.

37. On a complete reading of the scheme of Section 148A of the Act of 1961, we find that the heart and soul of this provision is contained in Clause (b) of Section 148A which provides for an opportunity of being heard to the assessee. This opportunity of hearing has to be given by serving upon the assessee a notice to show-cause. Clause (c) of Section 148A talks of consideration of the reply of the assessee furnished in response to the show-cause notice referred to in Clause (b) and then Clause (d) talks of a decision on the basis of materials available on the record including the reply of the assessee. This Court finds that under the scheme of Section 148A, though there is no specific provision for allowing an opportunity of personal hearing, to this Court it appears that in order to provide the petitioner an opportunity to put forth an effective reply, if the Assessing Officer thought it just and proper to accept the prayer of the petitioner to provide an opportunity of personal hearing before passing an order under Clause (d) of Section 148A, no fault may be found with the same and that would not allow the petitioner to contend that the decision under Clause (d) of Section 148A not having been taken



within one month from the end of the month in which the reply was received by the Assessing Officer, the order passed after one month shall be barred by limitation. This we say in the facts of the present case where it is evident that the date of personal hearing was fixed by the Assessing Officer on 30.07.2024, which is before the expiry of one month from the end of the month in which the reply was submitted by the petitioner. This, in our opinion, was an extension as envisaged under Clause (b) of Section 148A and the basis of this was the application submitted by the petitioner seeking a personal hearing. In our considered opinion, this ground is liable to fail.

38. The second ground which has been agitated before this Court is with regard to the sanction for issuance of notice as envisaged under Section 151 of the Act of 1961. Section 151 reads as under.

^{“79} **[Sanction for issue of notice.**

79. Substituted by the Finance Act, 2021, w.e.f. 1-4-2021. Prior to its substitution, section 151, as substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989 and later on amended by the Finance Act, 1990, w.e.f. 1-4-1990, Finance (No. 2) Act, 1998, wef. 1-10-1998, Finance Act, 2008, w.r.e.f. 1-10-1998 and Finance (No. 2) Act, 2014, w.r.e.f. 1-6-2013 and further substituted by the Finance Act, 2015, w.e.f. 1-6-2015, read as under:

"151. Sanction for issue of notice-(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."



151. Specified authority for the purposes of section 148 and section 148A shall be,—

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or ^{79a}***] Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:]

^{79b}[**Provided** that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.]”

39. It is the contention of learned Senior Counsel for the petitioner that in this case, the sanction of the specified authority for the purpose of Section 148 and Section 148A of the Act of 1961 has not been obtained. In his opinion, since more than three years had elapsed from the end of the relevant assessment year, the sanction was required to be obtained from the Principal Chief Commissioner of Income Tax or the Director General of Income Tax, Investigation. In this case, the sanction has been obtained from the Principal Commissioner, Patna. Contrary to the stand of the petitioner, the department has taken a stand that in this case, the sanction has been granted by the Principal Commissioner, Patna which is in consonance with the requirement in terms of

79a. Words “where there is no Principal Chief Commissioner or Principal Director General,” omitted by the Finance Act, 2023 w.e.f. 1-4-2023

79b. Inserted, *ibid*.



Clause (i). Learned Senior Counsel has submitted that according to Clause (i) of Section 151 of the Act of 1961, the Principal Commissioner is competent if three years or less than three years have elapsed from the end of the relevant assessment year. In this case, the relevant assessment year is the year 2020-2021. The notice under Section 148A(b) has been issued within three years on 29.03.2024. The order under Section 148A(d) has been passed on 25.09.2024 and on the same day notice under Section 148 has been issued. Attention of this Court has been drawn towards Section 149 of the Act of 1961, which provides the time limit for notice under Section 148 and Section 148A. Section 149 has been substituted by the Finance Act 2021 with effect from 01.04.2021. Prior to its substitution, Section 149 was amended by the Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989, Direct Tax Laws (Second Amendment) Act, 1989 with effect from 01.04.1989 and Finance Act, 2001 with effect from 01.06.2001 and Finance Act, 2012 with effect from 01.07.2012. We reproduce Section 149 of the Act of 1961 as under:-



⁷²**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);

⁷³[(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—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

72. 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 expressions "issued", "escaped assessment" and "likely to amount to one lakh rupees or more", see Taxmann's Direct Taxes Manual, Vol.3

73. Substituted by the Finance Act, 2022, w.e.f. 1-4-2022. Prior to its substitution, clause (read as under:

"(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 ⁷⁴[a notice under section 148 or section 153A or section 153C 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 or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:

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:

^{74a}**Provided also** that for cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to section 148, where,—

- (a) a search is initiated under section 132; or
- (b) a search under section 132 for which the last of authorisations is executed; or
- (c) requisition is made under section 132A,

after the 15th day of March of any financial year and the period for issue of notice under section 148 expires on the 31st day of March of such financial year; a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:

74. Substituted for "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" by the Finance Act, 2022, w.e.f. 1-4-2021.

74a. Inserted by the Finance Act, 2023, w.e.f. 1-4-2023



Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of,—

(a) a search under section 132 which is initiated; or

(b) a search under section 132 for which the last of authorisations is executed; or

(c) a requisition made under section 132A,

after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:]

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 ^{74b}[does not exceed 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.

⁷⁵[(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in

74b. Substituted for “is less than seven days” by the Finance Act, 2023, w.e.f. 1-4-2023

75. Inserted by the Finance Act, 2022, w.e.f. 1-4-2022.



relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.]

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

40. On a reading of the entire scheme of Section 149, it is evident that for purpose of computing the period of limitation as per the fifth proviso of 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 148 is stayed is liable to be excluded. In this case, the notice under Clause (b) of Section 148A was issued on 29.03.2024 and order under Section 148A(d) has been passed on 25.09.2024. In this fact situation, the notice under Section 148 has been issued after three years from the end of the assessment year 2020-2021 but that would not vitiate the notice under Section 148 of the Act of 1961 for the reasons stated hereinafter.

41. In the present case, the judgment of the Hon'ble Supreme Court in **Suo Motu Writ Petition (Civil) No. 03 of**



2020 Cognizance for Extension of Limitation reported in **(2021) 5 SCC 452**, which has also been relied upon by a Division Bench of this Court **Abha Saraf vs. versus Union of India and Others (CWJC No. 3207 of 2022)** have been placed before this Court. A statement has been made that the period beginning from 16th March 2020 to 20th March, 2022 would be liable to be excluded while counting the period of limitation of three years. It is submitted that in this case, the relevant year/assessment year would fall during the Covid period. In ordinary course, the period of limitation would have come to an end upon completion of three years subject to the calculation of time-limit in terms of Section 149, but in this case, the period from 1st of April, 2021 to 20th of March, 2022 shall be liable to be excluded while counting the period of limitation. In the case of Abha Saraf (supra), the Hon'ble Division Bench of this Court has held that the saving of limitation applies equally to individuals insofar as approaching the Courts or legal forums for redressal and also to the Departments, who are statutorily mandated to initiate proceeding within a specific time. Keeping in view the judgment of the Hon'ble Supreme Court in the matter of **Cognizance for Extension of Limitation** (supra) and of the Hon'ble Division Bench of this Court in **Abha Saraf**



(supra), we have no iota of doubt that in the present case as well the Department would be entitled to get the benefit of saving of limitation for the period 1st of April 2021 to 20th March, 2022. If that period is excluded from counting the limitation, notice under Section 148 of the Act of 1961 issued on 25.09.2024 would not be barred by limitation. In such circumstance, the sanction granted by the Principal Commissioner in accordance with Section 151 (i) of the Act of 1961 is in accordance with law.

42. In view of the aforementioned discussions, we are of the opinion that even the second ground is liable to fail.

43. In result, the writ application is dismissed. There would, however, not be any order for cost.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	10.07.2025
Uploading Date	08.08.2025
Transmission Date	

