

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 21480 of 2009

M/S Rupam Jewellery rep. by Bikash Ranjan Kamilya

Versus

The Union of India and Others

For the Petitioners : Mr. Rabindranath Mahato, Adv.
Mr. Aritra Shankar Ray, Adv.

**For the Income Tax
Department** : Mr. Aryak Dutta, Adv.
Mr. Amit Sharma, Adv.

Heard on : 10.09.2025

Judgment on : 24.10.2025

Ajay Kumar Gupta, J:

1. The petitioner has approached this court seeking directions, inter alia, upon the Respondent Authorities not to take further steps in the proceeding started against the petitioner under Section 147 and notice issued under Section 148 of the Income Tax Act, 1961 (In short, 'the Said Act') on 10.07.2009 and set aside the proceeding started vide memo no. Hal/ITO/W-2 AAGFR 9559R/09-10/105 dated 10.07.2009 under Section 147 of the Act and other consequential relief.
2. The specific case of the petitioner is that it is a bona fide Income Tax payer and is paying a handsome amount of tax regularly under the name and style of M/S. Rupam Jewellery.
3. The petitioner had already assessed his income tax return for the assessment year 2006-07 and paid tax accordingly, but despite the final assessment, the Income Tax Department conducted a survey in the business premises of the petitioner on 22.01.2006 under Section 133A of the said Act. In course of survey and scrutiny of assessment for the annual year 2006-07, the Department allegedly found a large scale of evasion of taxable income. Upon verifying the purchase bills/invoices, a major violation of Section 40A (3) for the Annual Year 2005-2006 was detected.

- 4.** It is further contended that the ITO Ward-2, Haldia, further allegedly had reason to believe that the income of the assessee for the assessment year 2005-06 had escaped assessment in terms of Section 147 of the said Act, and a notice was issued under section 148 of the said Act under memo no. Hal/ITO/W-2 AAGFR 9559R/09-10/105 dated 10.07.2009, and under Section 142(1) of the said Act, for appearance.
- 5.** The petitioner has submitted an objection against the illegal proceeding initiated against the petitioner through his F.C.A on 15.08.2009, contending therein that the authority has not followed the principle of natural justice, violated equity, and conducted a survey on the business premises improperly. Hence the petitioner has filed this writ petition praying for interference of the illegal proceeding initiated against the Petitioner.
- 6.** Learned counsel appearing on behalf of the petitioner vehemently argued and submitted that the respondent authority, particularly, ITO, Haldia, did not specify the reasonable grounds or reasons for the allegation of large-scale evasion of taxable income. Simply stating, evasion of tax without assigning any sufficient reason is a gross violation.
- 7.** A vague reason, mentioned without specifying any reasonable opinion of evasion of tax, is not enough. The Department must state

reasonable grounds while reopening the assessment. Simply a reason to suspect or a belief on the part of the assessing authority, cannot form the basis of the issuance of a notice. Belief should not be arbitrary or irrational but based on relevant and material reasons.

8. Learned counsel has placed reliance on judgments in the case of ***Assistant Commissioner of Income-Tax v. Sabh Infrastructure Ltd.***¹ and ***Sabh Infrastructure Ltd v. Assistant Commissioner of Income-Tax***², particularly paragraph 19 thereof, to bolster his contention that the petitioner never suppressed anything during the assessment. The petitioner had candidly disclosed all material facts, but the Income Tax Department suspected evasion for the assessment year 2005-06, without any sufficient material facts and information as to how the petitioner had failed to disclose. Therefore, the Petitioner prays for setting aside the aforesaid notices.
9. Per contra, the Learned counsel appearing on behalf of the Income Tax Department vociferously argued and opposed the prayer of the petitioner. Learned Counsel further submitted that the writ petition is not maintainable in its present form because the Petitioner has not annexed the notice issued under Section 148 of the said Act, 1961, with the writ petition, though he challenged the notices issued by the Income tax department after expiry of a long period.

¹ **(2024) 461 ITR 339 (SC)**

² **(2017) 398 ITR 198 (Delhi)**

- 10.** Learned counsel drew the attention of the Affidavit-in-opposition filed by the Income Tax Department. It is revealed from the affidavit that the notice under Section 148 was issued long back, on 31.03.2008. Notice under Section 143 (2) was issued on 10.07.2009. Notice under Section 142 (1) was issued on 5.8.2009 along with a letter calling upon the assessee to submit the specified information and documents. On 17.08.2009, the letter in question was submitted. The representative of the assessee appeared on 14.10.2009. He was requested to comply with the requisitions by 21.10.2009, but he did not appear.
- 11.** The writ petition was filed on 07.12.2009, without annexing the notice issued under Section 148 of the said Act. The notice was originally issued on 31.3.2008, but the writ petition was filed more than 20 months later. It was finally submitted that final assessment of tax has already been passed by the ITO, Ward-2, Haldia on 31.12.2009, therefore, the present writ petition is liable to be dismissed as it has become infructuous.
- 12.** In reply, the Learned counsel for the Petitioner, on his usual fairness, submitted that the copy of notice under Section 148 of the said Act has not been annexed with the writ petition. He does not know how it happened, though the writ petition was filed challenging the notice. Learned counsel indicated that the memo no. Hal/ITO/W-2 AAGFR

9559R/09-10/105 dated 10.07.2009 is annexed as P-1, and is sufficient to consider the case in hand.

- 13.** It was further submitted that, actually, the writ petitioner had engaged another lawyer previously, who had filed this writ petition. The file could not be handed over to the petitioner due to his sudden demise. Since the petitioner did not get back the file from the previous lawyer, a certified copy of the pleading was obtained. He also denies the order of final assessment, since it was not served upon the petitioner till date.
- 14.** Having heard the arguments and submissions of the learned counsels representing the respective parties and upon perusal of the material available on record, this court finds no copy of notice issued under section 148 of the said Act annexed with the petition. Therefore, it is very difficult to find out whether it was issued without following the guidelines of the Hon'ble Court mentioned in the aforesaid judgements referred by the Petitioner.
- 15.** The learned counsel appearing on behalf of the Income Tax Department handed over a copy of the final assessment order dated 31.12.2009, whereby the concerned ITO assessed the taxable income, rounding off Rs. 38,46,690/- and asked to compute tax, surcharge, education cess and further interest etc.

16. In the above backdrop, this court is of the opinion that the present writ petition ultimately becomes infructuous since the final assessment order has already been passed long back. The same has not been challenged as yet by the petitioner.
17. Considering the above facts and circumstances, there is no scope to issue a writ of mandamus commanding the authority concerned to set aside the notice issued long back and when final assessment order has already been passed. A copy of the assessment order has already been handed over to the Learned counsel for the petitioner in court on 10.09.2025.
18. It is well settled that a writ Court cannot enter into the disputed question of fact involved in the matter. The writ petitioner has an alternative efficacious remedy under the provisions of the Income Tax Act, 1961 against the final assessment order. Therefore, no useful purpose would be served in keeping the writ petition pending for adjudication.
19. In light of the above observation, **WPA 21480 of 2009** is **dismissed** without any order as to costs.
20. Interim order, if any, stands vacated.
21. This court notes that dismissal of writ petition, would not stand in the way of the writ petitioner to challenge the final assessment order dated 31.12.2009, if so advice, to the appropriate forum and in turn

the concerned Appellate authority is directed to dispose of the same independently and without being influenced by any of the observation made by this Court in accordance with law, if filed by the petitioner.

- 22.** All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.
- 23.** Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A.