

OD-4

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/909/2025

RAHUL KUMAR SHAW
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE SMITA DAS DE

Date : 12th June, 2026.

Appearance:

Mr. Subash Agarwal, Adv.

Mr. Amit Shaw, Adv.

...for the petitioner

Mr. Taraknath Jaiswal, Adv.

Mr. Madhu Jana, Adv.

...for the income tax department

The Court: The present Writ Petition has been filed challenging inter alia, the legality, validity and sustainability of the notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the said Act) along with the Order passed under Section under Section 148A(3) dated 30th June 2025 by the Income Tax Officer for Assessment Year 2020-21.

The core issue involved herein:

- i. whether the notice under Section 148 of the said Act issued for Assessment Year 2020-21 is barred by limitation under Section 149(1) (a) of the said Act;
- ii. whether it is saved by the extended period of limitation under Section 149(1b) on the ground that the income escaping

assessment amounts to or is likely to amount to Rs. 50,00,000/- or more.

The Learned Counsel for the petitioner submits that the notice issued under Section 148 of the said Act is barred by limitation since the same has been issued after the expiry of three years and three months from the end of the relevant Assessment Year 2020-21.

It is submitted that Section 149 (1) (a) of the said Act as substituted by the Finance Act, 2021 with effect from 1.4.21, provides that no notice under Section 148 shall be issued if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) of Section 149 (1).

It is further submitted that as per Section 149(1) (a) of the said Act no notice under Section 148 shall be issued if three years have elapsed from the end of the relevant assessment year unless the case falls under Section 149(1b) of the said Act.

It is submitted that the Section 149(1) (b) permits issuance of notice beyond three years but within ten years only if the assessing officer has in his possession books of accounts or other documents or evidence which reveals that income chargeable to tax represented in the form of assets which has escaped assessment amounts to or is likely to amount to Rs. 50,00,000/- or more.

The petitioner draws the attention of this court to the findings of the assessing officer as recorded in the impugned order dated 30th June 2025 is reproduced below:

“Final inference: Based on above facts and materials as is available on record, salary income and income from interest are

*duly reflected in his ITR and disclosed bank accounts. The assessee had deposited cash of Rs.36,78,000/- on various date which is not tenable. So, the amount of Rs.36,78,000/- which is escaped assessment for the AY 2020-21 in case of the assessee. Sale or transfer value of securities of Rs.1,38,44,619/- is not fully showing in his ITR. In ITR he has showed full consideration of Rs. 1,32,40,324/- instead of Rs.1,38,44,619/-. The difference amount of Rs.6,04,295/- is not disclosed by the assessee. Thus, it is my considered view that the above mention amount has escaped assessment within the meaning of section 147 of the Act for the AY 2020-21, and that the present matter of the assessee for AY 2020-21, is a **fit case** for issuance of notice u/s 148 of the Act.”*

It is submitted that as per that the Assessing Officer's own finding, the total amount alleged to have escaped assessment is Rs. 36,78,000/- + 6,04,295/- = Rs. 42,82,295/- which is below the statutory threshold of Rs. 50,00,000/- prescribed under Section 149(1) (b).

For Assessment Year 2020-21 the period of three years from the ends of the relevant Assessment Year expired on 31st March 2024. Even with the extension under the First Proviso to Section 149(1) the period of three years and three months expired on 30th June 2025. The impugned notice dated 30th June 2025 is admittedly beyond the said period.

Therefore the consequential notice issued under Section 148 is without jurisdiction and the impugned order is liable to be set aside.

The Learned Counsel appearing for the Income Tax Authorities vehemently opposes the same and submits that the amount escaping

assessment is more than Rs. 50,00,000/- as per paragraph 6 of the impugned order.

Learned Counsel appearing for the respondent is unable to satisfy the court with regard to the point of limitation and submits that the amount escaping assessment is more than Rs. 50,00,000/- and the issuance of the notice under Section 148 is sustainable in the eye of law.

It is contended that the procedure under Section 148A has been duly followed and prior approval under Section 141 has been obtained before issuance of the notice under Section 148.

Having heard the parties and upon perusing the materials available on records this court finds that the petitioner has been able to make out a prima facie case and an interference is warranted at this stage.

From the records, the notice issued under Section 148 is barred by limitation as per Section 149(1) (a) unless the case is covered by Section 149(1) (b). The applicability of Section 149(1) (b) depends on the amount involved for escaping assessment as per the finding of the Assessing Officer.

This Court has carefully examined the impugned order dated 30th June 2025. The Assessing Officer has specifically quantified the alleged escaped income at Rs. 36,78,000/- on account of cash deposit and Rs. 6,04,295/- on account of difference in sale consideration of securities. The total comes to Rs. 42,82,295/-.

The submission of the revenue that the amount escaping assessment is much more than the threshold limit of Rs. 50,00,000/- is not supported by the reasons recorded in the order passed under Section 148A(3). The jurisdiction under Section 149(1) (b) must be founded on the material and

the income quantified in the order itself. The Assessing Officer cannot travel beyond the reasons recorded to justify jurisdiction.

For Assessment Year 2020-21 the outer limit for issuance of notice under Section 149(1) (a) read with the First Proviso expired on 30th June 2024. The impugned notice dated 28th April 2025 is issued after one year and ten months of the expiry of limitation.

Since the total alleged escaped income as per the Assessing Officer's own finding is Rs. 42,82,295/- which is less than Rs. 50,00,000/-, the extended period of 10 years under Section 149(1) (b) is not available to the Department.

In view of the above, the impugned order and the consequential notice dated 30th June 2025 are liable to set aside. The notice issued under Section 148 of the said Act dated 28th April 2025 and the Order passed under Section 148A(3) dated 30th June 2025 by respondent No. 2 for the Assessment Year 2020-21 are hereby quashed and set aside. All consequential proceeding are also stands quashed.

With the above observation and direction the Writ petition is disposed of.

Since affidavit has not been called for, the allegations which have been made in the Writ petition are deemed to have been denied and not admitted.

(SMITA DAS DE, J.)