

IN THE HIGH COURT OF JHARKHAND AT RANCHI

T.A. No. 31 of 2002  
with  
T.A. No. 10 of 2003  
with  
T.A. No. 11 of 2003

Commissioner of Income Tax, Jamshedpur ... .. Appellant  
(in all appeals)  
Vrs.  
Pradeep Iron Industries (P) Ltd., Kolkata ..... Respondent  
(in all appeals)

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**CORAM: HON'BLE THE CHIEF JUSTICE  
HON'BLE MRS. JUSTICE JAYA ROY**

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For the Appellant: Mr. Deepak Roshan, Sr. S.C.(Rev.)  
Ms. Rupa Kumari, Adv.  
Mr. Amit Kumar, Adv.  
For the Respondent: Mr. B. Poddar, Sr. Adv.  
Mr. M.K. Choudhary, Adv.  
Mr. Piyush Poddar, Adv.  
Ms. Darshana Poddar, Adv.  
Ms. Amrita Sinha, Adv.

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**Dated 19<sup>th</sup> September 2012.**

Heard learned counsel for the parties.

2. The following substantial question of law has been framed in these appeals:

“Whether the I.T.A.T. Is justified on the facts and in circumstances of the case in cancelling the order passed by the Assessing Officer U/s 143(3)/147/251 of the I.T. Act, 61 for the Assessment Years 1979-80 to 1982-83 by holding that issuance of notice U/s 148 was beyond the provisions of the Act ?”

3. In these three appeals, though the assessment years are different but the question is the same and these are being decided by a common order.

4. Raising the same issue, another Tax Appeal No. 08 of 2003 against the same respondent has been preferred by the revenue, which was dismissed vide order dated 3.04.2006 on the ground of its being barred by time.

5. The relevant dates as mentioned in the order passed by the Income Tax Appellate Tribunal, Patna Bench, Patna, Circuit Bench at Ranchi in its impugned order dated 27.05.2002 are as under:

<i>(i) Date of Search</i>	<i>04.12.81</i>
<i>(ii) Date of order of the CIT(A) (Shri B.C. Mohanty setting aside the restoring the matter to the file of A.O. to be done afresh with certain direction</i>	<i>18.3.88</i>
<i>(iii) Date of service of the order dated 18.3.88 on I.T. Deptt.</i>	<i>22.3.88</i>
<i>(iv) Limitation of fresh assessment expired on</i>	<i>31.3.90</i>
<i>(v) Date of notice u/s 148</i>	<i>9.3.1990</i>
<i>(vi) Letter for filing of return u/s 148</i>	<i>3.12.1991</i>
<i>(vii) Date of reassessment order u/s 143(3)/147/251</i>	<i>30.3.92</i>
<i>(viii) Date of order of ITAT(Departmental Appeal against CIT(A) order dated 18.3.88</i>	<i>15.02.93</i>

6. From the above dates, it is clear that during the course of search and seizure operation, certain incriminating materials were found, on the basis of which assessment proceedings were concluded by passing an assessment order and the assessment order was set aside by the CIT(A) vide order dated 18.3.1988. Therefore, the proceeding of assessment stands reopened and this assessment could have been made up to 31.3.1990. Admittedly, no assessment was made till 31.3.1990. However, it appears from the facts of the case that to get extension of the period of limitation for assessment, the A.O. issued notice under Section 148 of the Income Tax Act, 1961, on 09.3.1990, about 22 days before the expiry of the period of limitation for assessment. On the basis of the above notice dated 09.3.1990, under Section 148 of the Income Tax Act, 1961, reassessment order was made under Section 147 read with Sections 143(3)/147/251 of the Act of 1961 on 03.12.1991. Learned counsel for the appellant submitted that in view of sub-section 1 of Section 150 read with Section 153(2), the period of limitation prescribed for making assessment in the Act of 1961, cannot have application in the cases where the A.O. proceeded to comply with the direction contained in the appellate order and, therefore, the

A.O. had jurisdiction to issue notice under Section 148 of the Act for the purpose of making any assessment or reassessment or recomputation to give effect to any finding or direction contained in the order passed by the appellate authority.

However, the argument is self contradictory. If there was no bar of limitation in making the assessment after remand order, then what was necessity for opting for the mode by issuing notice under Sections 148 and 147 ?. Admittedly, in consequence of search and seizure operation, the assessment was completed by making the assessment orders on 30.11.1978, 30.11.1979, 30.11.1980 and 30.11.1981 in all these four matters (including the cases of Tax Appeal No. 08 of 2003 which has been dismissed vide order dated 03.04.2006). Therefore, the matters which were pending before the A.O. before making the assessment orders and against the above assessment orders, the appeals were preferred and assessment orders were set aside by CIT(A) vide order dated 15.3.1988 and matters were remanded to the A.O. These proceedings could have been completed by or before 31.3.1990. The A.O. had two years time with it. The relevant materials were already lying with the officers as they were seized during the course of the search and seizure. The A.O. could have completed the assessment but it appears that in the present cases, a pretext has been taken by the A.O. and thereafter, only for the extension of period of limitation, the A.O. issued notice under Section 148 of the Act of 1961. Such intention is apparent from the facts mentioned in the order passed by the Tribunal as well as the stand taken by the Revenue. The other argument that, after remand order, if A.O. proceeds for assessment and there was no limitation, then there was no necessity of taking help of Section 148 and Section 147 of the Act of 1961.

7. Otherwise also, there is a force in the submission of the learned senior counsel for the respondent, Mr. Poddar, that these cases are squarely covered by the judgment of Patna High Court delivered in the case of ***Hemraj Munshi Ram Vs. Union of India and Ors.*** reported in ***(2000) 245 ITR 155*** wherein issuance of notice under Section 148 itself is found to be without any

reason and basis as the relevant material was already seized and were in possession of the revenue itself and in that fact circumstances, particulars furnished could be generally verifiable by the revenue and there was no reason to hold that assessee had failed to disclose fully and truly material facts to the A.O. In these cases also, the facts are identical to that of the case of ***Hemraj Munshi Ram(supra)***. Therefore, in fact, in these appeals, no question of law involves and the Tribunal has not committed any error in holding that notice under Section 147 of the Act of 1961 was given beyond the provision of law.

These appeals are, therefore, dismissed.

**(Prakash Tatia,C.J.)**

**(Jaya Roy, J.)**