

GAHC010009182023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/362/2023

NALINAKSHA SARMA
S/O- LT. L.K. SARMA, R/O- B.K. KAKOTI BYELANE, KACHARI BASTI,
ULUBARI, GHY-07, P.O. ULUBARI, P.S. PALTAN BAZAR, KAMRUP (M),
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF FINANCE,
ROOM NO. 46, NORTH BLOCK, NEW DELHI- 110001

2:THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
AAYAKAR BHAWAN
G.S.ROAD
CHRISTIAN BASTI
GHY-05

3:INCOME TAX OFFICER
WARD 1 (1)
GUWAHATI
AAYAKAR BHAWAN
G.S.ROAD
CHRISTIAN BASTI
GHY-05

4:THE ADDL./JOINT COMMISSIONER OF INCOME TAX
AAYAKAR BHAWAN
G.S.ROAD
CHRISTIAN BASTI
GHY-05

5:DEPUTY DIRECTOR OF INCOME TAX

AAYAKAR BHAWAN
G.S.ROAD
CHRISTIAN BASTI
GHY-0

For the Petitioner(s) : Mr. D. Upamanya, Advocate

For the Respondent(s) : Mr. S.C. Keyal, SC, Income Tax

Date of hearing : 21.11.2024

Date of Judgment : 21.11.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT & ORDER(ORAL)**

Heard Mr. D. Upamanya, the learned counsel appearing on behalf of the writ petitioner. Mr. S.C. Keyal, the learned Standing Counsel appears on behalf of the respondent Nos. 1, 2, 3, 4 and 5.

2. The present writ petition has been filed challenging the notice dated 15.03.2022 issued under Section 148A (b) of the Income Tax Act 1961, for short ('the Act of 1961'); the order dated 31.03.2022 passed under Section 148A (d) of the Act of 1961, as well as all consequential actions in pursuance to the order dated 31.03.2022.

3. From the materials on record, it appears that on 15.03.2022, a notice was issued under section 148A (b) of the Act of 1961, asking the petitioner to show cause as to why a notice under Section 148 of the Act of 1961 should not be issued in view of the details contained in Annexure A to the said notice dated

15.03.2022. It is pertinent to mention that the said notice was issued in connection to the Assessment Year 2015-16.

4. A perusal of Annexure A to the said notice dated the 15.03.2022, reveals that information were gathered from the inside portal for the financial year 2014-15, that there were various deposits in the form of TDS statement, time deposit as well as deposit in cash. It further revealed from such information to the Assessing Officer that the income chargeable to tax had escaped assessment for the Assessment year 2015-16, and as such the petitioner was asked to show cause.

5. On 19.03.2022 the petitioner upon receipt of the said notice dated 15.03.2022, submitted a communication on 25.03.2022 and informed the Assessing Officer that since 20.03.2022 was a Sunday, the petitioner applied for the relevant bank statements, FD statements and TDS statements only on 21.03.2022 and the Bank Officials had sought for two weeks time to provide the said documents. Under such circumstances, vide the said communication, the petitioner requested a further 2(two) weeks time so that he could submit an effective reply. The petitioner thereupon received messages from the Income Tax department intimating that the petitioner had to submit his reply on or before 31.03.2022.

6. The records further reveal that as the petitioner did not submit a reply on or before 31.03.2022, the order was passed under Section 148A (d) of the Act of 1961, wherein it was categorically mentioned that as the assessee failed to submit the reply on 25.03.2022 and income had escaped assessment amounting to Rs. 78,59,057/- (Rupees Seventy Eight Lakh Fifty Nine Thousand Fifty Seven) for the Assessment year 2015-16, the Assessing Officer i.e. the respondent No.3 was of the opinion that it was a fit case for issuance of notice under Section 148

of the Act of 1961.

7. It is the further case of the petitioner that the petitioner received the details from the banks only on 06.04.2022 and 25.04.2022 and thereupon submitted a reply on 20.05.2022. However, the said was not taken into consideration and the Respondent Authorities proceeded with the reassessment proceedings and as such the petitioner is before this Court.

8. Upon filing of the writ petition, it appears from the records that this Court by an order dated 30.01.2023, issued notice and further stayed the proceedings initiated by the Income Tax Department against the petitioner in connection with the notice under Section 142(1) dated 21.12.2022. The said interim order had been extended from time to time.

9. The record further reveals that an affidavit-in-opposition was filed by the respondent Nos. 2 to 5 on 05.09.2024. From a perusal of the said affidavit-in-opposition, it shows that the Assessing Officer taking into account that the proceedings were getting time barred in view for the Assessment year 2015-16, the last date for issuance of the Notice under Section 148 of the Act of 1961 being 31.03.2022, no adjournment was granted to the request made on 25.03.2022 by the petitioner.

10. In the backdrop of the above pleadings this Court has heard the learned counsels appearing on behalf of the parties.

11. Mr. D. Upamanya, the learned Counsel appearing on behalf of the petitioner submitted that from a perusal of the order dated 31.03.2022, passed under Section 148A (d) of the Act of 1961, it would show that the amount which was found to have escaped assessment was Rupees 78,59,057/- (Rupees Seventy Eight Lakh Fifty Nine Thousand Fifty Seven) for the assessment year

2015-16. He submitted that the materials on record including the reply so submitted by the petitioner on 20.05.2022, would show that the amount could not have been more than Rs. 37,59,057/- (Rupees Thirty Seven Lakh Fifty Nine Thousand Fifty Seven) and as such the period of limitation in terms with Section 149 (1)(a) of the Act of 1961 would have been 3 (three) years that is ending on 31.03.2019. The learned counsel therefore submitted that the issuance of the notice under Section 148A (b) on 15.03.2022, was therefore, barred by limitation. The learned counsel further submitted that even assuming for argument's sake but without admitting that the amount which had escaped assessment as mentioned in the order dated 31.03.2022 was Rs. 78,59,057/- (Rupees Seventy Eight Lakh Fifty Nine Thousand Fifty Seven) then Section 149 (1)(b) of the Act of 1961 would have been applicable whereby the period of limitation would be till 31.03.2026. The learned counsel therefore submitted that this is a case of complete non-application of mind and without giving a reasonable opportunity to the petitioner to contest the notice under Section 148A(b) of the Act of 1961 and as such contrary to Section 148A(c) of the said Act.

12. Per contra Mr. S.C. Keyal, the learned Standing Counsel appearing on behalf of the respondents submitted that the question of the initiation of the reassessment proceedings being barred under Section 149 (1)(a) of the Act of 1961 do not arise in view of the categorical findings in the order dated 31.03.2022, wherein the amount which has escaped assessment was Rs. 78,59,057/- (Rupees Seventy Eight Lakh Fifty Nine Thousand Fifty Seven). He however, submitted that the period of limitation in view of the said order would come within the ambit of Section 149 1(b) of the Act of 1961 which would end on 31.03.2026. He therefore, submitted that taking into account that the

findings of the respondent No. 3 in the order dated 31.03.2022 to the effect that the amount which has escaped assessment was Rs. 78,59,057/- (Rupees Seventy Eight Lakh Fifty Nine Thousand Fifty Seven), and the period would have expired only on 31.03.2026, the Authorities ought to have given a further opportunity instead of passing the order on 31.03.2022.

13. The Court had heard the learned counsels appearing on behalf of the petitioner as well as the respondents and have taken into account the materials on record.

14. It is seen that for the assessment year 2015-16, the period ends on 31.03.2016. In terms of Section 149(1)(a) of the Act of 1961, post the amendment w.e.f. 01.04.2021, the period within which the notice under section 148 of the Act of 1961 is required to be issued is 3(three) years. However, in terms with Clause (b) of Section 149 (1), if the amount which has escaped assessment amounts to or likely to amount to Rs. 50,00,000/- (Rupees Fifty Lakhs) or more for that year, the period is not more than 10 years. Therefore, for the assessment year 2015-16, as per Section 149(1)(a) of the Act of 1961, the ends on 31.03.2019. However, if Section 149(1)(a) of the Act of 1961 is applicable then the period is not beyond 31.03.2016.

15. It is further seen that as per the order passed under Section 148 A (d) the respondent No. 3 had categorically arrived at his opinion that income which had escaped assessment was Rs. 78,59,057/- (Rupees Seventy Eight Lakh Fifty Nine Thousand Fifty Seven).

16. This Court further takes note of that the Notice under Section 148A (b) of the Act of 1961 was issued on 15.03.2022, asking the petitioner to submit the reply on 25.03.2022. The said notice was received on 19.03.2022 and

thereupon the petitioner did not get a reasonable opportunity in the facts of the case to reply to the same within 25.03.2022. It is under such circumstances, the petitioner sought for an accommodation. Further from a perusal of the affidavit filed by the respondent Nos. 2 to 5, it appears that the respondent No. 3 has duly admitted to the fact that as the time period was expiring on 31.03.2022, no accommodation could have been granted and as such the order was passed on 31.03.2022 under Section 148 A (d) of the Act of 1961 and the notice was issued under Section 148 of the Act of 1961.

17. This Court cannot be unmindful of the fact, that the period for the Assessment year 2015-16 ends on 31.03.2016. All of a sudden if a notice was issued on 15.03.2022 and the noticee is asked to submit a reply to a notice within 10 (ten) days that is almost after 6 (six) years, there is every likelihood that the opportunity so granted is not adequate. In the instant case, the petitioner received the notice dated 15.03.2022 only on 19.03.2022 and 20.03.2022 was a Sunday. Therefore effectively, the petitioner was given only 6(six) days from the receipt of the notice which in the opinion of this Court cannot be said to be reasonable opportunity in the facts of the case. Under such circumstances, the petitioner ought to have been given some reasonable opportunity else the legislative intent behind the insertion of Section 148A to the Act of 1961 by the amendment made w.e.f. 01.04.2021 would become redundant. It is pertinent herein to observe that when a statute prescribes the requirement of a notice, the opportunity therefore to be granted to show cause has to be a reasonable opportunity. Merely because the Departmental Officer woke up late and by that time, the period was almost coming to an end, would not be a justification to deprive the noticee of due opportunity. Therefore in the opinion of this Court, the action on the part of the Assessing Officer was in

violation to Section 148A(c) of the Act of 1961.

18. This Court finds another reason to interfere. As stated above, the time period for issuance of notice under Section 148 of the Act of 1961 is normally 3(three) years from the end of the relevant assessment year i.e. in the present case upto 31.03.2019, taking into account that for the Assessment Year 2015-16, the period ends on 31.03.2026. However, in the circumstances, the amount which escaped assessment was likely to amount to Rs. 50,00,000/-(Rupees Fifty Lakh) or more, the extended period for limitation would be for the Assessment Year 2015-16, not beyond 31.03.2016. Therefore, the reason so assigned in the affidavit for not granting additional opportunity to the petitioner on the ground that the period would end on 31.03.2022 amounts to complete non-application of mind.

19. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The order dated 31.03.2022 passed under Section 148A (d) of the Act of 1961, as well as the notice under Section 148 of the Act of 1961 dated 31.03.2022, are set aside and quashed.

(ii) It is apparent from the records that the petitioner had submitted his reply on 20.05.2022. The said reply be taken into consideration by the respondent No. 3 in pursuance to the notice issued on 15.03.2022 under Section 148A (b) of the Act of 1961.

(iii) The petitioner be provided an opportunity of hearing either through himself or through his authorized

representative prior to passing the order under Section 148A(d) of the Act of 1961.

(iv) The petitioner would be entitled to raise all permissible objection to the initiation of the reassessment proceedings including the objection as regards limitation during the course of hearing.

20. With the above observations and directions the instant writ petition stands disposed of.

JUDGE

Comparing Assistant