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HIGH COURT OF ORISSA : CUTTACK.

W.P.(C) No. 17176 of 2022
(in the matter of an application under
Article 226 of the Constitution of India, 1950)

***

STEWART SCIENCE COLLEGE
(CHRISTIAN MINORITY
EDUCATIONAL INSTITUTION
REGISTERED UNDER THE SOCIETIES
REGISTRATION ACT, 1860)
REPRESENTED THROUGH ITS
SECRETARY
AND
SRI AJOY KUMAR BEHERA
AGED ABOUT 69 YEARS
SON OF LATE BIJOY KUMAR BEHERA
RESIDING AT: MISSION ROAD
CUTTACK – 753 001
SECRETARY OF … ***Petitioners***
STEWART SCIENCE COLLEGE

Mr. Prajnaraj Mohanty,
Advocate for the petitioners

-versus-

INCOME TAX OFFICER, WARD 1(1) … ***Opposite Parties***
AAYAKAR BHAWAN
SHELTER SQUARE, TULASIPUR
CUTTACK – 753 008 & OTHERS

Mr. Radheyshyam Chimanka,
Senior Standing Counsel (Income Tax)

Date of Hearing : 12.09.2022 :: Date of Judgment : 27.09.2022

P.T.O.

CORAM:

MR. JUSTICE JASWANT SINGH

AND

MR. JUSTICE MURAHARI SRI RAMAN

JUDGMENT

Murahari Sri Raman, J.—

This matter is taken up by virtual/physical mode.

1. The petitioner No.1, Stewart Science College (hereinafter referred to as "petitioner-College"), assails not only Notice dated 22.03.2022 issued under Section 148A(b), but also the Order dated 31.03.2022 passed under Section 148(A)(d) along with Notice dated 31.03.2022 issued under Section 148 indicating initiation of proceeding for assessment of escaped income under the Income-tax Act, 1961 (for brevity hereinafter referred to as "IT Act") by the Income Tax Officer, Ward 1(1), Cuttack pertaining to Assessment Year 2015-16 [Previous Year 2014-15]. The writ petitioner craves for following reliefs:

> *"I. Issue a writ of mandamus and certiorari/or any other appropriate writ/writs quashing the impugned notice under Section 148A(b) of the IT Act, 1961 dated 22.03.2022 and consequential order under Section 148A(d) along with notice under Section 148 of the IT Act, 1961 dated 31.03.2022 and proceedings initiated pursuant thereto;*
>
> *And*
>
> *II. Issue a writ of and/or order and/or direction ion the nature of prohibition commanding respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the issuance of notice under Section 148;*

And

III. Award cost of litigation;

And

IV. Pass such other order/orders and/or direction/directions as this Hon'ble Court may deem fit and proper;

And

And/or allow this writ petition."

2. Shorn off detailed narration of facts, suffice it to describe that based on information which suggests that income chargeable to tax for the Assessment Year 2015-16 has escaped assessment within the meaning of Section 147 of the IT Act, notice dated 22.03.2022 under Section 148A was issued calling upon the petitioner-College, bearing PAN AAFAS2114P, to furnish response electronically in 'e-proceeding' facility on or before 30.03.2022. Enclosed to said notice was the following material particulars facilitating filing of show-cause by the petitioner:

"You have deposited cash amounting to Rs.69,23,128/- in your bank account maintained with State Bank of India Corporate Centre during the Financial Year 2014-15 relevant to assessment year 2015-16. You have also received interest amount of Rs.1,77,782/- and Rs.32,578/- from the deposit accounts maintained with Tamilnadu Mercantile Bank Limited and State Bank of India respectively during the said assessment year. However, you have failed to file your Income Tax Return for the relevant A.Y. 2015-16. Therefore, you are required to show cause as per provision of Section 148A(b) of the Act, that why such amount of Rs.71,33,488/- (69,23,128 + 1,77,782 + 32,578) will not be treated as your escaped income as per Section 147 of the Income Tax Act, 1961 for the A.Y. 2015-16 and why notice under Section 148 will not be issued to you for the relevant assessment year."

2.1. Responding to aforesaid notice, a reply dated 30.03.2022 was filed by the petitioner-assessee which *inter alia* contained as follows:

"Since there is no taxable income being no liability for payment of tax, the law provides for Assessee like us not to file return of income. Not only our income is exempt from income tax by virtue of Section 10(23C)(iiiab), we are also not required to file return of income as the provisions of Section 139(4C) was effective from AY 2016-17. Thus there is no income chargeable to tax which has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. Merely due to non-filing of return does not amount to income escaping assessment and also does not require the department to take recourse to the provisions of Section 148 even when the reasons for non-filing of return has been informed and accepted by the department."

2.2. The petitioner has stated to have furnished return for the assessment year 2015-16 on 30.04.2022 in response to notice dated 31.03.2022 issued under Section 148 along with Local Fund Audit Report, Tax Audit Report and Form No.10B prescribed under Rule 17B of the Income Tax Rules, 1961 read with Section 12A of the Income Tax Act.

2.3. The Assessing Officer-Income Tax Officer, Ward-1(1), Cuttack, upon consideration of reply of the petitioner-assessee proceeded to issue notice under Section 148 of the IT Act after assigning following reason in his Order dated 31.03.2022 passed under Section 148A(d):

*"*** On perusal of the submission of the assesse it is seen that, the assesse accepted about the transactions made in the bank accounts. It claims the income to be exempted. However, the assessee should have filed ITR and could have claimed exemptions as per the provisions of the Act. This shows that, the assesse has nothing to explain against the show cause notice regarding non-filing of ITR and escapement of income for the assessment year 2015-16. The assesse has failed to discharge the onus to prove as*

per the show cause notice. In absence of any satisfactory explanation, the case of the assessee is considered as a fit case for issuance of notice under Section 148 of the Act.”

3. On the above factual backdrop, Sri Prajnaraj Mohanty, learned Advocate for the petitioner-assessee urged that the aforesaid reason ascribed by the Assessing Officer is not only bereft of application of mind but also the same is outcome of blameworthy preconceived approach. In furtherance to such argument, he submitted that the Assessing Officer has failed to address the core issue as to whether there was requirement of furnishing return with reference to Section 139(4C)(e) for Assessment Years prior to 2016-17. Amplifying such a contention, Sri Mohanty argued that since the expression *“sub-clause (iiiab)”* has been inserted in clause (e) of sub-section (4C) of Section 139 with effect from 01.04.2016 by virtue of the Finance Act, 2015, there was no requirement to furnish return of income of the educational institution like the petitioner-College, being exempted in terms of Section 10(23C)(iiiab) in respect of period prior to Assessment Year 2016-17. Therefore, it is submitted that the petitioner was not required to file return for the Assessment Year 2015-16.

3.1. A Certificate dated 28.01.2021 issued by the Secretary of National Commission for Minority Educational Institutions, Ministry of Human Resources Development, Government of India, is brought to the notice of this Court to establish that the petitioner-College is minority educational institution. Said certificate is to the following effect:

“This is to certify that by the order dated 10th day of September, 2020 passed by the National Commission for Minority Educational Institutions, New Delhi in case No.1668 of 2012

(Stewart Science College, Madhusudan Road, P.O. Buxi Bazar, P.S. Lalbag, District Cuttack, Odisha, 753001 Vrs. Secretary, School and Mass Education Department, Government of Odisha) run by the Stewart Science College, Madhusudan Road, P.O. Buxi Bazar, Cuttack, Odisha – 753001 (NGO Darpan Unique ID : OR/2018/0215316) has been declared as a minority educational institution covered under Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004 with the main objective of sub-serving the interests of the Christian minority community.

Given under my hand and the seal of the Commission on this 28th day of January, 2021."

3.2. The learned counsel for the petitioner placed reliance on the Letter No.47301-V.E/C.22/80/EYS, dated 04.11.1980 whereby the Government of Odisha in Education and Youth Services Department allowed increase of seats in respect of the petitioner-College for opening of new subjects/Honours classes. Copy of Resolution dated 11.07.1984 of the Government of Odisha in Education and Youth Services Department published in the Odisha Gazette, Supplement No.33, dated 17.08.1984 has been referred to indicate that the employees of the Odisha Aided Educational Institutions are extended the retirement benefit. Said resolution is as follows:

"No. 27950—IXE-MB-25/84-EYS
Government of Orissa
Education and Youth Services Department
Resolution
the 11th July 1984

Subject— Extension of retirement benefits to the employees of educational institutions of their choice established and administered by minorities having the right under clause (1) of Article 30 of the Constitution which are under the direct payment system of grant-in-aid.

The Orissa Aided Educational Institutions Employees' Retirement Benefit Rules, 1981 were made in exercise of powers conferred by sub-section (1) of Section 27, read with sub-section (1) of Section 10 of the Orissa Education Act, 1969 and brought into force with effect from the 1st April 1982. As provided in Section 2 of the said Act, the said Act does not apply to the educational institutions of their choice established and administered by minorities under clause (1) of Article 30 of the Constitution. Therefore, the Orissa Aided Educational Institutions Employees' Retirement Benefit Rules, 1981 are not ipso facto applicable to such institutions.

2. *Teachers of educational institutions established and administered by the minorities who have retired on or after the 1st April, 1982 on attaining the age of 60 years are not entitled to retirement benefits. This causes hardship to them as their couterparts in other aided educational institutions retiring on or after 1st April, 1982 are getting the retirement benefits provided in the said Retirement Benefit Rules of 1981.*

3. *After careful consideration, Government has been pleased to decide that the provisions in the above rules and executive institutions issued thereunder regarding the procedure of payment of retirement benefits under the said rules may be made applicable mutatis mutandis to the educational institutions established and administered by minorities which are covered by the Scheme of Direct Payment of grants-in-aid with effect from the 1st April, 1982, provided that, the employees are retired on attaining the age of 60 years.*

Order— Ordered that the Resolution be published in the Orissa Gazette for general information and copies thereof be sent to all concerned.

By order of the Governor
S.M. Patnaik
Secretary to Government"

3.3. Enclosing copies of Letter No.50336-HE-AC-II-COL-0018-2021/HE, dated 10.12.2021 of Accounts Officer (HE), Department

of Higher Education, Odisha and Letter No.16136-HE-AC-II-COL-0008-2022/HE, dated 20.04.2022 of Accounts Officer (HE), Department of Higher Education, Odisha to the writ petition, the counsel for the petitioner submitted that the Government of Odisha in Department of Higher Education releases Grant-in-Aid in favour of the petitioner-College, a Non-Government Aided College for disbursement of salary to the employees and in the said letters it has been stipulated that relevant papers are required to be kept open for test check by Accountant General Odisha, District Audit Officer, Local Fund Audit and auditor of the Higher Education Department if specially deputed for the purpose.

3.4. Sri Prajnaraj Mohanty, learned Advocate for the petitioners submitted that the assessee-College does fall within the meaning of expression "wholly or substantially financed by the Government" as employed in sub-clause (iiiab) of clause (23C) of Section 10 of the IT Act, it was not required to furnish return in view of provisions contained in Section 139(4C)(e). It is, therefore, contended that the Assessing Authority has misconstrued that there has been escapement of income for the Assessment Year 2015-16. In such view of the matter, not only the notice dated 31.03.2022 issued under Section 148 is tainted, but also the Order dated 22.03.2022 passed under Section 148A is vitiated.

4. Sri Radheyshyam Chimanka, learned Senior Standing Counsel for Income-tax Department countenancing the exercise of jurisdiction by the Income Tax Officer, Ward 1(1), Cuttack in initiating proceeding for assessment under Section 148, after consideration of reply dated 30.03.2022 furnished as required under Section

148A, submitted that the writ petition is premature inasmuch as the petitioner-assessee has ample opportunity to place its material before the Assessing Authority on merit as also raise objection against the Order dated 31.03.2022 passed under Section 148A(d) during the course of the assessment proceeding. Therefore, Sri Chimanka submitted that there being no prejudice caused to the petitioner, interference at this juncture by this Court under Article 226 of the Constitution of India would not be warranted.

5. Section 148A of the IT Act, which deals with conducting inquiry, providing opportunity before issue of notice under Section 148, reads thus:

*"**148A.***
Conducting inquiry, providing opportunity before issue of notice under Section 148.—

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, with the prior approval of specified authority, 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, relate to, the assessee.*

Explanation.—

For the purposes of this section, specified authority means the specified authority referred to in Section 151.”

5.1. Bare reading of aforesaid provisions suggests that the Assessing Officer is required to obtain prior approval of specified authority; and afford opportunity of hearing by allowing not less than 7 days,

but not exceeding 30 days from the date on which such notice was issued. Opportunity is extended to the petitioner by serving notice requiring it to explain as to why a notice under Section 148 for assessment should not be issued on the basis of information, which suggest that income chargeable to tax has escaped assessment in the case for the relevant assessment year and as a result of inquiry conducted, if any, as per clause (a) of Section 148A.

5.2. The notice dated 22.03.2022 issued under Section 148A clearly demonstrates that the Assessing Authority had in possession of information about deposit of cash in the banks by the petitioner-College during the Financial Year 2014-15. Section 148A uses the word "information" which triggers action by the Assessing Officer. The connotation of "information" in the context of reopening of assessment has succinctly been laid down in the case of *Larsen & Toubro Limited Vrs. State of Jharkhand, (2017) 103 VST 1 (SC) (Paragraphs 21, 22 & 27) = (2017) 13 SCC 780* which is as follows:

"21. It is also pertinent to understand the meaning of the word 'information' in its true sense. According to the Oxford Dictionary, 'information' means facts told, heard or discovered about somebody/something. The Law Lexicon describes the term 'information' as the act or process of informing, communication or reception of knowledge. The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment. We agree that a mere change of opinion or having second thought about it by the competent authority on the same set of facts and materials on the record does not constitute 'information' for the purposes of the State Act. But the word "information" used in the aforesaid

Section is of the widest amplitude and should not be construed narrowly. It comprehends not only variety of factors including information from external sources of any kind but also the discovery of new facts or information available in the record of assessment not previously noticed or investigated. Suppose a mistake in the original order of assessment is not discovered by the Assessing Officer, on further scrutiny, if it came to the notice of another assessor or even by a subordinate or a superior officer, it would be considered as information disclosed to the incumbent officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the Officer in such circumstances is in one sense extraneous to the record. It will be information in his possession within the meaning of Section 19 of the State Act. In such cases of obvious mistakes apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment or wrong assessment.

22. *There are a catena of judgments of this Court holding that assessment proceedings can be reopened if the audit objection points out the factual information already available in the records and that it was overlooked or not taken into consideration. Similarly, if audit points out some information or facts available outside the record or any arithmetical mistake, assessment can be re-opened.*

***

27. *The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or after bearing on the assessment. We are of the clear view that on the basis of information received and if the assessing officer is satisfied that reasonable ground exists to believe, then in that case the power of the assessing authority extends to re-opening of assessment, if for any reason, the whole or any part of the turnover of the business of the dealer has escaped assessment or has been under assessed and the assessment in such a case would be valid even if the*

*materials, on the basis of which the earlier assessing authority passed the order and the successor assessing authority proceeded, were same. ***"*

5.3. In the present case, it is admitted fact that the petitioner-College has deposited cash of Rs.69,23,128/- with the State Bank of India, Corporate Centre and received interest amounting to Rs.1,77,782/- and Rs.32,578/- from the deposit accounts maintained with Tamilnadu Mercantile Bank Ltd. While explaining by way of reply dated 30.03.2022 to the notice dated 22.03.2022, the petitioners submitted before the Authority concerned that cash amounting to Rs.69,23,128/- is the money received from students, but the same is stated to have been exempted under Section 10(23C)(iiiab) of the IT Act.

5.4. Provisions of Section 10(23)(iiiab) so far as is relevant for the present purpose is extracted hereunder:

"10. Incomes not included in total income.—

In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

*****

(23C) any income received by any person on behalf of—

*****

(iiiab) any ... other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government;"

5.5. To ascertain whether an educational institution like the petitioner-College is *"wholly or substantially financed by the Government"*,

Rule 2(bbb) of the Income Tax Rules, 1961, is referred to, which stands thus:

*"For the purposes of sub-clauses **(iiiab)** or (iiiac) **of clause (23C) of Section 10**, any university or **other educational institution**, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, **if the Government grant to such** university or **other educational institution**, hospital or other institution **exceeds fifty percent of the total receipts including any voluntary contributions**, **of** such university or **other educational institution,** hospital or other institution, as the case may be, **during the relevant previous year.**"*

[Emphasis supplied]

5.6. Conjoint reading of Section 10(23C)(iiiab) and Rule 2(bbb) makes it clear that in order to claim exemption from income tax, the petitioner is required to establish by furnishing required evidence before the Assessing Authority to the effect that the Government grant to Stewart Science College, Cuttack-educational institution exceeded fifty percent of the total receipts including any voluntary contributions during the relevant previous year. Added to this, another condition for claiming exemption under Section 10(23C)(iiiab) is required to be justified, *i.e.*, the petitioner-College is "existing solely for educational purposes and not for purposes of profit". These are matters of fact which are required to be adjudicated upon by the Assessing Officer at the first instance and thereafter in the event of any grievance, the same can be agitated and ventilated before the fora vested with power under the statute as the Income Tax Act is a self-contained code and exhaustive of the matters dealt with therein as held in *Rao Bahasur Ravula Subba Rao Vrs. Commissioner of Income Tax, 1956 SCR 577 = AIR 1956 SC 604 = (1956) 30 ITR 163 (SC)*.

5.7. Since the petitioner-College has not furnished return, the Assessing Authority-Income Tax Officer, Ward 1(1), Cuttack had no opportunity to examine the veracity of such claim for exemption. Therefore, there is justification to issue notice for assessment of escaped income on opining to initiate proceeding under Section 148 disclosing the reason by passing Order dated 31.03.2022 under Section 148A.

5.8. The action based on the subjective opinion or satisfaction can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated. The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the authority's opinion, judicial review in such a case is permissible. When we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect there is no evidence whatsoever to form or support the opinion. The distinction between insufficiency or inadequacy of evidence and no evidence must, of course, be borne in mind. A finding

based on no evidence as opposed to a finding which is merely against the weight of the evidence is an abuse of the power which courts naturally are loath to tolerate. Whether or not there is evidence to support a particular decision has always been considered as a question of law. It is in such a case that it is said that the authority would be deemed to have not applied its mind or it did not honestly form its opinion. The same conclusion is drawn when opinion is based on irrelevant matter. The existence of circumstances is a condition precedent to form an opinion. The court can inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In other words, if an inference from facts does not logically accord with and flow from them, the Courts can interfere treating them as an error of law. Thus, the Court can see whether on the basis of the facts and circumstances found, any reasonable man can say that an opinion as is formed can be formed by a reasonable man. That would be a question of law to be determined by the Court. Where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only. The Court can interfere if the constitutional or statutory term essential for the exercise of the power has either been misapplied or misinterpreted. The Courts have always equated the jurisdictional review with the review for error of law and have shown their readiness to quash an order if the meaning of the constitutional or statutory term has been misconstrued or misapplied. It is permissible to interfere in a case where the power is exercised for improper purpose. If a power granted for one purpose is exercised

for a different purpose, then it will be deemed that the power has not been validly exercised. If the power in this case is found to have not been exercised genuinely for the purpose of taking immediate action but has been used only to avoid embarrassment or wreck personal vengeance, then the power will be deemed to have been exercised improperly. The grounds which are relevant for the purpose for which the power can be exercised have not been considered or grounds which are not relevant and yet are considered and an order is based on such grounds, then the order can be attacked as invalid and illegal. On the same principle, the administrative action will be invalidated if it can be established that the authority was satisfied on the wrong question. The aforesaid principles of exercise of power *vis-à-vis* validity of exercising power has been discussed elaborately by the Hon'ble Supreme Court of India in *Amarendra Kumar Pandey Vrs. Union of India, 2022 SCC OnLine SC 881*.

5.9. "Proceeding" is frequently used to denote a step in an action and obviously it has that meaning in such phrases as proceeding in any cause or matter. When used alone, however, it is in certain statutes to be construed as synonymous with or including action. Reference may be had to *Halsbury's Laws of England, Vol. 1, 3rd Edition, page 6.*

5.10. The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. Refer: *Babu Lal*

Vrs. Hazari Lal Kishori Lal, AIR 1982 SC 818 = (1982) 1 SCC 525.

5.11. In *Commander Coast Guard Region (East) Vrs. O. Konavalov, MANU/TN/0029/2001 = (2001)1MLJ420 = O.S.A. No. 309 & 350 of 2000, decided on 10.01.2001 by Madras High Court = 2001 SCC OnLine Mad 28 = (2001) 1 CTC 247 = (2001) 1 Mad LJ 420* it is laid down that the word "Proceeding" has not been defined in the General Clauses Act, 1897.

Oxford Dictionary explains the term "Proceeding" as "an action taken in a Court to settle a dispute."

The Black's Law Dictionary, Seventh Edition, Edited by Bryan A. Garner, Editor-in-Chief, gives the meaning of the word "Proceeding" as:

"the regular and orderly progression of a law suit. Including all acts and events between the time of commencement and the entry of judgment; any procedural means for seeking redress from a tribunal or agency".

Words and Phrases (Legally Defined) [2nd Edition] Butterworths Publication explains the term "Proceedings" as:

"The term 'proceeding' is frequently used to note a step in an action, and obviously it has that meaning in such phrases as "proceeding in any cause or matter". When used alone, however, it is in certain statutes to be construed as synonymous with, or including "action" [Halsbury's Laws (3rd Edition) 5, 6]."

The term "Legal Proceedings" is explained as :

" 'Legal Proceedings' mean prima facie that which the words would naturally import— i.e., legal process taken to enforce the

rights of the Shipowner, Runchiman & Co. Vrs. Smyth & Co., 1994 (20) T.L.R. 625, per Lord Alverstone,C.J., at P.626."

The said Dictionary also refers to a Book *"The Law of Pleading under the Code of Civil Procedure" by Edwin E. Bryant,* and quoted as under:

" 'Proceeding' is a word much used to express the business done in courts. A proceeding in Court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word 'action', but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including the pleadings and Judgment."

The term 'proceeding' would only mean a legal process taken to enforce the rights.

5.12. The dictionary meaning of the word "proceeding" is "the institution of a legal action, any step taken in a legal action". In a general sense, the form and manner of conducting juridical business before a Court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus or the like. See: *Most Rev. P.M.A. Metropolitan & Others Vrs. Moran Mar Marthoma & Another, 1995 Supp (4) SCC 286 = AIR 1995 SC 2001*.

5.13. In *P.L. Kantha Rao Vrs. State of AP, AIR 1995 SC 807 = (1995) 2 SCC 471,* it is stated that the word 'proceeding' would depend upon the scope of the enactment wherein the expression is used with reference to a particular context where it occurs. It may mean a course of action for enforcing legal right. In the journey of

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litigation, there are several stages, one of which is the realisation of the judicial adjudication which attained finality.

5.14. The expression “proceeding” is not a term of art, which has acquired a definite meaning. What its meaning is when it occurs in a particular statute or a provision of a statute will have to be ascertained by looking at the relevant statute. Bearing in mind that the term “proceeding” indicates something in which, business is conducted according to a prescribed mode it would be only right to give it a comprehensive meaning so as to include within it all matters coming up for judicial adjudication and not to confine it to a civil proceeding alone. *Vide : Ram Chandra Aggarwal & Another Vrs. State of Uttar Pradesh & Another, AIR 1966 SC 1888 = 1966 Supp. SCR 393.*

5.15. The term ‘proceeding’ is a very comprehensive term and generally speaking, means a prescribed course of action for enforcing a legal right. It is a term giving the widest freedom to a Court of law so that it may do justice to the parties in the case. See: *Kantaru Rajeevaru Vrs. Indian Young Lawyers Association, (2020) 9 SCC 121 [9-Judge Bench]*.

5.16. Reference is made to *Mathew M. Thomas & Others Vrs. Commissioner of Income Tax, (1999) 2 SCC 543*, wherein it has been said that it is sufficient to refer to the Judgment of the Court in *Garikapati Veeraya Vrs. N. Subbiah Choudhry, AIR 1957 SC 540* wherein the court said at p.553:

> *“(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.”*

5.17. In *Oriental Gas Co. Ltd. Vrs. State of WB, (1973) 32 STC 141 (Cal)* it is observed that a proceeding under the sales tax statute comprehends the whole procedure for the levy, assessment, and collection of the tax liability of a dealer. When some step or action is taken for the ascertainment of imposition of that liability, the proceeding can be said to have commenced under the Act. Filing of return is a step in the procedure for the assessment of the liability of a dealer under the Act. By filing of such a return the machinery for assessment and imposition of liability is set in motion and with the filing of such a return a proceeding commences under the Act.

5.18. The word 'initiate' has been employed in Section 20 of the Contempt of Courts Act, 1971, which provides that no Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In the *Pallav Sheth Vrs. Custodian, (2001) 107 Comp Cas 76 (SC) = (2001) 7 SCC 549* it has been held that in the case of *suo motu* proceedings, contempt proceeding must be initiated by the Court by issuing a notice and in other cases initiation can only be by a party filing an application. Under Section 20 of the Contempt of Courts Act, 1971 action can be initiated, either by filing an application or by the Court issuing notice *suo motu*, within a period of one year from the date on which the contempt is alleged to have been committed.

5.19. In *Kishan Lal & Co. Vrs. Additional Commissioner of Commercial Tax, (2017) 102 VST 343 (Chhatisgarh) = 2017 SCC*

OnLine Chh 584 the initiation of proceeding has been described in the following manner:

"11. The word 'initiate' or 'initiation' has not been defined in the Act. Since it has not been defined in the Act, it would be appropriate to refer to the dictionary meaning of the word 'initiate'. In Webster's Third New International Dictionary, the word 'initiate' has been defined as to begin or set going; make a beginning of; perform or facilitate the first actions, steps or stages of. Likewise, in Shorter Oxford English Dictionary, the word 'initiate' has been defined as to begin, commence, enter upon; to introduce, set going, originate.

12. Black's Law Dictionary, 6th Edition, defines the words 'initiate' and 'initiative' as:

"Initiate: Commence; start; originate; introduce; inchoate. Curtesy initiate is the interest which a husband has in the wife's lands after a child is born who may inherit, but before the wife dies. To propose for approval - as schedule of rates. Idaho Power Co. Vrs. Thompson, D.C. Idaho, 19 F. 2d 547, 579.

Initiative: An electoral process whereby designated percentages of the electorate may initiate legislative or constitutional changes through the filing of formal petitions to be acted on by the legislature or the total electorate. The power of the people to propose bills and laws, and to enact or reject them at the polls, independent of legislative assembly. Hughes Vrs. Bryan, Okl., 425 P. 2d 952, 954. Not all state constitutions provide for initiative."

13. Thus, the word 'initiation' of suo motu revision as stated in proviso (a) to Section 9(3) of the Chhatisgarh Value Added Tax Act, 2005, has a definite connotation. Initiation of revisional proceeding is the time when the revisional authority applies its mind to the facts/materials on record and decides to direct issuance of notice in accordance with Rule 61 of the Rules proposing the proposed order and intimating the assessee his intention to take the proceeding in suo motu proceeding. Proviso (a) to Section 49(3) of the Act is the condition precedent to exercise the power of revisional authority under that procedure. It merely

contemplates initiation of proceeding by the revisional authority on its own or otherwise. The proceeding can be said to be initiated only when the revisional authority on its own motion or on the motion made otherwise decides to issue notice to the other side.

***

16. Therefore, what is required and condition precedent for initiation of proceeding by invoking Section 9(3) of the Chhatisgarh Value Added Tax Act, 2005, would be initiation of proceeding under Section 9(3) of the Act and initiation can be done only when the revisional authority applies its mind to the facts of the case on his own motion or on the information received. Once there is application of mind by the revisional authority for suo motu proceeding or on the basis of the information received and he decides to issue notice as contemplated under Rule 61 of the Chhatisgarh Value Added Tax Rules, then the exercise of initiation is complete and initiation cannot be said to be made only when the notice is received under Rule 61 by the assessee."

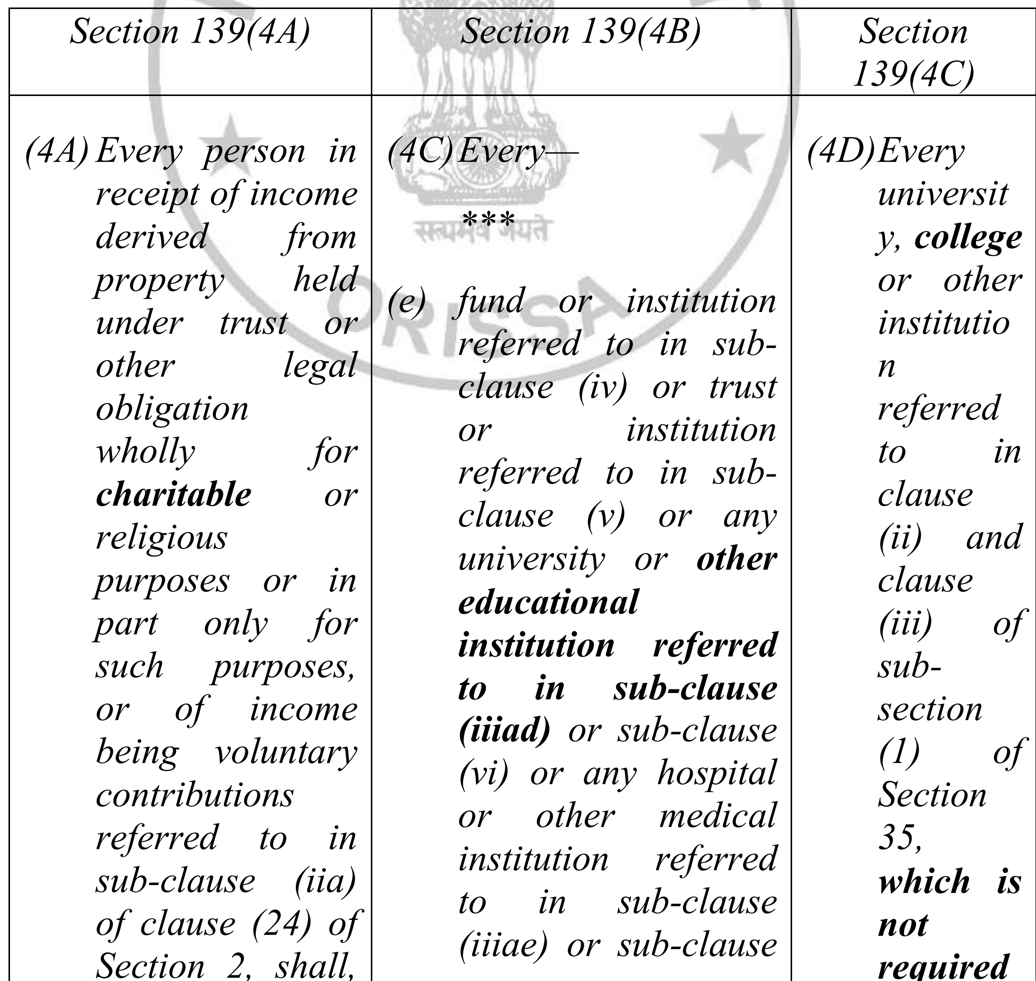
5.20. Perusal of record reveals that after passing of the Order dated 31.03.2022 under Section 148A(d) and issue of notice for assessment under Section 148 of the IT Act, having filed return under Section 139(4A) in Form ITR-7 on 30.04.2022 for the Assessment Year 2015-16 along with Audit Report (Annexure-4 series), the petitioner has participated in the proceeding and surrendered to the jurisdiction of the Assessing Authority-Income Tax Officer, Ward 1(1), Cuttack before whom said return is stated to have been filed.

5.21. In the above premises, it is unwarranted to show indulgence in matter pertaining to the Order dated 31.03.2022 passed under Section 148A(d) of the IT Act in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

Acceding to the contention of the petitioner would tantamount to rendering violence to provisions of Section 148.

6. Sri Prajnaraj Mohanty, learned counsel for the petitioner advanced argument that since the income of the petitioner-College falls within the ambit of Section 10(23C)(iiiab) of the IT Act, it was not required to furnish return in view of provisions contained in Section 139(4C)(e). It is noteworthy that the petitioner has furnished return under Section 139(4A) after receipt of notice for assessment under Section 148.

6.1. Relevant provisions contained in sub-sections (4A), (4C) and (4D) of Section 139, as they stood at the relevant point of time, are quoted hereunder:



Section 139(4A)	*Section 139(4B)*	*Section 139(4C)*
*(4A) Every person in receipt of income derived from property held under trust or other legal obligation wholly for **charitable** or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of Section 2, shall,*	*(4C) Every—* ***** *(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or **other educational institution referred to in sub-clause (iiiad)** or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiae) or sub-clause*	*(4D) Every university, **college** or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of Section 35, **which is not required***

if the total income in respect of which he is assessable as a representative assessee (the total Income for this purpose being computed under this Act without giving effect to the provisions of Sections 11 and 12) exceeds the maximum amount which is not chargeable to income tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).	*(via) of clause (23C) of Section 10;* *** *shall, if the total income in respect of which such research association, news agency, association or institution, fund or university or other educational institution or any hospital or other medical institution or trade union or body or authority or Board or Trust or Commission or infrastructure debt fund or mutual fund or securitization trust or venture capital company or venture capital fund is assessable, without giving effect to the provisions of Section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).*	***to furnish return of income*** *or loss under any other provision of this section,* ***shall furnish the return in respect of its income*** *or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).”*

[Emphasis supplied]

6.2. Filing return under Section 139(4A) is needed by every person who receives an income derived from the property held under any trust or other legal obligation, either wholly for religious or charitable purposes or partly for such purposes only, or of income being voluntary contributions referred to in sub-section 2(24)(iia), shall, in case the total income (without giving effect to the provisions of Sections 11 and 12) exceeds the maximum allowable amount which is not taxable under income-tax. Nonetheless, return under Section 139(4C) includes other educational institutions referred to in sub-clause (iiiad) of clause (23C) of Section 10 that are compulsorily required to file return if the amount accumulated by the institution exceeds the maximum allowable limit of exemption. Further, return under Section 139(4D) is applicable to all colleges, universities and institutions referred to in clause (ii) and clause (iii) of sub-section (1) of Section 35, which do not need to file tax returns of income and loss under any other provision of this section.

6.3. The contention of the petitioner-College that it does not require to furnish return cannot be accepted in view of clear provisions envisaged in sub-section (4D) of Section 139 of the IT Act which in unequivocal term speaks that every college, which is not required to furnish return of income or loss under any other provision of Section 139, shall furnish the return and all provisions of the IT Act shall apply as if it were a return under Section 139(1). Nonetheless, it has already filed return under Section 139(4A) claiming it to be educational institution with charitable activity.

6.4. This Court has taken note of Circular No.4/2002 dated 16th July, 2002 issued *vide* F.No.153/127/2002-TPL by the Government of India in Ministry of Finance, Department of Revenue as referred to by the petitioner in its reply to Notice dated 22.03.2022 issued under Section 248A. Said Circular is reproduced herein below:

"F.No.153/127/2002-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes (TPL Division)

To

All the Chief Commissioners/Directors General of Income-tax

Subject: *Requirement of tax deduction at source in case of entities whose income is exempt under Section 10 of the Income-tax Act.*

1. Subsequent to the amendment to Section 197A made by the Finance Act, 2002 whereby a new sub-section (1B) has been inserted with effect from 1st June, 2002, representations have been received seeking clarification whether the prescribed self-declaration under the said section can be submitted by entities exempt from tax under Section 10 even if the payments referred to in sub-section (1A) to be made to them exceed the threshold limit not subject to tax.

2. This matter has been examined by the Board. It has been decided that in case of those funds or authorities or Boards or bodies, by whatever name called, whose income is unconditionally exempt under Section 10 of the Income-tax Act and who are statutorily not required to file return of income as per Section 139 of the Income-tax Act, there would be no requirement for tax deduction at source since their income is anyway exempt under the Income-tax Act. The institutions whose income is unconditionally exempt under Section 10 and who are statutorily not required to file return of income as per the provisions of Section 139 are :

(i) *"local authority", as referred to in the Explanation to clause (20);*

(ii) *Regimental Fund or Non-public Fund established by the armed forces of the Union referred to in clause (23AA);*

(iii) *Fund, by whatever name called, set up by the Life Insurance Corporation of India on or after 1st August, 1996, or by any other insurer referred to in clause (23AAB);*

(iv) *Authority (whether known as the Khadi and Village Industries Board or by any other name) referred to in clause (23BB);*

(v) *Body or authority referred to in clause (23BBA);*

(vi) *SAARC Fund for Regional Projects set up by Colombo Declaration referred to in clause (23BBC);*

(vii) *Secretariat of the Asian Organisation of the Supreme Audit Institutions referred to in clause (23BBD) till assessment year 2003-2004;*

(viii) *Insurance Regulatory and Development Authority referred to in clause (23BBE);*

(ix) *Prime Minister's National Relief Fund referred to in sub-clause (i), Prime Minister's Fund (Promotion of Folk Art) referred to in sub-clause (ii), Prime Minister's Aid to Students Fund referred to in sub-clause (iii), National Foundation for Communal Harmony referred to in sub-clause (iiia), any university or other educational institution referred to in sub-clause (iiiab) and any hospital or other institution for the reception and treatment of persons as referred to in sub-clause (iiiac) of clause (23C);*

(x) *Credit Guarantee Fund Trust for Small Scale Industries referred to in clause (23EB) till assessment year2006-2007;*

(xi) *Provident fund to which the Provident Funds Act, 1925 (19 of 1925) referred to in sub-clause (i),*

recognised provident fund referred to in sub-clause (ii), approved superannuation funds referred to in sub-clause (iii), approved gratuity fund referred to in sub-clause (iv) and funds referred to in sub-clause (v) of clause (25);

(xii) Employees' State Insurance Fund referred to in clause (25A);

(xiii) Corporations referred to in clause (26BB);

(xiv) Boards referred to in clause (29A).

3. The contents of this Circular may be brought to the notice of all the officers working in your region.

Sd/-
(Deepika Mittal)
Under Secretary (TPL-III)
Tel 3092742"

6.5. Reading of provision contained in Section 10(23C)(iiiab) indicates that the exemption is hedged with certain conditions, which are as follows:

i. The educational institution must be existing one;

ii. The educational institution is solely for educational purposes and not for purposes of profit;

iii. The educational institution is wholly or substantially financed by the Government.

6.6. While considering the claim for exemption, the aforesaid conditions are required to be dealt with by the fact-finding authority on the evidence(s) adduced by the assessee/claimant. Whereas such exemption is subject to satisfaction of certain conditions, it cannot be said that the exemption envisaged under Section 10(23C)(iiiab) is generally exempted.

6.7. This Court in the case of *Atlas Engineering Works (Pvt.) Ltd. Vrs. Commissioner of Commercial Taxes and others, 2000 SCC OnLine Ori 296 = (2000) 120 STC 588* in the context of "general exemption" as envisaged under Section 8(2A) of the Central Sales Tax Act, 1956, held as follows:

> *"May it be noted that the Supreme Court in Pine Chemicals Ltd. Vrs. Assessing Authority, (1992) 85 STC 432 held that the dealers-assessees were entitled to claim the benefit of the provision contained in Section 8(2-A) of the CST Act in view of the exemption granted to them under the Jammu and Kashmir Government Order No. 159. The Commissioner of Sales Tax, Jammu and Kashmir sought review of the aforesaid judgment and the Supreme Court by judgment dated October 24, 1994 in Commissioner of Sales Tax, Jammu and Kashmir Vrs. Pine Chemicals Ltd., (1995) 96 STC 355 reversed its earlier opinion and has ruled that Section 8(2-A) of the CST Act requires specifically that exemption from Central sales tax must be a general exemption and not an exemption operative in specified circumstances or under specified condition. General exemption means that the goods are totally exempt from tax, and where the exemption from tax is subject to conditions or certain circumstances, there is no exemption from the tax generally."*

6.8. In *Indian Aluminium Cables Ltd. Vrs. State of Haryana, (1976) 38 STC 108 (SC)* and *Industrial Cables (I) Ltd. Vrs. Assessing Authority, (1987) 64 STC 349 (SC)* in the context of Section 8(2A) of the Central Sales Tax Act, 1956, it has been laid down that "general exemption" means that the goods should be totally exempt from tax before similar exemption from the levy of the Central sales tax can become available. Where the exemption from taxation is conferred by conditions or in certain circumstances, there is no exemption from tax generally.

6.9. Viewed in aforesaid perspective, Section 10(23C)(iiiab) of the IT Act is not generally exempt *qua* the petitioner-College. Therefore,

it is open for the Adjudicating Authority to examine whether the claim for exemption on the basis that the petitioner-College, claiming to be a minority institution on the basis of certification in the year 2021, is existing solely for educational purposes and not for purposes of profit and it is wholly and substantially financed by the Government. In case of ambiguity, the benefit tilts in favour of Revenue as laid down in *Dilip Kumar and Company & Others, (2018) 9 SCC 1 = 2018 SCC OnLine SC 747 = 2018 (361) ELT 577 (SC)*. In the said case, 5-Judge Constitution Bench of Hon'ble Supreme Court of India has propounded as follows:

"66. To sum up, we answer the reference holding as under:

i. Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

ii. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

iii. The ratio in Sun Export case (supra) [Sun Export Corporation Vrs. Collector of Customs, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

6.10. Another significant fact which has come to fore in the matter is that while complying with the terms of notice dated 31.03.2022 under Section 148, the petitioner-College has furnished return in Form ITR-7 mentioning therein that the same is filed under Section 139(4A). The petitioner-College, by furnishing said return

for the Assessment Year 2015-16, copy of which is enclosed to the writ petition as Annexure-4 series, disclosed the following fact:

Details of the projects/institutions run by you						
Sl. No.	Name of the project/ institution	Nature of activity (see instructions para 11d)	Classification code (see instructions para 11d)	Approval/ Notification/ Registration No.	Approving/ Registering Authority	Section under which exemption claimed, if any (see instruction para 11e)
1	Stewart Science College	Charitable	Education	12A – 791/2014 - 15/1880	CIT Cuttack	Section 11

6.11. Sub-section (4A) refers to filing of return disclosing receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of Section 2. The term "income" has been defined in Section 2(24)(iia) *inter alia* to include educational institution referred to in clause (iiiad) of sub-section (23C) of Section 10. Section 10(23C)(iiiad) during the material period stood thus:

"10. Income not included in total income.—

In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

***

(23C) any income received by any person on behalf of—

***

> *(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipt as may be prescribed."*

6.12. Thus, furnishing return under Section 139(4A) clinches that the petitioner-College has *ex facie* admitted its claim to have fallen within scope of exemption under Section 10(23C)(iiiad) of the Income Tax Act, 1961. On the one hand, by way of pleading in the writ petition the petitioner-College asserts that no return is required to be filed *qua* exemption claimed to have fallen within scope of Section 10(23C)(iiiab); on the other hand, in the return furnished in connection with proceeding under Section 148 it has disclosed the claim *qua* educational institution with charitable nature of activity so as to embrace exemption under Section 11 of the IT Act. Such conflicting and contradictory stance requires appropriate adjudication by the Assessing Officer/statutory authority based on the material on record.

6.13. To illustrate, but not to be construed as exhaustive, following serious disputed questions of fact may fall for determination by the statutory authorities vested with power under the IT Act:

i. Whether the return in Form IT-7 furnished under Section 139(4A) by the petitioner-College, can be accepted on the face of its claim of exemption from filing return based on pre-amended position contained in Section 139(4C)(e) *vis-à-vis* provisions contained in Section 139(4D)?

ii. Whether the claim of exemption under Section 10(23C)(iiiab) by the petitioner-College can be considered

in the light of return in Form ITR-7 mentioning therein that the same has been filed under Section 139(4A), which is applicable to the educational institution having charitable activity, but not minority educational institution as claimed in the writ petition?

iii. Whether the petitioner-College exists solely for educational purposes and not for purposes of profit and it is wholly or substantially financed by the Government?

iv. Whether the Certificate issued on 28th of January, 2021 by the National Commission for Minority Educational Institutions and Letter dated 10.12.2021 and Letter dated 20.04.2022 issued by the Department of Higher Education, being not contemporaneous documents, can be taken as evidence to arrive at a conclusion that the claim of exemption would be embraced within fold of Section 10(23C)(iiiab)?

v. Whether the documents available at Annexure-2 series to the writ petition shall have any bearing to come to conclusion that the petitioner-College is wholly or substantially financed by the Government to justify its claim of exemption under Section 10(23C)(iiiab) of the IT Act for the purpose of assessment pertaining to Assessment Year 2015-16 [Previous Year 2014-15]?

vi. Whether the petitioner has discharged its *onus* by showing that its claim falls within the fold of provision for exemption contained in Section 10(23C)(iiiab)?

vii. Whether the petitioner is to demonstrate by laying evidence before the authority concerned that it was justified in not filing return in view of pre-amended provision contained in sub-section (4C) of Section 139 though sub-section (4D) *ibid.* does require filing of return and in the event of ambiguity whether the principle enunciated in the case of *Dilip Kumar and Company & Others, (2018) 9 SCC 1 = 2018 SCC OnLine SC 747 = 2018 (361) ELT 577 (SC)* would apply?

So on so forth.

6.14. Under the above perspective, there is no doubt in mind that the petitioner-College has sought to raise factual dispute(s) by way of writ petition in the garb of raising questions of law.

7. The petitioner has made feeble attempt to question the propriety and justness of Order dated 31.03.2022 passed under Section 148A(d) of the IT Act by opining to proceed with assessment under Section 148 after duly considering the reply dated 30.03.2022 submitted by the petitioner in response to the notice dated 22.03.2022 issued under Section 148A(b) by way of writ petition.

7.1. It is pertinent to refer to *Judgment dated 02.06.2022 delivered by the High Court of Punjab and Haryana at Chandigarh* in the case of *Anshul Jain Vrs. Principal Commissioner of Income Tax, CWP No.10219 of 2022.* In the said case by invoking writ jurisdiction the petitioner had challenged the Order dated 31.03.2022 issued under Section 148A(d) of the IT Act and notice dated 31.03.2022

under Section 148 whereby the objections raised by the petitioner to the notice issued under Section 148A(b) were rejected.

The said Court framed the following issue:

"Whether at this stage of notice under Section 148, writ Court should venture into the merits of the controversy when AO is yet to frame assessment/reassemment in discharge of statutory duty casted upon him under Section 147 of the Act?"

After making elaborate discussion on the subject, the said Court held as follows:

"Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ Court should not interfere at such a pre-mature stage. Moreover it is not a case where from bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of order under Section 148A(d) is being challenged on the factual premise contending that jurisdiction though vested has been wrongly exercised. By now it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided.

In the light of aforesaid settled proposition of law, we find that there is no reason to warrant interference by this Court in exercise of the jurisdiction under Article 226/227 of the Constitution of India at this intermediate stage when the proceedings initiated are yet to be concluded by a statutory authority. Hence the writ petition stands dismissed."

7.2. The said Judgment of the Hon'ble Punjab & Haryana High Court was assailed before the Hon'ble Supreme Court of India in *SLP(C) No. 14823 of 2022 [Anshul Jain Vrs. Principal Commissioner of Income Tax]*, which came to be disposed of on 02.09.2022 with the following order:

"What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

Under the circumstances, the High Court has rightly dismissed the writ petition.

No interference of this Court is called for.

The present Special Leave Petition stands dismissed.

Pending applications stand disposed of."

7.3. It is seen that in the case of *Anshul (supra)* the grievance of the petitioner was that his objection raised against notice under Section 148A was not taken care of. Yet, the Hon'ble Supreme Court did not interfere with the order of dismissal of writ petition by the High Court of Punjab & Haryana. Similar is the case of the petitioner in the instant case. Therefore, this Court finds that no case is made out by the petitioner to interfere with the issue of notice under Section 148 by the Adjudicating Authority after taking decision to initiate proceeding on passing order under Section 148A(d) of said Act.

8. As required under Section 148 of the IT Act, the Assessing Officer having obtained prior approval of the Principal Chief Commissioner of Income Tax, Odisha, issued notice dated 31.03.2022 and the petitioner-College furnished return in terms of such notice. Therefore, meddling at this stage by this Court would be premature and entertainment of writ petition by exercise of power under Article 226 of the Constitution of India would run contrary to settled principles.

8.1. Self-imposed restriction for entertainment of writ jurisdiction has been succinctly enunciated by the Hon'ble Supreme Court in *Star Paper Mills Ltd. Vrs. State of U.P., (2006) 10 SCC 201 = 2006 SCC OnLine SC 979* which is to the following effect:

> *"4. In response, learned counsel for the respondents submitted that on factual adjudication it was to be established by the appellant that its case is covered by the ratio of this Court's decision in Krishi Utpadan Mandi Samiti case [1995 Supp (3) SCC 433].*
>
> > *'10. The issues relating to entertaining writ petitions when alternative remedy is available, were examined by this Court in several cases and recently in State of H.P. Vrs. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499].*
> >
> > *11. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.*
> >
> > *12. Constitution Benches of this Court in K.S. Rashid and Son Vrs. Income Tax Investigation Commission [1954 SCR 738 = AIR 1954 SC 207], Sangram Singh Vrs. Election Tribunal, Kotah [(1955) 2 SCR 1 = AIR 1955 SC 425], Union of India Vrs. T.R. Varma [1958*

SCR 499 = AIR 1957 SC 882], State of U.P. Vrs. Mohd. Nooh [1958 SCR 595 = AIR 1958 SC 86] and Venkataraman and Co. Vrs. State of Madras [(1966) 2 SCR 229 = AIR 1966 SC 1089] held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

13. *Another Constitution Bench of this Court in State of M.P. Vrs. Bhailal Bhai [(1964) 6 SCR 261 = AIR 1964 SC 1006] held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in N.T. Veluswami Thevar Vrs. G. Raja Nainar [1959 Supp (1) SCR 623 = AIR 1959 SC 422], Municipal Council, Khurai Vrs. Kamal Kumar [(1965) 2 SCR 653 = AIR 1965 SC 1321], Siliguri Municipality Vrs. Amalendu Das [(1984) 2 SCC 436 = 1984 SCC (Tax) 133 = AIR 1984 SC 653], S.T. Muthusami Vrs. K. Natarajan [(1988) 1 SCC 572 = AIR 1998 SC 616], Rajasthan SRTC Vrs. Krishna Kant [(1995) 5 SCC 75 = 1995 SCC (L&S) 1207 = (1995) 31 ATC 110 = AIR 1995 SC 1715], Kerala SEB Vrs. Kurien E. Kalathil [(2000) 6 SCC 293 = AIR 2000 SC 2573], A. Venkatasubbiah Naidu Vrs. S. Chellappan [(2000) 7 SCC 695], L.L. Sudhakar Reddy Vrs. State of A.P. [(2001) 6 SCC 634], Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vrs. State of Maharashtra [(2001) 8 SCC 509], Pratap Singh Vrs. State of Haryana [(2002) 7 SCC 484 = 2002 SCC (L&S) 1075] and*

GKN Driveshafts (India) Ltd. Vrs. ITO [(2003) 1 SCC 72].

14. *In Harbanslal Sahnia Vrs. Indian Oil Corporation Ltd. [(2003) 2 SCC 107] this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the Petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.*

15. *In Veerappa Pillai Vrs. Raman & Raman Ltd. [1952 SCR 583 = AIR 1952 SC 192], CCE Vrs. Dunlop India Ltd. [(1985) 1 SCC 260 = 1985 SCC (Tax) 75 = AIR 1985 SC 330], Ramendra Kishore Biswas Vrs. State of Tripura [(1999) 1 SCC 472 = 1999 SCC (L&S) 295 = AIR 1999 SC 294], Shivgonda Anna Patil Vrs. State of Maharashtra [(1999) 3 SCC 5 = AIR 1999 SC 2281], C.A. Abraham Vrs. ITO [(1961) 2 SCR 765 = AIR 1961 SC 609], Titaghur Paper Mills Co. Ltd. Vrs. State of Orissa [(1983) 2 SCC 433 = 1983 SCC (Tax) 131 = AIR 1983 SC 603], H.B. Gandhi Vrs. Gopi Nath & Sons [1992 Supp (2) SCC 312], Whirlpool Corporation Vrs. Registrar of Trade Marks [(1998) 8 SCC 1 = AIR 1999 SC 22], Tin Plate Co. of India Ltd. Vrs. State of Bihar [(1998) 8 SCC 272 = AIR 1999 SC 74], Sheela Devi Vrs. Jaspal Singh [(1999) 1 SCC 209] and Punjab National Bank Vrs. O.C. Krishnan [(2001) 6 SCC 569] this Court held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction.*

16. *If, as was noted in Ram and Shyam Co. Vrs. State of Haryana [(1985) 3 SCC 267 = AIR 1985 SC 1147] the appeal is from 'Caesar to Caesar's wife' the existence of alternative remedy would be a mirage and an exercise in futility. ... There are two well-*

recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings themselves are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

The above position was recently highlighted in U.P. State Spinning Co. Ltd. Vrs. R.S. Pandey [(2005) 8 SCC 264 = 2005 SCC (L&S) 78], SCC pp. 270-72, paras 10-16."

8.2. In a case where assessment order was challenged, the High Court quashed the same invoking writ jurisdiction; however, the Hon'ble Supreme Court in the matter of *Commissioner of Income Tax Vrs. Chhabil Dass Agarwal, (2014) 1 SCC 603 = 2013 SCC OnLine SC 717 = (2013) 357 ITR 357 (SC)* reiterated the scope and purport of exercise of power under Article 226 of the Constitution of India and re-stated the self-imposed restrictions *qua* entertainment of writ petition:

"12. The Constitution Benches of this Court in K.S. Rashid and Son Vrs. Income Tax Investigation Commission [AIR 1954 SC 207], Sangram Singh Vrs. Election Tribunal [AIR 1955 SC 425], Union of India Vrs. T.R. Varma [AIR 1957 SC 882], State of U.P. Vrs. Mohd. Nooh [AIR 1958 SC 86] and K.S. Venkataraman and Co. (P) Ltd. Vrs. State of Madras [AIR 1966 SC 1089] have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable

relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [See N.T. Veluswami Thevar Vrs. G. Raja Nainar [AIR 1959 SC 422], Municipal Council, Khurai Vrs. Kamal Kumar [AIR 1965 SC 1321 = (1965) 2 SCR 653], Siliguri Municipality Vrs. Amalendu Das [(1984) 2 SCC 436 = 1984 SCC (Tax) 133], S.T. Muthusami Vrs. K. Natarajan [(1988) 1 SCC 572], Rajasthan SRTC Vrs. Krishna Kant [(1995) 5 SCC 75 = 1995 SCC (L&S) 1207 = (1995) 31 ATC 110], Kerala SEB Vrs. Kurien E. Kalathil [(2000) 6 SCC 293], A. Venkatasubbiah Naidu Vrs. S. Chellappan [(2000) 7 SCC 695], L.L. Sudhakar Reddy Vrs. State of A.P. [(2001) 6 SCC 634], Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vrs. State of Maharashtra [(2001) 8 SCC 509], Pratap Singh Vrs. State of Haryana [(2002) 7 SCC 484 = 2002 SCC (L&S) 1075] and GKN Driveshafts (India) Ltd. Vrs. ITO [(2003) 1 SCC 72] .]

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15. *Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419], Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. Vrs. State of Orissa, (1983) 2 SCC 433 = 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ*

petition should not be entertained ignoring the statutory dispensation."

8.3. This Court in the case of *National Aluminium Company Ltd. Vrs. Employees State Insurance Corporation, 2012 SCC OnLine Ori 90* has observed as follows:

> *"24. This Court in the case of Rohit Kumar Behera Vrs. State of Orissa, 2012 (II) ILR-CUT 395, held as under:*
>
> > *'21. Law is well settled that unless it is shown that the notice to show cause has been issued palpably without any authority of law, the show cause notice cannot be quashed in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution.' "*

8.4. Bearing in mind the above principles, the scope of alternative remedy *vis-à-vis* entertainment of writ petition for exercising extraordinary jurisdiction under Article 226 of the Constitution of India *qua* the impugned Notice(s) *vide* Annexure-1 series issued by the Income Tax Officer, Ward 1(1), Cuttack, it may be apt to refer to *Union of India Vrs. Coastal Container Transporters Association, (2019) 20 SCC 446* wherein it has been laid down by the Hon'ble Supreme Court as follows:

> *"30. On the other hand, we find force in the contention of the learned senior counsel, Sri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of Constitution of India at the stage of show cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court, where writ petitions can be entertained at the show cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. High Court ought not to have entertained the writ petition, more so, when against*

the final orders appeal lies to this Court. The judgment of this Court in the case of Union of India Vrs. Guwahati Carbon Ltd., (2012) 11 SCC 651 = 2012 SCC OnLine SC 210 relied on by the learned senior counsel for the appellants also supports their case. In the aforesaid judgment, arising out of Central Excise Act, 1944, this Court has held that excise law is a complete code in order to seek redress in excise matters and held that entertaining writ petition is not proper where alternative remedy under statute is available. When there is a serious dispute with regard to classification of service, the respondents ought to have responded to the show cause notices by placing material in support of their stand but at the same time, there is no reason to approach the High Court questioning the very show cause notices. Further, as held by the High Court, it cannot be said that even from the contents of show cause notices there are no factual disputes. Further, the judgment of this Court in the case of Malladi Drugs & Pharma Ltd. Vrs. Union of India, (2020) 12 SCC 808 = 2004 SCC OnLine SC 358, relied on by the learned senior counsel for the appellants also supports their case where this Court has upheld the judgment of the High Court which refused to interfere at show cause notice stage."

8.5. The Supreme Court of India in *South India Tanners & Dealers Association Vrs. Deputy Commissioner of Commercial Taxes, (2008) 23 VST 8 (SC)* expressed displeasure in entertainment of writ petition against the Show Cause Notice. The Hon'ble Supreme Court in the said case laid down the modality for the Authority in the following terms:

"2. We have repeatedly stated that as far as possible the High Courts should not interfere in matters at show cause notice stage.

3. Without reply to the show cause notice the appellants herein preferred Original Petitions before the Tamil Nadu Taxation Special Tribunal which decided the matters against the assessees. The assessees filed writ petitions against the order passed by the Special Tribunal in the

High Court of Madras in which impugned judgments have been delivered, against which these Civil Appeals have been filed. We find that the assessees have never replied to the show cause notices till date.

4. We are of the view that in such circumstances the Special Tribunal/High Court ought not to have interfered and they ought to have directed the assesse to reply to the show cause notice and exhaust the statutory remedy under the Act, which they have not done till date.

5. In the circumstances, to put an end to this controversy we, first of all, grant liberty to the Department to amend the show cause notices and take up additional grounds, if so advised, within a period of eight weeks from today. They will accordingly give an opportunity to the assessees to reply to the amended show cause notice as well as the original show cause notice within a period of six weeks from the date of the assesses receiving the amended show cause notice.

6. On receiving replies from the assessees the Assessing Authority shall hear and dispose of the matters as expeditiously as possible in accordance with law and in accordance with the directions given hereinabove.

7. We make it clear that the Assessing Authority will decide the matters uninfluenced by any observations made by the High Court/Tribunal in the earlier round of litigation.

8. All contentions on both sides are expressly kept open. At this stage we do not wish to express any opinion on the merits of the case."

8.6. In an identical case relating to writ petition questioning the Show Cause Notice relating to service tax under Chapter-V of the Finance Act, 1994, *viz. Bhubaneswar Development Authority Vrs. Commissioner of Central Excise, 2015 SCC OnLine Ori 53,* this Court observed as follows:

"5. After hearing the learned counsel for the respective parties, it would be relevant herein to take note that the judgment of

the Hon'ble Supreme Court in the case of Collector of Central Excise, Hyderabad Vrs. M/s. Chemphar Drugs and Liniments, Hyderabad, (1989) 2 SCC 127 and in particular, Para-9 thereof is quoted as hereunder:

> *"9. *** In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11-A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or willful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case."*

6. Hon'ble Single Judge of Calcutta High Court in the case of Infinity Infotech Parks Ltd., (2015) 85 VST 465 (Cal) appears to have placed reliance on the judgment of Hon'ble Supreme Court as noted hereinabove in Para-66 which admittedly, is a leading judgment on the issue raised in the present case. In the said case, the Hon'ble Supreme Court came to conclude that something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. But most importantly, the Hon'ble Supreme Court has noted thereafter that 'Whether in a particular set of facts and circumstances there was any fraud or collusion or willful misstatement or suppression or contravention of any provision of any Act, is a question of

fact depending upon the facts and circumstances of a particular case.

7. On perusal of the aforesaid judgment of the Hon'ble Supreme Court, it is clear therefrom that Hon'ble Supreme Court in the said case was dealing with an appeal filed by the Collector of Central Excise, Hyderabad against an order passed by the Tribunal. In the facts and circumstances of the said case, Hon'ble Supreme Court came to hold that this finding of fact having been ultimately held against the revenue by the Tribunal which is the final fact forum and dismissed the appeal filed by the revenue on the basis that it did not want to interfere the facts determined by the Tribunal in the said case.

*8. In the present set of circumstances of the case, any finding by the Court at this stage is likely to be prejudicial, either the Petitioner-BDA or the Service Tax Authority. ***"*

8.7. In *Supreme Paper Mills Limited Vrs. Assistant Commissioner of Commercial Taxes, (2010) 11 SCC 593 = (2010) 31 VST 1 (SC),* the Hon'ble Supreme Court after taking note of earlier case being *Sales Tax Officer, Ganjam Vrs. Uttareswari Rice Mills, (1973) 3 SCC 171 = 1973 SCC (Tax) 123 = AIR 1972 SC 2617 = (1972) 30 STC 567 (SC) = (1973) 89 ITR 6 (SC),* wherein challenge was made to Show Cause Notice, has been pleased to make the following observation:

"14. In our considered opinion, the ratio of the aforesaid decision in Uttareswari Rice Mills case [(1973) 3 SCC 171 = 1973 SCC (Tax) 123] of this Court is squarely applicable to the facts of the present case. The expression used in Section 11-E of the Act is that the Commissioner must be satisfied on information or otherwise that the registered dealer has furnished incorrect statement of his turnover or furnished incorrect particulars of his sale in the return. A Show Cause Notice is issued to the dealer with the purpose of informing him that the Department proposes to reopen the assessment because the Commissioner himself is satisfied that the dealer has furnished incorrect statement of

his turnover or incorrect particulars of his sales in the return submitted, so as to enable the dealer to reply to the show-cause notice as to why the said power vested in the Commissioner should not be exercised.

15. A notice was issued in order to provide an opportunity of natural justice to the dealer. There is nothing in the language of the aforesaid provision which either expressly or impliedly mandates the recording of any reasons. The provision of the Act nowhere postulates that the reasons which led to the issue of the said notice should be incorporated in the notice itself, and that in case of failure to do so, the same would invalidate the notice.

16. The aforesaid provision is clear and explicit and there is no ambiguity in it. If the legislature had intended to give any other meaning as suggested by the counsel appearing for the appellant it would have made specific provision laying down such conditions explicitly and in clear words. It is a well-settled principle in law that the court cannot add anything into a statutory provision, which is plain and unambiguous. Language employed in a statute itself determines and indicates the legislative intent. If the language is clear and unambiguous it would not be proper for the court to add any words thereto and evolve some legislative intent not found in the statute."

8.8. Challenge being made to the Show Cause Notice, the Hon'ble Supreme Court in the case of *CCE Vrs. Krishna Wax (P) Ltd., (2020) 12 SCC 572 = 2019 SCC OnLine SC 1470* at Paragraphs 7, 10 and 13 discussed thus:

"7. Section 11-A thus deals with various facets including non-levy and non-payment of excise duty and contemplates issuance of a show-cause notice by the Central Excise Officer requiring the "person chargeable with duty" to show cause why "he should not pay the amount specified in the notice". In terms of sub-section (10) of said Section 11-A, the person concerned has to be afforded opportunity of being heard and after considering his representation, if any, the amount of duty of excise due from such person has to be determined by the Central Excise Officer. Without going

into other details regarding the period of limitations and the circumstances under which show-cause notice can be issued, the crux of the matter is that such determination is after the issuance of show-cause notice followed by affording of opportunity and consideration of representation, if any, made by the person concerned.

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10. The issuance of show-cause notice under Section 11-A also has some significance in the eye of the law. The day the show-cause notice is issued, becomes the reckoning date for various issues including the issue of limitation. If we accept the submission of the respondent that a prima facie view entertained by the department whether the matter requires to be proceeded with or not is to be taken as a decision or determination, it will create an imbalance in the working of various provisions of Section 11-A of the Act including periods of limitation. It will be difficult to reckon as to from which date the limitation has to be counted.

*****

13. It must be noted that while issuing a show-cause notice under Section 11-A of the Act, what is entertained by the Department is only a prima facie view, on the basis of which the show-cause notice is issued. The determination comes only after a response or representation is preferred by the person to whom the show-cause notice is addressed. As a part of his response, the person concerned may present his view point on all possible issues and only thereafter the determination or decision is arrived at. In the present case even before the response could be made by the respondent and the determination could be arrived at, the matter was carried in appeal against the said internal order. The appellant was therefore, justified in submitting that the appeal itself was premature."

8.9. In *Union of India Vrs. Bajaj Tempo Ltd., (1998) 9 SCC 281 = 1997 (94) ELT 285 SC = JT 1998 (9) SC 138* it is advised that the appropriate course for the assessee was to reply to the show cause notice enabling the authorities to record their findings of fact in

each case and then, if necessary, the matter could be proceeded to the Tribunal and thereafter to the High Court.

8.10. The Hon'ble Supreme Court in *Union of India Vrs. Guwahati Carbon Ltd., (2012) 11 SCC 651* has held as under:

> *"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram vs. Municipal Committee, Chheharta, (1979) 3 SCC 83. In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23).*
>
> > *"23. ... when a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking remedy are excluded."*

8.11. The petitioner-College, in the instant case, has the fullest opportunity to refute allegations, if any, and rebut adverse finding/observations involved in the matter, as discussed above. The petitioner may also raise legal issues as well as factual disputes before the Assessing Officer during the course of proceeding. It is possible for the petitioner to seek further time, if according to him the time given by the authority for filing the reply was required to be extended in order to enable it to collect further material. It cannot, therefore, be said that the notice dated 31.03.2022 under Section 148 is vulnerable. Reference can be made to *GKN Driveshafts (India) Ltd. Vrs. ITO, (2003) 1 SCC 72 = 2002 SCC OnLine SC 1116* as the guiding rule for the Adjudicating Authorities as enunciated by the Hon'ble Apex Court. Paragraph 5 of said Judgment speaks as follows:

> *"5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years."*

8.12. The Hon'ble Supreme Court in the case of *State of Maharashtra and Others Vrs. Greatship (India) Limited, 2022 SCC OnLine SC 1262* reiterated the scope of interference where there is existence of statutory remedy in exercise of power under Article 226/227 of the Constitution of India. The following are the observations:

> *"14. At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the assessee straightway preferred writ petition under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of United Bank of India Vrs. Satyawati Tondon, (2010) 8 SCC 110 in which this Court had an occasion to consider the entertainability of a writ petition under Article 226 of the Constitution of India by by-passing the statutory remedies, is required to be referred to. After considering the earlier decisions of this Court, in paragraphs 49 to 52, it was observed and held as under:*

"49. The views expressed in Titaghur Paper Mills Co. Ltd. Vrs. State of Orissa, (1983) 2 SCC 433 were echoed in CCE Vrs. Dunlop India Ltd., (1985) 1 SCC 260 in the following words : (SCC p. 264, para 3)

"3. … Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

50. In Punjab National Bank Vrs. O.C. Krishnan, (2001) 6 SCC 569 this Court considered the question whether a petition under Article 227 of the Constitution was maintainable against an order passed by the Tribunal under Section 19 of the DRT Act and observed : (SCC p. 570, paras 5-6)

"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act'). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy

contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.

6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."

51. In CCT Vrs. Indian Explosives Ltd. [(2008) 3 SCC 688] the Court reversed an order passed by the Division Bench of the Orissa High Court quashing the showcause notice issued to the respondent under the Orissa Sales Tax Act by observing that the High Court had completely ignored the parameters laid down by this Court in a large number of cases relating to exhaustion of alternative remedy.

52. In City and Industrial Development Corpn. Vrs. Dosu Aardeshir Bhiwandiwala [(2009) 1 SCC 168] the Court highlighted the parameters which are required to be kept in view by the High Court while exercising

jurisdiction under Article 226 of the Constitution. Paras 29 and 30 of that judgment which contain the views of this Court read as under : (SCC pp. 175-76)

"29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

53. In Raj Kumar Shivhare Vrs. Directorate of Enforcement [(2010) 4 SCC 772] the Court was dealing with the issue whether the alternative statutory remedy available under the Foreign Exchange Management Act, 1999 can be bypassed and jurisdiction under Article 226 of the Constitution could be invoked. After examining the scheme of the Act, the Court observed : (SCC p. 781, paras 31-32)

"31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has

> *however dismissed the writ petition on the ground of lack of territorial jurisdiction.*
>
> *32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum."*

> *15. Applying the law laid down by this Court in the aforesaid decision, the High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order, bypassing the statutory remedies."*

8.13. The Hon'ble Delhi High Court in the context of affording personal hearing during the course of Faceless Assessment, in the case of *Assotech Realty Private Limited Vrs. National E-Assessment Centre and Another*, *2022 SCC OnLine Del 582* laid down as follows:

> *"This Court in the case of Bharat Aluminium Company Ltd. vs. Union of India & Ors., W.P.(C) No.14528/2021 dated 14th January, 2022 [2022 SCC OnLine Del 105 = (2022) 442 ITR 101 (Del) = (2022) 325 CTR 252 (Del)] has held that the use of the expression "may" in Section 144B(7)(viii) is not decisive. Where discretion is conferred upon quasi judicial authority whose decision has civil consequences, the word "may" which denotes discretion should be construed to mean a command. Consequently, the requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory."*

8.14. The present case is neither a case of lack of jurisdiction nor can there be any allegation of violation of principles of natural justice. It is enunciated in *Deepak Agro Foods Vrs. State of Rajasthan, (2008) 7 SCC 748 = (2008) 10 SCR 877 = (2008) 16 VST 454 (SC)* as follows:

"17. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties. (See Kiran Singh Vrs. Chaman Paswan, AIR 1954 SC 340). However, exercise of jurisdiction in a wrongful manner cannot result in a nullity— it is an illegality, capable of being cured in a duly constituted legal proceedings.

18. Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit inasmuch as the assessing officer does not adjudicate on a lis between an assessee and the State and, therefore, the law on the issue laid down under the civil law may not stricto sensu apply to assessment proceedings. Nevertheless, in order to appreciate the distinction between a null and void order and an illegal or irregular order, it would be profitable to notice a few decisions of this Court on the point.

19. In Rafique Bibi Vrs. Sayed Waliuddin, [(2004) 1 SCC 287] explaining the distinction between null and void decree and illegal decree, this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable."

8.15. Constitution Bench comprising 5-Judges of the Hon'ble Supreme Court of India has culled out distinction between "want of jurisdiction" and "irregular assumption of jurisdiction" in the case of *Central Potteries Ltd. Vrs. State of Maharashtra, (1963) 1 SCR 166 = AIR 1966 SC 932 = (1962) 13 STC 472* which is to the following effect:

> *"7. In this connection it should be remembered that there is a fundamental distinction between want of jurisdiction and irregular assumption of jurisdiction, and that whereas an order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack, an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity. It may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack. Therefore even if the proceedings for assessment were taken against a non-registered dealer without the issue of a notice under Section 10(1) that would be a mere irregularity in the assumption of jurisdiction and the orders of assessment passed in those proceedings cannot be held to be without jurisdiction and no suit will lie for impeaching them on the ground that Section 10(1) had not been followed.* ***This must a fortiori be so when the appellant has itself submitted to jurisdiction and made a return.*** *We accordingly agree with the learned Judges that even if the registration of the appellant as a dealer under Section 8 is bad that has no effect on the validity of the proceedings taken against it under the Act and the assessment of tax made thereunder."*

[Emphasis laid]

8.16. The petitioner has ample opportunity to agitate issues before the Assessing Officer. Therefore, this Court holds entertainment of the writ petition at the stage of notice would be premature. Doing so would frustrate the tax administration and adjudication process. This Court is alive to the fact that the statute under consideration,

viz., the IT Act and rules framed thereunder, provides sufficient safeguard for the assessee-petitioner, more so, when against the final orders of adjudication, appeal lies.

9. Since the petitioner-College has already filed return in Form ITR-7 on 30.04.2022 mentioning therein that it has been filed under Section 139(4A) of the IT Act for the Assessment Year 2015-16 after receipt of notice dated 31.03.2022 under Section 148, the Assessing Officer is required to verify the books of account of the relevant year and examine any other evidence that may be allowed to be adduced by the petitioner-College with reference to the materials available in record. While doing so, he will confront adverse material, if any, he wishes to utilize against the assessee-petitioner and record statement with regard to such verification. Needless to say that the petitioner shall be allowed reasonable opportunity for stating its case, which shall be considered by the Assessing Officer in the order of assessment including the grounds of challenge against the Order dated 31.03.2022 passed under Section 148A(d). The petitioner for the purpose of assessment may participate in the proceeding initiated under Section 148 of the IT Act and no unnecessary adjournment shall be granted.

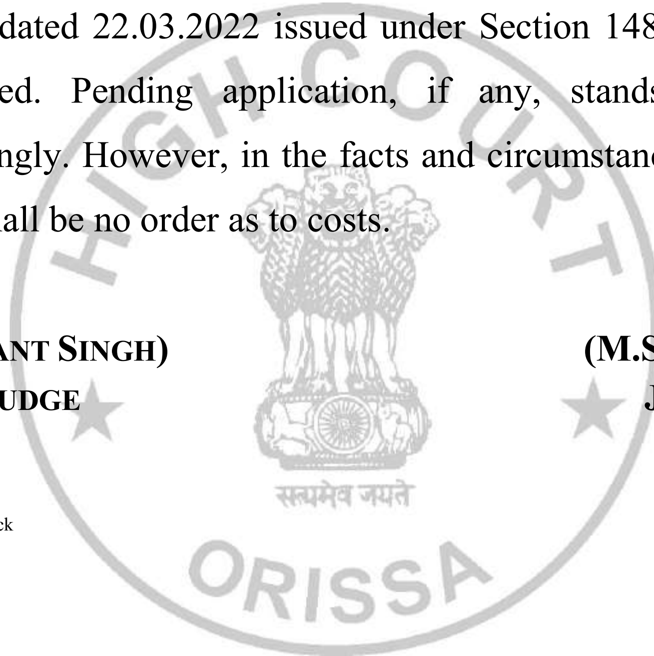
9.1. In *Income Tax Officer, Calcutta Vrs. Selected Dalurband Coal Company Pvt. Ltd., (1997) 10 SCC 68*, the Hon'ble Supreme Court held as follows:

"At the stage of the issuance of the notice, the only question is whether there was relevant material, as stated above, on which a reasonable person could have formed the requisite belief. Since we are unable to say that the said letter could not have constituted the basis for forming such a belief, it cannot be said that the issuance of notice was invalid. Inasmuch as, as a result of our

order, the reassessment proceedings have now to go on, we do not and we ought not to express any opinion on merits."

9.2. It is, hence, made clear that this Court has not expressed any opinion on the merits and it is for the authority concerned to consider the materials before him on merits without being influenced by any of the observations made herein above.

9.3. The writ petition challenging the Notice dated 31.03.2022 issued under Section 148 and the Order dated 31.03.2022 passed under Section 148A(d) of the Income Tax Act, 1961 with reference to Notice dated 22.03.2022 issued under Section 148A(b) is hereby dismissed. Pending application, if any, stands disposed of accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.



(JASWANT SINGH)
JUDGE

(M.S. RAMAN)
JUDGE

Laxmikant

High Court of Orissa, Cuttack
September 27, 2022