

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

WRIT PETITION No. 15244 of 2023 (O)

BETWEEN:-

**M/S AMRIT HOMES PRIVATE LIMITED,
THROUGH ITS MANAGING DIRECTOR PRITPAL
SINGH BINDRA, S/O LATE SHRI DALIP SINGH
BINDRA, AGED ABOUT 60 YEARS, R/O E-1/165,
ARERA COLONY, BHOPAL (M.P.)**

.....PETITIONER

***(BY SHRI G.N. PUROHIT – SENIOR ADVOCATE WITH SHRI ESHAN
TRIPATHI AND MS. UMA PARASHAR - ADVOCATES)***

AND

- 1. DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE – 2, AAYAKAR BHAWAN, 48
ARERA HILLS, BHOPAL (M.P.)**
- 2. DIRECTOR GENERAL OF INCOME TAX (INV)
AAYAKAR BHAWAN, 48 ARERA HILLS, BHOPAL
(M.P.)**

.....RESPONDENTS

(SHRI SIDDHARTH SHARMA - ADVOCATE)

Reserved on : 12.07.2023

Pronounced on : 09.08.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Sheel Nagu pronounced the following:

ORDER

Instant petition filed u/A. 226 of the Constitution assails notice dated 28.04.2023 issued u/S 148 of Income Tax on the ground that order dated 28.04.2023 passed u/S.148A(d) of Income Tax Act does not satisfy the foundational prerequisite of Section 148A(d).

2. Submission of learned Senior Counsel - Shri G.N. Purohit while attacking the impugned order passed u/S 148A(d) is as follows:-

- (i) Despite absence of any information suggesting that income chargeable to tax has escaped assessment, the impugned order u/S 148A(d) has been passed resulting in issuance of notice u/S 148.
- (ii) Without taking into account the reply submitted by the petitioner/assessee, the impugned order/notice have been issued/passed.
- (iii) The notice u/S 148 is untenable on the anvil of statutory bar u/S 149(b) and also because of absence of books of accounts/documents/evidence revealing a case of escaped assessment.

3. Learned counsel for petitioner has relied upon the Coordinate Bench decision of this Court in *The Principal Commissioner of Income Tax -I Vs. Shri Pukhraj Soni* rendered on 06.02.2019 and the decision of the Apex Court in *Red Chilli International Sales Vs. Income Tax Officer and another*, 2023 SCC OnLine SC 237.

4. It is not disputed by petitioner that opportunity of being heard as contemplated by Section 148 A (b) & (c) was afforded by way of issuance of notice by the Revenue and obtaining reply of petitioner/assessee. However, the grievance is that information/evidence categorized as foundational material is not sufficient to suggest that any income chargeable to tax has escaped assessment with regard to the assessment year 2016-17. Thus the very nature and character of this information/evidence is questioned by petitioner/assessee.

4.1 The decision of the Co-ordinate Bench in *the Principal Commissioner of Income Tax -I* (supra) may not be of assistance to petitioner since it does not relate to Section 148A which was inserted in the Income Tax Act w.e.f. 01.04.2021. As regards decision of the Supreme Court in *Red Chilli International Sales* (supra), it is seen that the Division Bench of High Court of Punjab & Haryana had dismissed similar petition u/A. 226/227 of the Constitution filed by petitioner/assessee therein by refusing to interfere in the order passed u/S 148A(d) on the ground that since proceedings are yet to be concluded, interference ought to be avoided at premature stage, especially in the absence of any jurisdictional error and in the face of alternative statutory remedy of rectification of error. Pertinently, the decision of Punjab & Haryana High Court in the case of *Red Chilli International Sales* (supra) was assailed before the Apex Court which passed the following order:

“1. *Delay condoned.*

2. *We with the petitioner that the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court, on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under*

Section 148 of the Income Tax Act, 1961 is satisfied. The provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the notice under Section 148A (b) including the annexure thereto, the reply filed by the petitioner and the order under Section 148A(d) of the Income Tax Act, 1961.

3. *Recording the aforesaid, the special leave petition is disposed of. We clarify that the dismissal of the special leave petition would not be construed as a findings or observations on the merits on case.*

4. *Pending application(s), if any, shall stand disposed of.”*

5. The Apex Court while setting aside the judgment of Punjab & Haryana High Court in ***Red Chilli International Sales (supra)*** found that the High Court has not dealt with the provisions of new taxing regime introduced by Finance Act, 2021 and thus held that matter deserves a deeper probe. The Apex Court as such held that the Punjab & Haryana High Court ought not to have dismissed the petition merely on the ground of non-availing of alternative remedy but should have gone into the tenability of order u/S.148A(d) within the jurisdictional contours of Article 226/227 of Constitution.

5.1. From the aforesaid, it is evident as day light that the present petition which is also against the order u/S 148A(d) and the consequential notice u/S 148 of IT Act needs to be considered on the anvil of the grounds raised in this petition and also on the anvil of foundational prerequisites u/S 148A justifying issuance of an order u/S 148A (d) followed by notice u/S 148.

5.2 Section 148A was inserted in the IT Act by Finance Act, 2021 dated 01.04.2021, primarily to give effect to the ratio laid down by Apex Court in ***GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and others, 2003 (1) SCC 72*** which *inter alia* held thus:

“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 abovesaid five assessment years.”

6. Section 148A on becoming a part of the Statute Book provided an additional opportunity to the assessee of being heard to the assessee before reopening case of escaped assessment.

6.1 From bare perusal of newly inserted Section 148A, it is obvious that it statutorily provides for the following prerequisite before issuance of notice in cases of escaped assessment.

- A. Conduction of inquiry with prior approval of specified authority in regard to information which suggests that certain income chargeable to tax has escaped the assessment.
- B. For conducting the aforesaid inquiry, a notice to show-cause is required to be served on the assessee within the prescribed time, requiring assessee to explain as to why notice u/S 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment.
- C. The Assessing Officer is required to consider the reply of the assessee to the show-cause notice.

D. The nature of inquiry contemplated by Section 148A is not a detailed one. The purpose of this inquiry is to communicate to assessee that Assessing Officer is in possession of information suggesting that certain income of assessee which is chargeable to tax has escaped assessment. This communication is made by issuance of show-cause notice which should contain enough information and reasons to reveal the said intention of the Assessing Officer. Thereafter, the assessee on receiving the show-cause notice is required to file reply.

6.2 The show-cause notice thus should be reasoned enough to enable the assessee to know the mind of the Assessing Officer as regards factum of certain income having escaped assessment and his intention to re-open assessment of such income. This is possible only when the show-cause notice contains enough information to disclose the intention of the Assessing Officer so as to afford reasonable opportunity to assessee to respond. The contents of the show-cause notice thus should be precise and concise satisfying the concept of reasonable opportunity.

6.3. This Court hastens to add at this juncture that this inquiry as explained above cannot be a detailed one where assessee is given opportunity of adducing evidence in support of his defence/response. However, this inquiry includes within its ambit, the obligation of the Assessing Officer to supply reasons which are suggestive of a *prima facie* case revealing income chargeable to tax having escaped assessment.

6.4 Pertinently, the statute [See 148A(b)] does not oblige the Assessing Officer to supply the relevant material/evidence which are the foundation for the Assessing Officer to come to the *prima facie* view that income chargeable to tax has escaped assessment. This is because neither in the judgment of the

Apex Court in the case of ***GKN Driveshafts (India) Ltd.*** (supra) nor in Section 148A any such indication can be gathered.

6.5 The only duty cast upon the Assessing Officer is to supply information by mentioning the same in the show-cause notice issued u/S 148A(b) of IT Act.

7. This Court has culled out the foundational prerequisite of Section 148A, as aforesaid, to emphasize that if the inquiry contemplated in Section 148A is interpreted to mean a detailed inquiry where both sides can seek and adduce evidence/material (documentary/ocular), then the entire object behind Section 148A would stand defeated.

7.1 The object behind Section 148A as is evident from the findings in the fountainhead decision of ***GKN Driveshafts (India) Ltd.*** (supra), is to enable the assessee to be informed of the reasons and information suggesting that income chargeable to tax has escaped assessment and, therefore, in turn to empower the assessee to prepare and file an effective reply and thereafter the Assessing Officer to pass an order u/S 148A(d), followed by issuance of notice u/S 148 of IT Act.

7.2 The object behind insertion of Section 148A by the Legislature w.e.f. 01.04.2021 *inter alia* appears as follows:-

- (a) to prevent rampant and casual issuance of notice u/S. 148 by the Revenue;
- (b) to save unnecessary harassment to the assessee of being subjected to re-opening a case under Section 148;
- (c) to save the Revenue of the time and energy which may be vested pursuing frivolous and fruitless proceedings u/S 148.

8. It is settled in tax jurisprudence that taxing statute is to be interpreted literally. There is no intendment to taxing statute. Nothing can be implied from or read into a taxing statute. The words used in taxing statutory provision are required to be given their plain meaning. [See: *Cape Brandy Vs. IRC, L 1921 (1) KB 64, State of Bombay Vs. Automobile and Agricultural Industries Corporation, 1961 (12) STC 122 Para 5, Federation of A.P. Chambers Vs. State of Andhra Pradesh, 2000 (6) SCC 550 Para 7, State of West Bangal Vs. Kesoram Industries Ltd. and others, 2004 (10) SCC 201 Para 106, State of Jharkhand and others Vs. Ambay Cements, 2005 (1) SCC 368 Para 24. 25 and 26, Ajmera Housing Corporation and others Vs. Commissioner Income Tax, 2010 (8) SCC 739 Para 36, Deputy Commissioner of Income Tax Vs. Ace Multi Axes System Limited, 2018 (2) SCC 158, Commissioner of Customs (Import) Mumbai Vs. Dilip Kumar Company and others, 2018 (9) SCC 1 Para 24 and 25, Checkmate Services Pvt. Ltd. Vs. Commissioner Income Tax, 2023 (6) SCC 451 Para 55 and 56].*

8.1 Applying this principle of interpretation of taxing statute, it is obvious from reading of Section 148A that it does not expressly provide for supply of any material/evidence in support of the show-cause notice u/S 148A(b). Thus this Court has no hesitation to hold that statutory provision u/S 148A does not obligate the Assessing Officer to supply any material/evidence, provided the show-cause notice contains reasons disclosing the mind of the Assessing Officer of nursing the prima facie view suggestive of a case where income chargeable to tax has escaped assessment.

8.2 This Court would be failing in its duty by not dealing with the aspect that the concept of reasonable opportunity which can reasonably be implied

from textual interpretation of Section 148A(b) of IT Act (of supply of adverse material) is available to the assessee/petitioner or not. It needs to be tested on the anvil of the trite law that taxing statute is to be strictly construed solely on the plain language employed.

8.3 No doubt, the concept of reasonable opportunity ostensibly appears to be inherent in the inquiry contemplated u/S 148A. However, it has to be seen whether this concept can be stretched to the extent of supplying of material/evidence in support of the opinion of Assessing Officer that certain income has escaped assessment.

8.4 No doubt, the concept of reasonable opportunity in non-taxing statutes is applied to its fullest (including supply of adverse material) irrespective of presence of any express provision or not in cases where the authority concerned passes order entailing civil consequences of adverse nature.

8.5 Pertinently, the law of interpretation of taxing statute is at variance to the law of interpretation of non-taxing statute. The difference is that the taxing statute is to be understood by the plain words used in it without taking aid of other tools of interpretation of statutes e.g. intendment, implication or reading into. [See: The decision cited in Paragraph 8].

8.6 On the anvil of aforesaid time tested principle as regards interpretation of taxing statute, it is obvious that the provisions of Section 148A of IT Act so far as it relates to the nature of inquiry contemplated therein is to be understood from the plain language used by the Legislature.

8.7 The language of Section 148A(b) stipulates opportunity of being heard to the assessee by way of issuance of notice to show-cause to explain as to why notice u/S 148 be not issued on the basis of information to the Assessing

Officer suggesting that certain income chargeable to tax has escaped assessment.

8.8 The words employed by Section 148A(b) provide for affording of opportunity of being heard by way of show-cause notice. Thus, the requirement of law is satisfied if the show-cause notice contains information which has persuaded the Assessing Officer to form an opinion that certain income has escaped assessment of a particular assessment year.

8.9 The statute does not compel the Assessing Officer to supply material/evidence (documentary/oral) on the basis of which the aforesaid opinion has been formed by the Assessing Officer.

9. From the aforesaid analysis and in the backdrop of textual interpretation of Section 148A(b), it is evident that if the show-cause notice contains sufficient information revealing the opinion formed by Assessing Officer that certain income of assessee has escaped assessment with a precise but concise elaboration in the show-cause notice of the foundational material behind the opinion, then the show-cause notice can sustain judicial scrutiny even if the foundational evidence/material (oral/documentary) is not supplied to the assessee.

9.1 The reason for taking the aforesaid view is not far to see.

9.2 The insertion of Section 148A w.e.f. 01.04.2021 in the Income Tax Act is to ensure that the power u/S 148 is not exercised as a matter of course or without application of mind. Thus, the inquiry contemplated by Section 148A(b) is not a detailed or full-scale one, but is merely meant to offer reasonable opportunity of being heard to the assessee to avoid casual re-opening assessment u/S 148.

9.3 It may not be out of place to mention that the show-cause notice u/S 148A(b) ought to be pregnant with concise and precise information revealing the information about foundational material which persuaded the Assessing Officer to come to a tentative finding that certain income has escaped assessment.

9.4 In the conspectus of aforesaid discussions, it is obvious that petitioner/assessee is not entitled to the material/evidence (oral/documentary) which are the foundation of the opinion formed by the Assessing Officer so long as a show-cause notice mentions about such foundational evidence/material and the supportive reasons to form the said opinion.

9.5 From the fact of the case, it is obvious from the show-cause notice u/S 148A(b) vide Annexure-P/3 that it is accompanied by annexure which informs the petitioner/assessee of the reasons and information which persuaded the Assessing Officer to form the tentative opinion that income pertaining to assessment year 2016-17 has escaped assessment. Moreso, the petitioner/assessee has also filed a detailed reply (Annexure-P/4) to the said notice.

9.6 From the above, it is evident that the impugned order u/S 148A(b) vide Annexure-P/5 and the consequential notice u/S 148 were issued/passed after following due process of law.

10. Certain High Courts, in particular, High Court of Delhi [*Mahashian Di Hatti Pvt. Ltd. Vs. Deputy Commissioner of Income Tax (W.P (C) 12505/2022, Divya Capital One (P) Ltd Vs. Assistant Commissioner of Income Tax, (2022) 139 taxmann.com 461 (Delhi), Sabh Infrastructure Ltd. Vs. Assistant Commissioner of Income Tax, (2018) 99 taxmann.com 409 (Delhi)*], High Court of Chhattisgarh [*Vinod Lalwani Vs. Union of*

India, (2023) 146 taxmann.com 204 (Chhattisgarh)] and High Court of Judicature at Bombay [*Anurag Gupta Vs. Income Tax Officer and others (W.P. No.10184/2022)*] have taken a contrary view than the one taken by this Court in the present order. Pertinently, these Courts have not considered the foundational principle of interpretation of taxing statute i.e. nothing can be read into or implied and the plain meaning of the words used in the taxing statute are to be given there due meaning. These High Courts have been persuaded by the principle of reasonable opportunity which is ordinarily applied while interpreting non-taxing statute. Thus, in the humble considered opinion of this Court, the judgments of these High Courts do not have persuasive value.

11. Pertinently, the question of going into the veracity and genuineness of material/evidence forming the opinion of the Assessing Officer suggesting that income of petitioner/assessee has escaped assessment ought not to be gone into while exercising writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution. Thus the ground of reliability and tenability of the evidence/material is not considered herein.

12. Consequently, the present petition deserves to be and is hereby **dismissed** at the admission stage itself with liberty to petitioner to avail the statutory alternative remedy under the Income Tax Act in accordance with law.

(SHEEL NAGU)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE