PART A: ISSUE OF REOPENING U/S 148- SC/HC DECISIONS

SC ON On validity of asst in appeal against sec 263 order and two sets of reasons impact

Petition for Special Leave to Appeal (C) No. 26629/2023 (482 ITR 281)

PRINCIPAL COMMISSIONER OF INCOME TAX Petitioner(s) VERSUS BULBUL AGRAWAL Respondent(s)

(19.02.2025)

"After having heard learned counsel appearing for petitioner and after perusing the finding of facts recorded by the Tribunal in paragraph 14 and 15 of its judgment which has been confirmed by the High Court, we find no case for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India. The Special Leave Petitions are, accordingly, dismissed"

Notable is para 14/15 of ITAT order as specifically referred in SLP dismissal order of SC which are reproduced in hon'bleORISSA HIGH COURT (4 cases – also in sc SLP) here lead case BADALPRAKASH JINDAL INCL BIBULAL (SUPRA) underlying decision reported at 457 ITR 345

"14. Now, we turn to the third contention of the ld. Counsel that the copy of the reasons recorded by the AO on 26.03.2018 in the order sheet and copy of the reasons supplied to the assessee are different and there is no date in the copy of the reasons supplied to the assessee by the Department which clearly show that the AO has not supplied the actual reasons recorded by him in the order sheet to the assessee. Therefore, in view of the order of the ITAT, Kolkata in the case of Jansampark Advertising & Marketing Pvt. Ltd (supra), the validity of initiation of reassessment proceedings u/s 147 of the Act and consequent reassessment order is not sustainable.

15. We are not in agreement with the contention of the ld. CIT-DR that the AO has only made order sheet entry on 26.03.2018 copy of the actual reasons recorded by him was supplied to the assessee which is available at pages 4-9 of the assessee's paper book. Therefore, it cannot be alleged that the reasons recorded by the AO are different from the copy of the reasons supplied to the assessee because the reasons recorded in the order sheet at page 13 clearly reveals that the AO has recorded reasons for initiation of reassessment proceedings in the first order sheet recorded on 26.03.2018 and, therefore, on the very same date, after obtaining approval of competent authority/JCIT, Range-2, Sambalpur on the very same date issued notice u/s 148.

Therefore, we safely presume that the reasons recorded by the AO are different from the copy of the reasons supplied to the assessee. The ITAT, Delhi Bench in the case of Jansampark Advertising & Marketing Pvt. Ltd. (supra) decided a similar issue by referring to the order of the ITAT Delhi in the case of Wimco Seedlings Ltd. vs. JCIT, dated 2.06.2020 in ITAs No.2755, 2756, 2757/Del/2002 with the following observations and findings:…"

Further hon'ble Orissa high court decision has held that "12. Indeed, if the original re-assessment order itself was not validly passed, the subsequent revisional order by the PCIT was required to be held invalid" same stands approved being landmark proposition.

SC in CHIEF REVENUE CONTROLLING OFFICER CUM Appellant(s)INSPECTOR GENERAL OF REGISTRATION, & ORS. VERSUSP. BABU Respondent(s)

CIVIL APPEAL NOS.75-76 of 2025
On importance/connotation of reasons to believe
Per Hon'ble Justice ***(J.B. PARDIWALA)***

"19. When both the authorities viz., the Registering Authority and the Collector are vested with the discretion to decide regarding the market value of the property, by the expression 'reason to believe', then whether it reflects the subjective satisfaction of the authorities concerned or it reflects the objective determination of the market value of the property? What is meant
by 'reason to believe' is the issue to be considered. 20. Availability of material is the foundation or the basis, for any authority to arrive at any decision whatsoever
Duty is enjoined upon the Registering Officer to ensure that Section 47-A(1) does not work as an engine of oppression nor as a matter of routine, mechanically, without application of mind as to the existence of any material or reason to believe the fraudulent intention to evade payment of proper Stamp Duty. The expression 'reason to believe' is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith, it cannot be merely a pretence. It is open to the Court to examine the question whether the reasons for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section. The word 'reason to believe' means some material on the basis of which the department can re-open the proceedings. However, satisfaction is necessary in terms of material available on record, which should be based on objective satisfaction arrived at reasonably."

Hon'ble Delhi high court decisions

ASSET CONDITION U/S 149(1)(b) and INTERPLA Y OF FIRST PROVISO TO SEC 147 VS SEC 149(1) FIRST PROVISO

RATNAGIRI GAS AND POWER PRIVATE LIMITED VS ACIT (02.05.2025)

W.P.(C) 221/2023

"*Thus, the first and foremost question to be addressed is whether the conditions as specified under Section 149(1)(b) of the Act are satisfied. As is apparent from the plain language of the said clause that, essentially, three conditions are required to be satisfied. First, that the Assessing officer has in his possession books of account or other documents or evidence, which reveal that the income chargeable to tax has escaped assessment. Second, that the said evidence is to the effect that the income chargeable to tax that has escaped assessment is represented in the form of*

an asset. And third, that the amount of income that has escaped assessment is or is likely to amount to ₹50 lakhs or more.

Explanation to Section 149(1) of the Act further explains that for the purposes of Clause (b) of Sub-section (1) of Section 149 of the Act, the expression 'asset' would include immovable property, being land or building or both, shares and securities, loans and advances and deposits in bank.

If we now examine the reasons for re-opening of the assessment as set out in the order passed under Section 148A(d) of the Act, we find that there is no evidence to support that the income, which has allegedly escaped assessment is represented in the form of an asset.

It is, thus, apparent that any expenditure incurred for the salaries and wages, irrespective of the years in which the same is incurred, would not be represented by any asset. Since the conditions as specified under Section 149(1)(b) of the Act are not satisfied, no notice under Section 148 of the Act could be issued after expiry of three years from the end of AY 2013-14, that is, after 31.03.2017.

In view of the above, it is not necessary to address the question whether reopening of assessment for AY 2013-14 is barred under the proviso to Section 149(1) of the Act. However, we consider it apposite to address the said question as well.

In cases where a notice under Section 148 of the Act can be issued under Section 149(1)(a) and (b) for any assessment year, beginning on or before 1st day of April, 2021, it would also be necessary to examine whether such a notice could be issued at 'that time

In the facts of the present case, the initiation of reassessment proceedings is not premised on any search conducted under Section 132 of the Act or requisitioned made under Section 132A of the Act. Thus, it would be relevant to examine whether a notice under Section 148 of the Act could have been issued for the reasons as communicated to the petitioner on 30.05.2022, pursuant to the directions issued by the Supreme Court in Union of India & Ors. v. Ashish Agarwal1.

As is clear from the plain language of the First Proviso to Section 147 of the Act as applicable at the material time that in cases where an assessment has been made under Section 143(3) of the Act, no action could be taken after expiry of four years from the end of the relevant assessment year unless the income chargeable to tax had escaped assessment for the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year."

In the present case, the petitioner had expressly disclosed in its accounts, which were furnished in support of its return that the expenses booked under the head 'wages and salaries' included ₹6.29 crores on account of salaries and wages, which pertain to prior financial years.

Thus, no proceedings for initiation of reassessment could have been initiated under the provisions relating to reassessment that were in force prior to 01.04.2021 after expiry of four years from the end of the relevant assessment year.

38. In view of the above, even if reopening of assessment by issuance of notice under Section 148 of the Act is permissible under the main enactment of Section 149(1) of the Act, no such notice could be issued in the present case by virtue of the first proviso to Section 147(1) of the Act."

Interplay of SEC 149(1A) vs Sec 149(1)

MOHD ATHAR ANJUM vs ACIT

Date of Decision : 25.04.2025

W.P.(C) 4196/2025

" The petitioner has filed the present petition, inter alia, impugning an assessment order dated 21.03.2025 [impugned order] passed by the Assessing Officer [AO] under Section 147 of the Income Tax Act, 1961 [the Act]. The impugned order was passed pursuant to the proceedings initiated for reassessment of the petitioner's income for Assessment Year [AY] 2018-19.

Although, the AO had proceeded on the basis that the allegedly unaccounted cash transactions related to an event, there is no material on record to indicate that the income in various previous years, which is alleged to have escaped assessment is represented by 'an asset' or arises from one singular event or occasion which is spread over several previous years. Although the order passed under Section 148A(d) of the Act does allege that the income chargeable to tax that has escaped assessment is related to an event or occasion; there is no material to indicate the singular occasion or event to which the income that has escaped assessment over several years relates. There is also no asset that represents the income that has escaped assessment.

The learned counsel for the Revenue submitted that by virtue of Sub-section (1A) of Section 149 of the Act it was permissible to aggregate the quantum of income that has escaped assessment in various assessment years to satisfy the value as mentioned under Section 149(1)(b) of the Act

Sub-section (1A) of Section 149 of the Act contains a non obstante provision, which mandates issuance of notice, for an assessment year falling within the period as referred to in clause (b) of Section 149(1) of the Act, notwithstanding that the income escaping assessment in the assessment year does not exceed the value as mentioned in that clause provided the following conditions are cumulatively satisfied:

(a) that the income chargeable to tax, which has escaped assessment in more that one previous years amounts to or is likely to amount to fifty lakh rupees or more; and

(b) that the said income, which has escaped assessment is represented by (i) an asset; or (ii) or expenditure in relation to such event or occasion has been made or incurred, which amounts to or is likely to amount to fifty lakh rupees or more.

In the present case, the aforesaid conditions, as set out in Sub-section (1A) of Section 149 of the Act, are not satisfied.

REFERENCE MADE TO *M/s L-1 Identity Solutions Operating Company Private Limited v. Assistant Commissioner of Income Tax, Central Circle-25: Neutral Citation No.: 2025:DHC:2690-DB*

"Undisputably, the threshold amount of ₹50 lakhs of the income that has escaped assessment or is likely to escape assessment, is to be reckoned in respect of the specified assessment year. We say so because the conditions as set out in clause (b) of Section 149(1) of the Act are required to be read in conjunction with the opening sentence of Section 149(1) of the Act. The same is also made amply clear by use of the non obstante clause in Sub-section (1A) of Section 149 of the Act. A plain reading of Sub-section (1A) of Section 149 of the Act indicates that the condition of a minimum amount of ₹50 lakhs of income escaping assessment, may be satisfied by the cumulative amount that has escaped assessment or is likely to escape assessment in respect of more than one assessment year exceeding the said amount. However, the same is subject to the condition that the income chargeable to tax is represented in the form of an "asset" or "expenditure in relation to an event or occasion". Thus, in cases where the income that has escaped assessment is represented by 'an asset', notwithstanding that the said asset is on account of income that escaped assessment for more than one previous years, the condition under Section 149(1)(b) of the Act would be satisfied, if the value of the asset exceeds ₹50 lakhs. The same would hold true if there is an expenditure in relation to an 'event' or 'occasion', which exceeds the value of ₹50 lakhs. In this case as well as notwithstanding that the expenditure has been incurred in different previous years, the condition under Section 149(1)(b) of the Act would be satisfied if the cumulative value of the asset exceeds ₹50 lakhs. The same would hold true if there is an expenditure in relation to an 'event' or 'occasion', which exceeds the value of ₹50 lakhs. In this case as well as notwithstanding that the expenditure has been incurred in different previous years, the condition under Section 149(1)(b) of the Act would be satisfied if the cumulative value of the expenditure exceeds ₹50 lakhs, provided that the same is related to an event or occasion."

Interplay of sec 149 vis a vis sec 153A of 1961 Act

SMART CHIP PRIVATE LIMITED vs ACIT

W.P.(C) 3801/2025

Date of Decision: 23.04.2025

"*The petitioner has filed the present petition, inter alia, impugning a notice dated 21.03.2024 [**impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**Act**] and the reassessment proceedings conducted pursuant to the impugned notice. It is the petitioner's case that the impugned notice is barred by limitation and therefore, the reassessment proceedings initiated are without jurisdiction.*

Mr Sumit Lalchandani, learned counsel appearing for the petitioner contended that in terms of the first proviso to Section 149(1) of the Act, the reassessment of income relating to AY 2016-17 could not be reopened beyond the period of six years, which immediately preceded the assessment year relating to the previous year in which the search is conducted under Section 132 of the Act or requisition is made under Section 132A of the Act. It is contended that the search under Section 132 of the Act in the present case was conducted during the period 21.03.2023 to 25.03.2023, that is, during the previous year 2022-23. Thus, the period of six years for which the AO can travel back to reassess the petitioner's income is required to be reckoned from immediately preceding AY 2023-24, and AY 2016-17 falls beyond the period of six years.

Mr Abhishek Maratha, learned counsel appearing for the Revenue countered the said submissions. He contended that, in terms of Section 149(1)(b) of the Act, the limitation for reopening of the assessment would extend to ten years, being the maximum period for which reassessment could be initiated by issuing a notice under Section 153A of the Act, subject to incriminating material being found during the search conducted under Section 132 of the Act or requisition being made under Section 132A of the Act. He submitted that in terms of Section 149(1)(b) of the Act, as was in force at the the material time, the assessment could be opened for a period exceeding three years but not more than ten years. However, by virtue of the proviso to Section 149(1) of the Act, no such notice under Section 148 of the Act could be issued if such a notice could not be issued under Sections 148, 153A or 153C of the Act at the time on account of the same being beyond the time as stipulated under Section 149(1)(b) of the Act.

Mr Lalchandani disagreed with the aforesaid submission and argued that, in terms of the fourth proviso to Section 153A(1) of the Act, no notice for the relevant assessment year or years could be issued unless the AO had in his possession books of account or other documents or evidence which revealed that income represented in the form of an asset has escaped assessment. Thus, the extended period of limitation beyond the six years preceding the assessment year relevant to previous year in which a search was conducted, would be applicable only in cases where the AO had evidence, which discloses that the escaped income was represented by an asset. He contended that, in the present case, the income which is alleged to have escaped assessment is on account of an expenditure, which the AO had disallowed and not on account of any asset which represent such income .

A plain reading of the first proviso to Section 149(1) of the Act indicates that the issuance of a notice under Section 148 of the Act is proscribed if a notice under Sections 148, 153A or 153C of the Act could not have been issued at that time on account of the time limit specified under Clause (b) of Section 149(1) of the Act, or under Section 153A or Section 153C, as in force at that time .

*The aforesaid observations in **Union of India & Ors. v. Rajeev Bansal** (supra) were made in the context of time limits for issuing notice under Section 148 of the Act under the provisions as were in force prior to 31.03.2021, as imputed by virtue of the first proviso to Section 149(1) of the Act. This principle would be equally applicable for proscribing the issuance of a notice under Section 148 of the Act, if the proceedings for reassessment could not be initiated under the provisions of Section 153A or 153C of the Act, or under Section 153A or Section 153C of the Act as referred to in the first proviso to Section 149(1) of the Act.*

There is no cavil that the impugned notice would be unsustainable if such a notice could not be issued under the provision of Section 153A of the Act as was applicable in respect of a search conducted prior to 31.03.2021. It thus

requires us to determine the period of limitation within which a notice under Section 153A could be issued in respect of AY 2016-17.

It is the petitioner's case that the time limit for issuance of such notice is confined to the six assessment years preceding the assessment year relevant to the previous year in which search was conducted. However, the Revenue contends that by virtue of Explanation 1 to Section 153A(1) of the Act, the Revenue can travel back ten years from the end of the assessment year relevant to the previous year in which the search under Section 132 was conducted or a requisition under Section 132A of the Act was made. Plainly, the said controversy is required to be addressed by referring to sec 153A of the Act.

As is apparent from the plain language of Section 153A(1) of the Act, the AO has the jurisdiction to issue a notice in respect of each of the assessment years falling within six assessment years as well as for the relevant year or years as referred to in Clause (b) of Section 153A(1) of the Act. However, the fourth proviso to Section 153A(1) of the Act proscribes issuance of any notice for assessment or reassessment in respect of a relevant assessment year unless the conditions as stipulated in the fourth proviso are satisfied.

The expression "relevant assessment year" is defined under Explanation 1 to sub-section (i) of Section 153A of the Act to mean a year that falls beyond the period of six assessment years preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Mr. Maratha's contention that the extended period of limitation under Section 153A of the Act would be applicable for the purpose of the proviso to Section 149(1) of the Act notwithstanding that the conditions, as stipulated in the fourth proviso to Section 153A of the Act are not satisfied, is unmerited. Once, we accept that a notice under Section 148 of the Act cannot be issued if such a notice could not be issued under Section 153A of the Act; it would be necessary to determine the period of limitation for issuance of a notice under Section 153A of the Act.

Since a block of six assessment years and a further period not exceeding the block of ten assessment years is contemplated under Section 153A of the Act, it follows that it would be necessary to determine whether the extended period of ten years is applicable in the facts of the present case. This necessitates considering the reasons as recorded for issuance of the impugned notice.

In terms of Explanation 2 to Section 153A(1) of the Act, the term 'asset' is defined to include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank accounts

The AO seeks to disallow expenses on account of doubting the genuineness for the reason that the same were not incurred wholly or exclusively for the purpose of the petitioner's business. Absent any further material to establish that such expenses had resulted in the acquisition of any asset, the conditions stipulated in the fourth proviso to Section 153A(1) of the Act would remain unsatisfied.

In the aforesaid view the period of limitation for issuing a notice under Section 153A of the Act, in the given facts of this case, would necessarily have to be confined to a period of six assessment years immediately preceding the assessment year relevant to the previous year in which the search under Section 132 of the Act was conducted"

INTERPLAY OF SEC 149 VIS A SEC 150 & CAN REMAND ORDER RESULT IN BYPASS TO LIMITATION

ADM AGRO INDUSTRIES PRIVATE LIMITED VS ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1), DELHI & ANR. W.P.(C) 17660/2024 (22.04.2025)

Pursuant to the directions issued by this court, the AO afforded the petitioner a hearing and passed an order dated 31.03.2024 under Section 148A(d) of the Act holding that it was a fit case for issuance of notice under Section 148 of the Act and issued a fresh notice dated 01.04.2024 under Section 148 of the Act. The petitioner has challenged the

said notice on several grounds. However, at this stage, the petitioner has confined the petition to initiation of reassessment proceedings as barred by limitation as stipulated under Section 149(1) of the Act.

The first notice issued under Section 148 of the Act – which was directed to be construed as a notice under Section 148A(b) of the Act in terms of the decision passed by the Supreme Court in ***Union of India & Ors. v. Ashish Agarwal*** (*supra*) – was issued on 30.06.2021. It is material to note that it was the last date of the period of limitation as extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, [**TOLA**], for issuance of such a notice under Section 148 of the Act for AY 2014-15. Considering that the said notice was required to be considered as a notice under Section 148A(b) of the Act, no further time was available for issuing a notice under Section 148 of the Act on that date (30.06.2021).

In terms of the directions issued by the Supreme Court in the case of ***Union of India & Ors. v. Ashish Agarwal*** (*supra*), the AO was also required to furnish information to the assesses, which was required to be accompanied by such a notice and the assessees were required to be afforded a minimum of seven days to respond to the said notice. As explained by the Supreme Court in ***Union of India and Ors. v. Rajeev Bansal: 2024 INSC 754***, the period from 30.06.2021 to the date on which the assesses responded to the notice under Section 148A(b) of the Act – in this case on 10.06.2022 – is required to be excluded.

After excluding the said period, the AO had no time left for issuance of notice under Section 148 of the Act as the initial notice under Section 148 of the Act (construed as a notice under Section 148A(b) of the Act) was issued on the last date of limitation as extended by TOLA. Thus, in terms of the then third proviso to Section 149(1) of the Act as was in force at the material time, the AO had seven days for issuance of such a notice. Accordingly, the notice under Section 148 of the Act was required to be issued on or before 17.06.2022. However, the AO had issued a notice under Section 148 of the Act on 23.07.2022

Concededly, the question whether the said notice was issued within the period of limitation is covered by the decision of this court in ***Ram Balram Buildhome Pvt. Ltd v. Income Tax Officer & Anr.: 2025: DHC:547-DB***

Notwithstanding that the said notice had been issued beyond the period of limitation, the learned counsel appearing for the Revenue contends that the period of limitation as prescribed under Section 149 of the Act would not be applicable by virtue of Section 150 of the Act as the SUBSEQUENT ORDER
u/s 148A(d) of the Act which was issued on 31.03.2024 and the notice dated 01.04.2024 issued under Section 148 of the Act was issued pursuant to the order dated 06.12.2022 passed by this court in W.P.(C) 16718/2022 (*ADM Agro Industries India Private Limited v. Deputy Commissioner of Income Tax, Circle 1(1) Delhi: 2022/DHC/005868)*.

Thus, if the order, which is subject matter of proceedings before the appellate or revisional authority, could not have been passed on account of being barred by limitation, Section 150(1) of the Act would not be applicable. Sub-section (2) of Section 150 of the Act is in essence carves out an exception to Sub-section (1) of Section 150 of the Act and posits that Sub-section (1) of Section 150 of the Act would not be applicable where by virtue of any other provision limiting the time within which action for assessment, reassessment or re-computation may be taken
and such assessment, reassessment or re-computation is beyond the period of limitation on the date on which the order which is subject matter of appeal reference or revision is passed.
HELD "In the present case, notice under Section 148 of the Act which was subject matter of challenge in the writ petition [W.P.(C) 16718/2022] was barred by limitation on the date, it was issued by virtue of Section 149(1) of the Act. Thus, any order passed in a challenge to the said notice would not have the effect of obliterating the time limits for passing such an order"

We find no merit in the contention advanced on behalf of the Revenue.

There is no dispute that the matter was remitted to the AO for considering afresh. However, the contention that the AO is now absolved of the timelines is unmerited. Clearly, the AO was required to pass an order in accordance with law. And, as noted above, the time period for passing such order had already elapsed on the date the impugned notice was issued. The import of the order is not to obliterate the timelines stipulated for issuing the the AO to

examine whether it was a fit case for issuance of a notice under Section 148 of the Act, which would not be the case if issuance of such a notice was barred by limitation. In the present case, the matter had been remanded to the AO to merely consider afresh in the light of the challenge raised by the petitioner. The import of the said order dated 06.12.2022 was not to foreclose any right or contention of the parties"

DHC ON REOPENING U/S 148 OLD LAW HOST OF PROPOSITIONS

MARUTI SUZUKI INDIA LTD.

Judgment pronounced on 21 February, 2025

YEAR WISE INDEPENDENT MATERIAL MUST TO JUSTIFY REOPENING ACTION
REFERENCE MADE TO EARLIER DECISION OF SAME HON'BLE HIGH COURT IN CASE OF ***Grid Solutions OY (Ltd.) v. CIT 2025 SCC OnLine Del 183 "***
the existence of a PE is a fact specific issue and which must be answered in the context of what may have existed in a particular AY coupled with the satisfaction of the AO that there has been no change in the set of fundamental facts which would be germane for determination "*"**23.** It is in the aforesaid backdrop that the observations of the Supreme Court in CIT v. Gupta Abhushan (P) Ltd. also assume significance and where it was unambiguously held that a survey report pertaining to a particular tax period cannot ipso facto be read or countenanced as being relevant and binding for independent assessment years"*

VIVO MOBILE INDIA PRIVATE LIMITED VS ASSISTANT COMMISSIONER OF INCOME TAX & ANR. ***Date of Decision: 14th February, 2025 (FATAL IMPACT OF NOT PROVIDING BACK RELIED UPON MATERIAL)***

"The impugned show cause notice dated 09.08.2024 (hereafter referred to as "impugned notice") was issued under section 148A(b) of the Income Tax Act, 1961 (hereafter referred to as "Act") to the petitioner on the basis of High Risk CRIU/VRU information available on 'Insight Portal'.

8. It is not disputed that the assessment proceedings for AY 2018-19 had concluded and the present proceedings initiated under Section 148A(b) of the Act was in respect of re-opening of the assessment proceedings. The show cause notice issued under Section 148A(b) of the Act was premised on accommodation entries in the form of bogus capital expenses from fictitious entity, namely M/s. Zhongmao (India) Eng. Pvt. Ltd., to the extent of Rs.7,35,47,572.22/-. It was only upon

the clarification issued by the petitioner in its reply dated 16.08.2024, that the respondent/Revenue came to be informed of the correct name of the
*entity i.e. M/s. Zhonghua (India) Eng. Pvt. Ltd. Pursuant thereto, the respondent/Revenue appears to have conducted a physical verification which was confirmed vide the Clarificatory Letter dated 22.08.2024. However, without issuing a further notice in respect of the alleged non-existence of the said entity at the Jasola address and calling for an explanation in that regard, the respondent/Revenue passed the impugned order under Section 148A(d) of the Act dated 31.08.2024. This procedure, to our mind, is abject violation and infraction of the principles of natural justice, inasmuch as, the conclusion regarding the said entity being a non-existent bogus entity was never put to the petitioner in the show cause notice dated 09.08.2024 issued under Section 148A(b) of the Act. In other words, the petitioner was never afforded an opportunity to respond to the said allegation. It is trite that principles of natural justice inhere in all administrative and quasi judicial actions, particularly in taxing statutes, unless expressely barred by legislative intent. {**See Sahara India (Firm) vs. CIT; (2008) 14 SCC 151**}*

*9. The aforesaid infraction gathers great significance having regard to the fact that the original assessment proceedings for the AY 2018-19 stood closed. It was only by the impugned notice under Section 148A(b) of the Act dated 09.08.2024, the initiation of re-assessment proceedings were to commence. Ordinarily, after the closure of the assessment proceedings, the Assessing Officer (AO) would be functus officio and to re-confer jurisdiction upon the AO to initiate re-assessment proceedings, relevant incriminating material ought to be put to the assessee before any such re-commencement can be sought. The view expressed by the learned Division Bench of the High Court of Calcutta in **Grindlays Bank Plc. v. Commissioner of Income-Tax** reported in **1990 SCC OnLine Cal 396**, in this context would be relevant It is thus clear that the facts obtaining in the present petition get covered under the ratio laid down by the Calcutta High Court, though the same was rendered in the previous tax regime. Ergo, in the absence of such material being put to the petitioner, it was deprived of a valuable opportunity to explain the existence or otherwise of the entity i.e. M/s. Zhonghua (India) Eng. Pvt. Ltd. Thus, on the aforesaid analysis, we find that the said infraction has deprived the petitioner of an opportunity to offer proper explanation.*

In view of the above, we have no hesitation in setting aside the impugned order under Section 148A(d) of the Act dated 31.08.2024 as also the notice under Section 148 of the Act of the even date.

DHC IN CASE OF ERNST AND YOUNG EMEIA SERVICES LIMITED VS ACIT 24 MARCH 2025

REOEPNING CAN NOT BE RESORTED FOR SCRUTINY PURPOSES AND IMPACT OF VARIATION OF SCN "9.

Undisputedly, there is a distinction between initiation of proceedings for scrutiny of income tax return to assess the assessee's income chargeable to tax and initiation of proceedings for reassessment for the reason that the income of an assessee has escaped assessment. Recourse to the provisions for reassessment under Section 147 of the Act is not a substitute for the assessment proceedings" "14.

It is at once apparent from the above that the reasons as set out in the impugned order passed under Section 148A(d) was not the information as set out in the notice under Section 148A(b) of the Act. There was no allegation in the said notice that the Assessee had a PE in India, which forms the entire basis of the order under Section 148A(d) of the Act. The decision to issue notice under Section 148 of the Act cannot be based on information and grounds that were not set out in notice under Section 148A(b) of the Act"

Hon'ble Gujarat high court

HON'BLE GUJARAT HIGH COURT IN CASE OF

PRIMIT SHAMBHUPRASAD PURANI Versus THE INCOME TAX OFFICER, WARD 1(2)(1), VADODARA & ANR 08.04.2025

SPECIAL CIVIL APPLICATION NO. 7305 of 2022

"22. In view of above facts and considering the material facts on record, it is evident that the impugned order dated 30.03.2022 passed under *section 148A(d) of the Act is a classic example of order passed without application of mind by the respondent Assessing Officer ignoring the fact on record. Even on perusal of the order the same is self contradictory as is evident from para nos. 1 and 4 of the order. The respondent Assessing Officer has recorded in para no.1 that the petitioner has filed return of income however in para no.4 it is recorded that no return of income is filed. It is also not in dispute that the petitioner has filed bank statement of his father from whom he had borrowed funds to purchase crypto currency which is available on record and not disputed by the learned advocate for the respondent.*

23. We are therefore, of the opinion passed under section 148A(d) of the Act is liable to be quashed and set aside and is hereby quashed and set aside. respondent. Consequently notice issued under Section 148 of the Act of the even date would not survive and is accordingly quashed and set aside.

24. In view of setting aside of order passed under section 148A(d) of the Act and notice under section 148 of the Act, subsequent assessment order dated 20.03.2023 and consequential notices issued by respondent Assessing Officer also would not survive."

Hon'ble Gujarat high court in case of O3 DEVELOPERS PRIVATE LIMITED

Versus

THE INCOME TAX OFFICER, WARD 2(1)(1) SPECIAL CIVIL APPLICATION NO. 334 of 2022 Date : 01/04/2025

"On perusal of the reasons recorded by therespondent-Assessing Officer which are reproduced here-in-above, it appears that the respondent has failed to take into consideration the details of the accommodation entries alleged to have been taken by the petitioner from Kushal Ltd where the search has been conducted. No evidence much less a single evidence, was referred while recording the reasons vis-a-vis the alleged bogus accommodation entry obtained by the petitioner for the year under consideration. 16.

We are therefore, of the opinion that merely because name of the petitioner appears in the insight portal in connection with any search operation carried out, then it is the duty of the respondent-Assessing Officer to have material to have a live nexus with the information made available on the insight portal and the assessment records of the year under consideration.

We are therefore, of the opinion that merely because name of the petitioner appears in the insight portal in connection with any search operation carried out, then it is the duty of the respondent-Assessing Officer to have material to have a live nexus with the information made available on the insight portal and the assessment records of the petitioner to form a bona fide belief that the income has escaped assessment. In the facts of the case, it appears that the respondent-Assessing Officer has issued the impugned notice for reopening only to make fishing and roving inquiry on the basis of information in the insight portal making allegations of credit entries in the books of accounts of the petitioner which is duly audited and income is offered to tax by filing the return of income.
In such circumstances, it cannot be said that respondent-Assessing Officer could have formed a reasonable belief to arrive at prima facie conclusion on the basis of the information made available on the insight portal for assumption of the In such circumstances, it cannot be said that respondent-Assessing Officer could have formed a reasonable belief to arrive at prima facie conclusion on the basis of the information made available on the insight portal for assumption of the jurisdiction to issue the impugned notice for reopening of the assessment. In view of the foregoing reasons, impugned notice is not tenable in the eye of law as per the settled legal position as the respondent-Assessing Officer could not have formed a reason to believe to assume jurisdiction in absence of details of nature of transaction, date of transaction and any live nexus of the information with the transactions recorded and audited as per the books of accounts of the petitioner to come to even prima facie conclusion that the income has escaped assessment. In view of the foregoing reasons, petition succeeds and the impugned notice dated 31.03.2021 is hereby quashed"

ON VALIDITY OF REOPENING ACTION U/S 148 BASED ON VAGUE REASONS /BORROWED SATISFACTION

JAMBUWALA COMMODITIES PRIVATE LIMITED

Versus

INCOME TAX OFFICER, WARD 2(1)(1)

SPECIAL CIVIL APPLICATION NO. 2488 of 2022(10.03.2025)

"7. Having heard the learned advocates appearing for the respective parties and considering the material placed on record, it appears that the respondent-Assessing Officer while recording the reasons has failed to take into consideration the report of the Investigation Wing in true perspective. It also appears that the respondent-Assessing Officer while recording the reasons for reopening has not even considered that the amount mentioned in the reasons of Rs.14,03,19,900/- regarding the Assessment Year 2013- 14 is nothing but total of debit and credit side of the account of M/s. Affluence Commodities Pvt. Ltd. from the books of accounts of the petitioner. Similarly for Assessment Year 2014-15 also the reasons recorded reflects the total of the debit and credit side of the account of the said Company from the books of accounts of the petitioner meaning thereby that the respondent-Assessing Officer without application of mind and contrary to any information in his possession has issued the impugned notices in a mechanical manner. 7.1 This Court in case of Paresh Babubhai Bahalani (Supra) has

referred to and relied upon the decision in the case of Bharatkumar Nihalchand Shah Vs. ITO [Special Civil Application No. 5353 of 2022 dated 7.3.2023] wherein, it is held that non-specific and general reasons without establishing the rational nexus between transaction and the escapement of income are not valid for assumption of jurisdiction to reopen the assessment. 8. Applying the above decision to the facts of the case and on perusal of the reasons recorded by the respondent, it is clear that no information is revealed with regard to the nature or date of transaction between the petitioner and M/s. Affluence Commodities Pvt. Ltd., and the respondent -Assessing Officer has further proceeded to record that the petitioner has failed to offer the income as deemed income amounting to Rs.14,03,19,900/- which is nothing but total of debit and credit side of the account from the books of account maintained by the petitioner of the said company. It is therefore, evident that the reasons recorded by the respondent are on the borrowed satisfaction without forming an independent opinion and therefore, the assumption of the jurisdiction to reopen the reassessment under Section 147 of the Act is bad in law.
9. In view of the foregoing reasons, the entire exercise of reopening carried out by the respondent-Assessing Officer without disclosing the relevant facts to the Assessee is a futile exercise in absence of any independent satisfaction reflected in the reasons recorded on the basis of the information received by the Assessing Officer."

ON REOPENING ACTION U/S 148 ALLEGED BOGUS LTCG
NIMESH MAHESHBHAI SHAH HUF THRO NIMESH MAHESHBHAI SHAH Versus INCOME TAX OFFICER
SPECIAL CIVIL APPLICATION NO. 2036 of 2022 (07.01.2025)

"41. Moreover, from the reasons recorded it appears that the initiation of reopening proceedings are on the borrowed satisfaction as no independent opinion is formed and on bare perusal of the reasons recorded, it emerges that the Assessing Officer, considering the information received from the insight portal, has issued impugned notice forming reason to believe that the income has escaped the assessment on the presumption that the petitioner has been involved in creating the non-genuine profit which is already offered to tax in the return of income which is accepted in the regular course of assessment by passing the order under section 143(3) of the Act
42. It is also pertinent to note that there is no basis to form reasonable belief for escapement of income except the information made available on the insight

portal. The respondent-Assessing Officer has not considered the material on record to come to the conclusion that there is failure on the part of the petitioner to disclose truly and fully all material facts to have reason to believe for escapement of income. Therefore, on the basis of the information received from another agency on insight portal or from the SEBI report, there cannot be any reassessment proceedings unless the respondent, after considering such information/material received from other sources, consider the same with the material on record in the case of the petitioner assessee and thereafter, is required to form independent opinion that income has escaped assessment. Without forming such opinion solely and mechanically relying upon the information received from the other sources, the respondent-Assessing Officer could not have assumed the jurisdiction to reopen the assessment based on such information. This Court in case of Raajratna Stockholdings Pvt. Ltd. v. Assistant Commissioner of Income Tax Circle 1(1)(1) (judgment dated 25.11.2024 rendered in Special Civil Application No.3696 of 2022) in similar circumstances has quashed and set aside the impugned notice issued under section 148 of the Act and consequential order disposing off the objections raised by the petitioner."

ON FATAL IMPACT OF NOT PROVIDING RELIED UPON MATERIAL TO REOPENING ACTION U/S 148

AMITKUMAR CHANDULAL RAJANI PROP. OF S.R.JEWELLERS Versus

INCOME TAX OFFICER, ITO WARD 2(1)(1), RKT & ANR.

Date : 20/01/2025

SPECIAL CIVIL APPLICATION NO. 2930 of 2022

"10. There is no reference to the transaction carried out by the petitioner. The details of the transactions carried out by the petitioner appear to pertain to the reliefs from the seized material or from any other source. It is also pertinent that the respondent-Assessing Officer has not provided any documents, statements or any material to the petitioner but, on the contrary, in the affidavit-in-reply in Paragraph No.9, it is averred that such information cannot be provided to the assessee because it is a confidential matter of the department. Such a stand taken by the respondent-Assessing Officer is contrary to the provision of the Act, inasmuch as, unless and until the petitioner is provided the material upon which the reasons are recorded the action of the respondent is illegal"

Hon'ble Gujarat high court in case of FILCO TRADE CENTRE PRIVATE LIMITED Versus DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 2(1)(1) & ANR SPECIAL CIVIL APPLICATION NO. 3412 of 2022

Date : 29/10/2024

"Having heard the learned advocates appearing for the respective parties and considering the facts of the case, it appears that the Assessing Officer has recorded the reasons based upon the information made available to him without application of mind. ***On perusal of the reasons recorded, it is apparent that the Assessing Officer has not referred to the nature of accommodation entry availed by the petitioner from Jignesh Shah and Sanjay Shah for Rs.6,90,006/- for Assessment Year 2016-17 is concerned****. Merely recording the facts from the information made available to the effect that the petitioner was beneficiary who has availed the accommodation entry to the tune of Rs.6,90,0006/- cannot be said to be a reason having nexus with the material made available to the Assessing Officer for opening of the assessment."*

Guj HC in PUNJAB NATIONAL BANK VS INCOME TAX OFFICER, WARD 1(1) & ORS

SPECIAL CIVIL APPLICATION NO. 11087 of 2022

Date : 17/03/2025

It also appears on perusal of the impugned assessment order that the same is passed in name of OBC Bank, Bharuch Branch for PAN "AAACO7436M" for A.Y. 2017-18 on the basis of the Multi Year MNS Data which revealed that the OBC Bank has purchased the time deposits other than a time deposit made through renewal of another time deposits aggregating to Rs. 393.97 Crore during the previous year 2016-17 relevant to A.Y. 2017-18 which was not offered to tax, however, when it was submitted to the respondent No.1 by the petitioner-PNB which is duly recorded in the assessment order (Page 117 of the paper-book) that the OBC was merged with PNB and the jurisdiction of the erstwhile OBC was in New Delhi having PAN "AAACO0191M", but the Assessing Officer, without considering such submission, proceeded to finalize the assessment on the data available on examination of the Multi Year MNS Data by making addition of Rs. 393.97 Crore raising demand of Rs. 648.26 Crore on a non-existing OBC for A.Y. 2017-18 by the impugned assessment order passed under section 147 read with section 144 of the Act.

9. From the undisputed facts stated here-inabove, it is apparent that respondent No.1 as well as NFAC Center who has passed the impugned order is without application of mind and without considering the fact that the OBC in whose name impugned assessment order is passed, does not exist after 01.04.2020 and therefore, no assessment order could have been passed in the name of the OBC having PAN Number "AAACO7436M".

10. Respondent No.1 has, without taking into consideration the return of income filed by the OBC for A.Y. 2017-18, passed the assessment order dated 30.12.2019 under section 143(3) of the Act for the said year and has not even bothered to find as to whether the amount of Rs. 393.97 Crore relating to the purchase of time deposits have been duly accounted for or reflected in the return of income of the OBC Bank or not and simply on the basis of the Multi Year MNS Data, accepting the same as a gospel truth, has proceeded to pass impugned assessment order by making high pitch assessment making addition of Rs. 393.97 Crore brushing aside the submissions made by the petitioner-PNB. On the basis of the Multi Year MNS data which is an abstract phenomenon unknown to anyone nor disclosed in the assessment order as to what type of Multi Year MNS Data is made available to the Assessing Officer, the Assessing Officer has proceeded to make addition without making any inquiry ignoring the factual submission made by the petitioner-PNB to the effect that the OBC Bank does not exist after 01.04.2020 and therefore, there could not have been any assessment order being passed in the name of the said Bank having PAN "AAACO7436M".

11. It is also apparent from the record that the impugned assessment proceedings have been initiated with prior permission of the higher authorities under section 151 of the Act. It appears that the Additional CIT, Range-2(1), Vadodra, also without application of mind, has sanctioned the approval for issuance of the notice under section 148 of the Act.

12. In view of the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned Assessment order is hereby quashed and set aside. At this juncture, in the facts of the case it is apparent that the respondents, oblivious of the facts submitted by the petitioner- PNB, has proceeded to pass impugned assessment order resulting into high-pitch assessment of Rs. 393.97 Crore attracting the tax demand of Rs. 648.26 Crore and such high-pitch assessment order could not have been passed against a non-existing OBC under PAN "AAACO7436M" which was already requested to be cancelled since 2013 and hence, and for no fault on part of the petitioner, the impugned order is passed on account of total non-application of mind and negligence on part of the respondent No.1. We therefore deem it to be a fit case to impose exemplary cost of Rs. 1 Crore upon the respondent to be paid to the petitioner-Bank for passing such high pitched assessment order contrary to the facts available on record.

13. After the judgement was dictated in the open Court, whereby, we deemed it fit to impose exemplary cost of Rs. 1 Crore upon the respondents while signing the present judgement, we felt that an opportunity should be granted to the respondents to show cause as to why such cost should not be imposed.

14. We are conscious of the fact that quantum of the cost proposed to be imposed by us is a small fraction of the quantum of the high-pitched assessment and consequent demand raised upon the petitioner-PNB.

15. In view of the above, let this matter be listed for further hearing on 04.04.2025 granting an opportunity to the respondent to show cause as to why the cost of Rs. 1 Crore should not be imposed"

Guj HC NILKANTH CONCAST PRIVATE LIMITED Versus JOINT COMMISSIONER OF INCOME TAX (OSD) CIRCLE, GANDHIDHAM & ORS.

SPECIAL CIVIL APPLICATION NO. 13226 of 2024

Date : 10/03/2025

"8. Be that as it may, the fact remains that once the notice under section 148 dated 31.01.2021 was served upon the assessee on 01.04.2021, the same is issued and served after 31.03.2021 i.e. during the period from 01.04.2021 to 30.06.2021 as per TOLA.

9. Therefore, the assessment order passed pursuant to the notice under section 148 dated 29.03.2022 would become infructuous in view of the decision of Hon'ble Apex Court in case of Ashish Agarwal (supra). The respondent has thereafter issued notice under section 148 of the Act pursuant to the order dated 26.07.2022 passed under section 148A(d) of the Act.

Therefore, the assessment order dated 29.03.2022 passed pursuant to the notice dated 31.03.2021 shall not survive and consequently, the appeal preferred by the petitioner would also not survive as the assessment order passed pursuant to the notice dated 31.03.2021 would not be a valid assessment order passed pursuant to such notice and a fresh assessment order will have to be passed as per the reassessment notice issued under section 148 of the Act on 26.07.2022 in view of the decision of the Apex Court in case of Rajiv Bansal (supra).

10. In view of the foregoing reasons, the petition succeeds and the impugned order

dated 29.03.2022 is declared as void and non existent order in view of the subsequent notice issued by the respondent under section 148 of the Act dated 26.07.2022. Consequently, recovery notice and order passed under section 154 of the Act would also not survive and the appeal preferred by the petitioner is hereby declared to have become infructuous."

Hon'ble Gujarat high court decision in case of NARSIMHA TRADING CO. Versus INCOME TAX OFFICER, WARD 1(2)(3) Date : 02/12/2024 SPECIAL CIVIL APPLICATION NO. 17833 of 2021

AY 2017-2018 (DEMONETISATION PERIOD) CASH DEPOSITS:

"Having heard learned advocates for the respective parties and considering the facts of the case, it is not in dispute that the petitioner has disclosed in the return of income for the Assessment Year 2017-18 that the petitioner has deposited cash of Rs.80,07,000/- between 09.11.2016 and 30.12.2016. Moreover, the petitioner has also explained in the objection reply to the impugned notice by explaining that the deposit was of Rs. 80,07,000/- and not Rs. 56,07,000/- as stated in the impugned notice. The assessee has explained that there were cash sales in addition to the cash received from the debtors which was deposited during the said period. It also emerges from the said reply that the total cash deposited by the petitioner up to 07.11.2016 was Rs. 3,23,00,000/- and the cash deposited during the demonetization period is Rs. 80,07,000/- as against total cash sales of Rs. 57,55,624/-. 9. Thus, the petitioner has explained the cash deposit in the bank account during demonetization period. The Assessing Officer however, has discarded above explanation of the petitioner only observing that the petitioner has failed to furnish supporting and corroborative evidence proving direct nexus of cash deposited during demonetization with the amount of cash received from the customers. Such reasons assigned by the Assessing Officer in the order disclosing the objection is contrary to the facts on record as the petitioner has explained in detail about cash deposited in the bank account during the year under consideration. 10. It also appears from the record that the petitioner has along with the objections, submitted the requisite details, copies of bank statements, audited balance-sheet account etc. which was not even referred to by the Assessing Officer in the order disposing the objection.

11. It appears that the Assessing Officer has formed reasonable belief that income chargeable to tax has escaped assessment only on the basis of the information available with him regarding the failure on the part of the petitioner-assessee of known source for the cash deposited ignoring that the petitioner has categorically stated in the reply that the cash deposited is out of the sales which is duly reflected in the books of account.

12. In such circumstances, in absence of any independent application of mind by the respondent- Assessing Officer and in absence of any live link between the information received and the material available record, the impugned notice cannot be sustained. Merely because the Assessing Officer wishes to verify veracity of cash deposit cannot be the basis for reopening for making roving and fishing inquiry by reassessment even in case where the return was not scrutinized before acceptance originally. Therefore, respondent assessing officer could not have assumed jurisdiction to issue the impugned notice for reopening. Respondent assessing officer has failed to assume jurisdiction in absence of any tangible material to arrive at primafacie reason to believe that income has escaped assessment.

Guj HC on change of opinion in new law

RASNA PRIVATE LIMITED

Versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 3(1)(1),

AHMEDABAD ***Date : 18/03/2025 SPECIAL CIVIL APPLICATION NO. 8373 of 2022***

"Therefore, even when the notice under section 148 is issued after 01.04.2021, the respondent Assessing Officer could not have assumed the jurisdiction to reopen the assessment on mere change of opinion, while exercising power to reopen the assessment by the respondent Assessing Officer under section 147 of the Act, subject to the provision of sections 148 to 153 of the Act.

In view of above conspectus of law, the law has not changed even after the amendment of the provisions of section 147 and section 148 and introduction of procedural provision of section 148A in the statute. The concept of change of opinion has remained constant for the purpose of reopening of the assessment as the reopening or reassessment is not review of the assessment already done."

Also see DHC in case of Aarti Fabricott Pvt Ltd vs ITO 467 ITR 612 ;

BASIC CLOTHING PVT LTD VS ITO WP(C) 16462/2022 order dated 19.09.2023 (464 ITR 771)

DHC in Chandra Global Finance Ltd vs ITO W.P.(C) 359/2023(26.09.2024)

Hon'ble Bombay high court in case of SHRI DILIP LAXIMAN POWAR vs ITO WRIT PETITION NO.429/2024 (30.07.2024); Hon'ble Bombay high court in case of MFE Formwork Technology SDN.BHD., vs DCIT 2024:BHC-AS:15677-DB; Hon'ble Bombay high court in case of Shivam Ispat Private Limited vs DCIT WP58-2022.DOC WRIT PETITION NO.58 OF 2022 (20.03.2024); Hon'ble Bombay high court in case of Knight Riders Sports Pvt Ltd vs ACIT 459 ITR 16';Hon'ble Bombay high court in case of Hasmukh Estates Pvt Ltd vs ACIT 459 ITR 524

BOMBAY HIGH COURT

ON BORROWED SATISFACTION "

"This is a classic case of the AO acting under dictation or on borrowed satisfaction"

Pr. Commissioner of Income Tax-1 VS Versus

Agfa India Pvt. Ltd

2025:BHC-OS:5519-DB

Pronounced on 01 April 2025

22. The crucial words, therefore, are "if the assessing has reason to believe …". This means that the Assessing Officer and not any other officer, whether superior to the Assessing Officer or not, must have had reason to believe that income had escaped assessment. Only then could the Assessing Officer exercise powers under Section 147 of the IT Act

26. Thus, it is apparent that the entire process of initiating reassessment proceedings commenced with the letter of Additional CIT, Transfer Pricing to the Jt. CIT. The Jt. CIT and the CIT, acting upon the letter from the Additional CIT, Transfer pricing, virtually directed the AO to initiate proceedings for reassessment. Nothing on record indicates any

independent application of mind by the AO. There is nothing to suggest that the AO who issued the notice under Section 147-148 had, himself, any reason to believe. This AO, regarding himself, to be bound by the directions of his superiors, i.e. the Jt. CIT and the Additional CIT-Transfer Pricing to his Joint Commissioner issued the impugned notices. Thus, the record does show that this was not a case where the AO himself had any reason to believe or the AO, after independent application of mind, believed or had any reason to believe that the income had escaped assessment.

27. In Anirudhsinhji (supra), the Hon'ble Supreme Court held that the power conferred on one authority could be said to be exercised by another authority where such authority acts under the dictates of the other authority. The Court explained that if a statutory authority has been vested with jurisdiction, it has to exercise it according to its own discretion. If discretion is exercised under the direction of or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether.

28. In Anirudhsinhji (supra), the Hon'ble Supreme Court quoted the following passage from Administrative Law 7th Edition by Wade and Forsyth under the heading "surrender", Abdication, Dictation" and sub-heading "Power in the wrong hands" as below:

"Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them.... Ministers and their departments have several times fallen foul the same rule, no doubt equally to their surprise...."

33. In this case, it is apparent that the AO regarded himself to be bound by the TPO's determination for the subsequent assessment year and felt that he had no option but to issue the notice for reopening the assessment. The directions of the Joint Commissioner of Income Tax or the Commissioner of Income Tax left the AO in no doubt about the bindingness of the TPO's determination and the Commissioner's directions. All this is sufficient to vitiate the initiation of reassessment proceedings. This is a classic case of the AO acting under dictation or on borrowed satisfaction.

34. The ITAT in this case, has allowed the assessee's Appeal upon analysing the material on record and correctly concluding that this was not a case where the AO had independently applied his mind to the materials on record. The materials on record showed that the AO had acted under the dictation of his superiors and had issued the notice to reopen the assessment without himself having any reason to believe that the income had indeed escaped assessment."

Also see

Hon'ble P&H high court decision in case of FinDoc Finvest Private Ltd.vs DCIT (07.03.2025)CWP-9658 -2024 (O&M) Reserved on : 17.12.2024 Pronounced on : 07th March, 2025

HON'BLE CHATTISGARH HIGH COURT IN CASE OF 1. Deputy Commissioner of Income Tax (Assessment) Special Range Bhilai District Durg Chhattisgarh. ---- Appellant Versus 1. Surendra Kumar Jain (Dead) Through Legal Heirs 2024:CGHC:25811-DB Judgment delivered on 18-07 – 2024 ITA No. 6 of 2005 ON IMPUGNED REOPENING U/S 147/148 AND ASSESSMENT CARRIED OUT ON BASIS OF DICTATES OF DDIT(INV) AND WITHOUT INDEPENDENT APPLICATION OF MIND
472 ITR 346

BHC on NOT REBUTTAL TO ASSESSEE'S SPECIFIC OBJECTION HELD FATAL

M/s. Indusind Media & Communications Ltd. VS ACIT 2025:BHC-OS:2858-DB

"20. The petitioner is also justified in relying upon the decision of the Co-ordinate Bench in the case of AnkitaChoksey (Supra) wherein the Court had observed that when an assessee points out in its objection that the officer has proceeded on wrong facts and the assessing officer in its order disposing of the objection does not deal with this factual position then, it should be safely concluded that the revenue does not dispute the fact stated by the assessee. In our view, the petitioner in its objections has stated that there is no double deduction of the same amount and therefore, the basis of reopening that there is a double deduction is factually incorrect. This factual averment raised by the petitioner in its objection has not been rebutted in the order rejecting the objections. Therefore, even on this count the decision relied upon by the petitioner in the case of Ankita Choksey (Supra) supports the case of the petitioner"

GlaxoSmithKline Pharmaceuticals Ltd. …Petitioner Versus

Assistant Commissioner of Income Tax Circle-7(1)(1) and Ors. …Respondents

2025:BHC-OS:4400-DB

"12. In the order rejecting the objection, the officer has not rebutted the specific plea of the petitioner that there was nofailure to disclose fully and truly all material facts necessary for the assessment. The order merely reproduces the reasons as recorded, certain provisions of the reassessment and the decisions. We, therefore, are of the view that in the absence of any rebuttal of the specific objection raised by the petitioner, it shall be deemed that the respondent has accepted that there was no failure to disclose fully and truly all material facts necessary for the assessment."

REOPENING ACTION HOST OF PROPOSTIONS

Crystal Pride Developers VS ACIT

2025:BHC-OS:3206-DB

LACK OF FRESH TANGIBLE MATERIAL AND CHANGE OF OPINION

There appears to be no fresh tangible material before the respondents to form its own/independent opinion in regard to reopening of the petitioner assessment for the A.Y. 2014-15, under Section 147 of the IT Act. This would be clearly indicative of change of opinion on part of the respondents in the facts of this case which is not permissible under the statutory scheme of Act read with the judgments in this regard, as further discussed below

Applying the above principles to the given facts, it is discernible that there is no fresh tangible material placed on record by the respondents to justify reopening of the assessment for A.Y. 2014-15 by a notice under section 148 dated 27 March 2021. In fact, the petitioner had disclosed all such material which was available with the assessing officer, during the course of the assessment proceedings. It appears that the assessing officer by the impugned assessment order sought to review the decision already taken during assessment which is impermissible. Also the impugned assessment order clearly brings out a change of mind/ opinion of the assessing officer in reopening the assessment of the petitioner for A.Y. 2014-15 cannot be camouflaged under 'reason to believe' which would be in the teeth of and contrary to the settled legal principles, as noted above.

39. We would at this juncture refer to a recent judgment of a co-ordinate bench of this court in the case of Imperial Consultants and Securities Ltd. v. Deputy Commissioner of Income Tax, Circle-6(1)(2) & Ors.9 where we had the occasion to consider and deal with a similar issue of reopening of assessment which was examined in light of jurisdictional requirements and settled legal position. In this context the court re-visited the judgments rendered in Andhra Bank Ltd v. CIT10 ;

Siemens Information System Ltd v. Assistant Commissioner of Income-Tax & Ors 11; NYK Line (India) Ltd v. Deputy Commissioner of Income-Tax 12 ; Income Tax Officer, Ward No. 16(2) v. Techspan India Private Ltd & Anr 13 ; GKN Sinter Metals Ltd v. ACIT14. In the said case of Imperial Consultants (Supra) Justice G.S. Kulkarni speaking for the Division Bench considering of reopening of assessment beyond the period of four years, Based on the above, it is pertinent to note that the entire basis for reopening of the assessment in the given case is on the materials which were already available with the assessing officer, in finalizing the petitioner's assessment under Section 143(3) the IT Act. It is thereby evident that the assessing officer acted on a complete change of opinion on the same material available with him with an intent to review the assessment already done. This is certainly not permissible, applying the settled principles of law as discussed by us hereinabove

<u>PROCEDURE U/S 144B - VIOLATED</u>

We may observe that the mandatory procedure postulated under Section 144B of the IT Act is also not followed by the respondents. This is in as much as the petitioner's objection dated 18 February 2022 to the reasons recorded for reopening of the assessment by the respondent dated 9 December 2021 were neither considered, dealt with, much less disposed of by the respondents. Further the reply of the petitioner to the draft assessment order dated 24 March 2022 was filed by the petitioner on 28 March 2022, mainly pointing out that the reassessment proceedings were contrary to the provisions of section 147 of the IT Act read with the decision of the Supreme Court in GKN Driveshaft (Supra). The respondent failed to even consider these vital aspects which embrace the requirement of reasonable opportunity to be given to the petitioner, rushed to pass the impugned assessment order on 29 March 2022 i.e., just within a day after receiving a reply dated 28 March 2022 from the petitioner to the draft assessment order. No opportunity of being heard/hearing was given to the petitioner despite the variations prejudicial to the petitioner were unilaterally proposed by the respondents, nor were the objections raised by the petitioner separately disposed of by the respondents. Thus, the impugned assessment order runs contrary to the intrinsic principles of natural justice inbuilt and ingrained under Section 144B of the IT Act rendering the impugned order patently illegal. Such view on similar facts has taken by a coordinate bench of this Court to which one of us (G.S. Kulkarni, J.) was a member in the case of Teerth Developers and Teerth Realties v. Additional/Joint/Deputy/Assistant

Commissioner of Income Tax/Income Tax Officer and Ors 7

GKN DRIVESHAFT VIOLATED

35. To add to the above, in our considered view, the impugned assessment order passed inter alia u/s 147 of the IT Act is wholly without jurisdiction. This is as much as it runs contrary to the decision of the Supreme Court in GKN Driveshafts (Supra) wherein it was categorically held that on receipt of reasons from the assessing officer the assessee is entitled to file objections. The assessing officer is bound to dispose such objections by a speaking order. This would be a proper course to be adopted by the respondent when a notice is issued under section 147 of IT Act. There is abject failure on the part of respondent no. 2 to comply with such jurisdictional requirements ingrained under section 147 of the IT Act. To make matters worse, the petitioner despite pointing this aspect out in its response/reply dated 28 March 2022 to the draft assessment order passed by respondent no. 2 dated 24 March 2022, it was glossed over by the respondents Considering the facts in the given case, the above decision is applicable and in light of such settled legal principles we see no reason to take a different view as Mr. Sharma would want us to. The impugned order cannot be given any effect to as it is eclipsed by the observations and ratio of such judgments.

Hon'ble Patna high court landmark decisions on sec 148/148A

Ankit Agarwal vs The Principal Chief Commissioner of Income Tax ***Civil Writ Jurisdiction Case No.5202 of 2024 Date : 18-04-2025***

We have heard learned counsel for the parties. In this case, the first and foremost question which would arise for consideration is altogether in terms of Section 149 of the Act of 1961 as amended vide Finance Act 2021 with effect from 01.04.2021, a notice under Section 148 or Section 148A could have been issued by the assessing authority in respect of the Assessment Year 2015-16.

In the present case, the assessing authority has issued notice under Section 148A clause (b) of the Act on 23.03.2022 calling upon the petitioner to show cause as to why in view of the details contained in Annexure 'A', a notice under Section 148 of the Act should not be issued.

It is evident from annexure to the notice dated 23.03.2022 that the Assessing Officer had an information under the module of non-filing of return from the Insight Portal which was a palpably incorrect information in his hand. He has stated that as per data available on the e-filing portal, the assessee had not filed the ITR for the assessment year under consideration. Again, this information is totally incorrect. Learned Senior Standing Counsel for the Department has submitted that this seems to be a mistake and it may have been committed in course of cut and paste. This Court is afraid that such submissions cannot be taken as an appropriate explanation from the respondents. The name of the petitioner has been mentioned in the first paragraph of the annexure and then the authority issuing the notice has apparently mentioned about a data available on the e-filing portal which is not a correct data. The fact remains that the petitioner has filed its ITR on 30.03.2016 and his audit report was also uploaded.

This Court further finds that in the second paragraph of the annexure, it is stated that the assessee had deposited in cash aggregating to Rs. 20 lakhs in the State Bank of India and had also made transactions of Rs.26,31,400/- and Rs.43,97,919/- but all these transactions have not at all been discussed later on and what has ultimately transpired is that the Assessing Officer has disallowed long term capital gain of Rs. 25,90,000/- which was claimed by the petitioner in his Income Tax Return

*The contention of learned counsel for the petitioner that in the annexure to the notice issued under section 148A (b) of the Act, the amount of escaped assessment was inflated to bring it over and above Rs. 50 lakhs only to avoid the period of limitation has much force and there is no reason as to why this submission of the petitioner be not accepted. It is further evident that while issuing notice under section 148A(b), the notice issuing authority not only relied upon wrong information but he also failed to submit any material in support of the same to the petitioner. In this regard, the judgment of the learned coordinate Bench of this court in case of **Salik Khan** (supra) (paragraph '5') and paragraph '101' of the judgment in case of **Rajeev Bansal** (supra) have been relied upon.*

On facts appearing from the records, there is no iota of doubt to this Court that no effective show-cause notice under section 148A (b) of the Act of 1961 was served upon the petitioner. The fact that the petitioner did not respond to the show-cause notice dated 23.03.2022 would not make the show-cause notice good and compliant with the requirement of law. After coming into force of the Finance Act 2021 the respondents could have issued a notice under Section 148 of the Act of 1961, if the condition prescribed under Section 149(1) (b) would have been satisfied.

In view of the discussions hereinabove, we are of the considered opinion that the proceeding initiated against the petitioner was based on incorrect information furnished in the notice under section 148(A) (b) which was not supported by any material, therefore, the very initiation of the proceeding by issuing section 148 notice on 06.04.2022 would stand vitiated.

Patna high court in case of Kishore Kumar Singh vs The Deputy / Assistant Commissioner of Income Tax Circle - 4 Patna ***Civil Writ Jurisdiction Case No.587 of 2022***
Date : 22-04-2025

"Core issue involved in the present lis is whether notice under Section 148 of the Income Tax Act, 1961 requires reasons in support of notice or not. We are of the view that whatever notice issued by the official respondent, it must be supported by reasons otherwise aggrieved person has no opportunity of filing his detailed explanation to such notice. Reading of the aforementioned notice, it is very bald and vague, resultantly, petitioners are not in a position to submit their explanation effectively.

Core issue involved in the present lis is whether official respondent while issuing notice under Section 148 of the Income Tax Act, 1961 require to furnish reasons or not? The learned counsel for the petitioners submitted that reasons are mandatory requirement to meet Article 14 of the Constitution of India otherwise petitioners are not in a position to submit their explanation in effective manner. It is also submitted that respondents while issuing notice under Section 148 are exercising quasi judicial functions, therefore, any quasi judicial action taken by the official respondent, it must be supported by reasons otherwise aggrieved person has no opportunity of submission of effective reply to the notice.

Learned counsel for the respondents relied on the cited decisions supra to contend that no reasons are required to be furnished along with the notice under Section 148, the same cannot be appreciated for the reasons that assuming that Section 148 does not prescribe notice must be supported by reasons, it is a quasi judicial function of the authority and it has repercussion insofar as in submitting effective reply or material to the notice issued under Section 148. In other words, reasonable opportunity is not provided to meet the notice. In the absence of any specific stipulation of assigning reasons under Section 148, still the

authorities were required to follow the principles laid down by the Hon'ble Supreme Court in the case of ***Oryx Fisheries Private Limited vs. Union of India and Others reported in (2010) 13 SCC 427. That apart, the Constitution Bench of the Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others reported in (1993) 4 SCC 727, in which it is held that if the statutory provision does not provide issuance of second show cause notice and the inquiring officer's report, still the disciplinary authority was required to issue second show cause notice along with inquiring officer's report, the same principle is applicable to the case in hand to the extent of meeting Article 14 of the Constitution of India.***

Decision in the case of ***GKN Driveshafts*** *(cited supra) it is not that reasons have not been issued along with the notice, there are dearth of reasons, the same decision is not applicable to the case in hand, on the other hand, in the present case not even iota of material like reasons supporting the notice.*

The general principle insofar as providing opportunity or reasons in support of any adverse order or civil consequence, in such circumstance invariably reasons must be supported. In the present case, by virtue of notice under Section 148, petitioners are required to submit their explanation or whatever the materials. In this regard, unless and until petitioners are made known that they have to answer to the notice and it is not supported by reasons, otherwise they are not in a position to submit effective reply / explanation with the material information. On this score the petitioners have made out a case.
Reserving liberty to the respondents to issue fresh notice supported by reasons, such exercise shall be undertaken within a period eight weeks from today, reserving liberty to raise such other contentions on behalf of the petitioners are left open to be urged before concerned authority/forum".

Hon'ble Rajasthan high court

SEC 148A VAGUE REASONS & REVENUE DUTY TO PROVIDE COMPLETE RELIED UPON MATERIAL

Prateek Bulls And Bears Private Limited VS DCIT

2025:RJ-JP:7476-DB]

"This petition is filed seeking quashing of the notice dated 14.03.2022 issued under Section 148(b) of the Income Tax Act, 1961 (for short 'the Act') for the Assessment Year 2018-2019 and the order dated 31.03.2022 passed under Section 148A(d) of the Act.

Analysis and Conclusion:

5. Section 148A of the Act stipulates that before initiating the proceedings under Section 148 of the Act, with prior approval of the specified authority the A.O. if so, required may conduct an enquiry with regard to the information suggesting escaped assessment. The assessee is to be provided an opportunity of hearing by issuing notice specifying the date of not less than seven days but not exceeding thirty days, which may be extended on application. The information relied upon for reassessment and outcome of enquiry if conducted any, is to be supplied. In case of information having been received from investigating wing or other agency, brief summary of information along with relevant portion of report and details of documents relied upon is to be supplied. The decision that if it is a fit case for issuance of notice under Section 148 is to be taken

with prior approval of the specified authority, on the basis of material available on record and after considering the reply filed by the assessee. The order is to be passed within one month from ending of the month when reply was filed and in case no reply was filed within one month from end of month when time to file reply expires.

6. The proviso to Section 148A of the Act provides exception to the applicability of Section 148A of the Act."

7. From perusal of the reasons annexed with the notice issued under Section 148A(b) of the Act, it is evident that name of the bank in which the account was maintained is not mentioned. Inspite of the mandate of Section 148A of the Act, circulars and guidelines issued by the department that material relied upon should be supplied to the assessee, the casualness in which the reasons are supplied, is evident. Vague information was supplied and in absence of name of bank it becomes impossible for the assessee to file response

11. The objections were not decided in accordance with Section148A and the guidelines issued for procedure to be followed in proceedings under Section 148A of the Act.

12. Even before this Court, the department miserably failed to put an iota of evidence to even prima-facie show that the bank account mentioned in the notice belonged to the petitioner and even at this stage, the name of the bank of which account number belongs is not disclosed."

PART B : REOPENING :ALLEGED BOGUS PURCHASE ISSUE

1. HON'BLE RAJASTHAN HIGH COURT IN CASE OF Multimetals Limited Versus Deputy Commissioner Of Income Tax [2025:RJ-JP:12407-DB] D.B. Civil Writ Petition No.9007/2022 ON SUBJECT OF REOPENING U/S148/148A BASED ON INPUTS FROM GST DEPARTMENT AND ISSUE OF NON APPLICATION OF MIND (19.03.2025)

A. Brief factual background

a) AY 2018-2019
b) Notice dated 14.03.2022 issued under Section 148A(b) of the Act
c) The notice was responded to on 17.03.2022
d) Impugned order dated 28.03.2022 passed under Section 148A(d); The AO decided that it is a fit case to proceed under Section 148 of the Act
e) Assessee is engaged in manufacturing of Seamless Extruded Copper, Nickle, Aluminum, Brass and related products.
a) In the present case, the notice under Section 148A(b) of the Act was issued on the basis of information received from the Goods and Services Tax authorities. On that basis the AO issued a notice to the petitioner for explaining the purchases made from the company. The stand was changed after filing of reply by the petitioner denying purchases made from the company and the petitioner was asked to explain transaction.

B. Important propositions

Proposition 1 (on overview of sec 148/148A)

"The combined reading of Section 148A of the Act and the guidelines emanates that the safeguards were provided before initiating the proceedings under Section 148 of the Act. In case need so arises to conduct an enquiry with regard to material available suggesting escaped assessment, the Assessing Officer ('AO') can proceed to enquire after prior approval of specified authority. The assessee is to be provided an opportunity of hearing. The information relied upon along-with outcome of the enquiry is to be supplied. In case of an information having been received from the investigation wing or the other agency, the
summary of information along-with the relevant portion of report and details of the documents relied upon is to be supplied.
The decision to proceed under Section 148 on the basis of material available with the department and after considering the reply filed by the petitioner is to be taken after prior approval of the specified authority.
An exception has been provided by the proviso to Section 148A of the Act with regard to applicability of procedure under Section 148A of the Act."

Proposition 2 Sec 148A can not be done on casual and arbitrary exercise of power and there has to be independent application of mind on part of AO

"As per Section 148A, AO before issuing notice should have information suggesting escaped assessment, the AO can conduct enquiry, if required but with prior approval of specified authority. To similar effect, guidelines are issued. This itself pre-supposes that notice under Section 148 is not be issued in routine but after AO being satisfied that information suggests escaped assessment and for that there has to be independent application of mind by AO qua the information. We may hurry to add that AO is not required to reach to a final conclusion of escaped assessment. The intent behind the procedure prescribed is obvious that re-opening of assessment should not be result of casual or arbitrary exercise of power."

Proposition 3: Non application of mind in extant case (Mere information from another department can not be used for sec 148/148A without analysing the impact of the same under 1961 Act income tax law and DIFFERENCE BETWEEN SALE AND PURCHASE)

"10. The non-application of mind by the AO while issuing notice under Section 148A(b) is writ large. There was no distinction made between a transaction of sale and purchase. ***It is a classic case where on the basis of an information received from another department the proceedings were initiated without considering the relevance of the information qua the Act."***

Proposition 4: Fatal impact of non supply of relevant relied upon material

"11. Inspite of the precise language used in Section 148A of the Act and the issuance of guidelines by the CBDT, the AO failed to supply the material relied upon to the petitioner or to give relevant portion of the report received from the GST authorities or details of enquiry conducted, if any and this is inspite of a specific
request made by the petitioner. Non supply of the information relied upon and outcome of enquiry if held, denies the petitioner reasonable opportunity to object that no case is made out for reopening the assessment."

Proposition 5: For inquiry & verification sec 148A can not be resorted and same can not be resorted for roving and fishing inquiry and changed stance vitiates the reopening action

"The Supreme Court in the case of ***Chhugamal Rajpal Vs. S.P. Chaliha and Ors.*** reported in **(1971) 79 ITR 603 (SC)** held that the AO must have a prima-facie ground for taking action under Section 148 of the Act and a need for further enquiry in itself shall not confer jurisdiction upon AO for reopening the assessment.
13. The only conclusion of use of phrase 'information which suggest that income chargeable to tax has escaped assessment' and power to conduct enquiry if required, is that at least prima

facie AO has to be satisfied that information suggest escaped assessment. In other words, there has to be basis suggesting escaped assessment for proceeding under Section 148, fishing and roving enquiry to find income escaped from tax cannot be made. The ***changed instance of the AO during the pendency of notice under Section 148A(b) of the Act, in fact was issued for testing the relevance of the material received from GST authority vis-à-vis escapement of tax under the Act which is not permitted.***

Proposition 6: Impact of not considering the assessee reply u/s 148A

"14. Be that as it may, the petitioner filed another reply explaining the sales figure which are equivalent to the figure mentioned by the AO in the notice. The stand of the petitioner was substantiated by annexing transportation documents, invoices showing GST having been charged separately, testing reports and evidence that the consideration passed through banking channels. Instead of dealing with the documents produced by the petitioner and verifying the transaction, the material produced was brushed under the carpet by the A O stating that the movement of the goods from premises of petitioner to the company was not proved. 15. The stand taken by the AO has two fold fallacy. The distinction of nature of investigation to be made by the GST authorities and the income tax authorities has been given a gobye. Secondly, the bilties attached with the reply was an evidence of transportation of the goods from the premises of the petitioner to premises of the company. 16. There is other angle to be considered that AO without doubting the payments made through banking transaction, charging & deposit of GST and other documents produced to substantiate the sale transactions decided that it is a fit case to proceed under Section 148"

Proposition 7: Fatal impact of Non compliance to procedure u/s148A (court expressed its displeasure on mechanical sec 148A process)

"17. Non-compliance of the procedure as given in section 148A of the Act vitiates the proceeding being an unreasonable exercise of power. There cannot be a dispute that the procedure stipulated u/s 148A is mandatory. The intent of laying down the steps to be followed before issuance of notice u/s 148 is loud & clear, inspite of this not only in this case but in number of cases before this Court it has been observed that rather than implementing the procedure in its spirit, it is mechanically gone through to complete the formality and this needs to looked into by authorities at appropriate level.

Proposition 8 : Bombay high court decision in CC Dangi case

"Before concluding it would be appropriate to note the decision of the Bombay High Court dated 26th November, 2024 in Writ Petition No.247/2023 titled as C.C. Dangi and Associates Vs. Assistant Commissioner of Income Tax, Circle-16(2), Mumbai and Others wherein the transactions with M/s.Flash Forge Pvt. Ltd. was dealt with and the proceedings under Section 148 of the Act were quashed holding that the proceedings were result of colossal non-application of mind amounting to abuse of authority and power vested by law."

2. **HON'BLE BOMBAY HIGH COURT LANDMARK DECISION ON SEC 148/148A/SEC 151 (REOPENING & SANCTION) IN CASE OF C. C. Dangi & Associates VS Assistant Commissioner of Income Tax, Circle – 16(2), Mumbai & Ors**
2024:BHC-OS:21660-DB

STRICTURES ON JAO/PCIT U/S 148/151 ; DIRECTION TO CBDT TO SEE WHETHER CIT/ OFFICERS COMPETENT FOR JOB; PERSONAL COSTS IMPOSED; *GROSS* NON APPLICATION OF MIND ; INTERPLAY BETWEEN CGST AND INCOMETAX LAW FAKE INVOICE CASE

a) INTERPLAY BETWEEN CGST & INCOME TAX LAW

It is classic case wherein certain information which may be relevant in so far as the CGST authorities are concerned in relation to the transactions qua a registered person under the CGST Act is being mechanically and without application of mind, taken to be relevant, in so far as the proceedings under the IT Act are concerned, more so, when it is a case of re-opening of the assessment. We say so, as the CGST
regime is governed by the provisions of the Central Goods and Service Tax Act and the State Goods and Service Tax Act as applicable. In so far as the income tax is concerned, it is governed under an independent enactment, namely the Income Tax Act, 1961. Both these Acts operate in different fields, with
independent scheme of taxation, hence, there is no question of any overlapping or intermixing of the jurisdictions of these authorities, which stand compartmentalized. Even if some information is available under the CGST regime in respect of the registered person (assessee), the same cannot ipso facto and/or automatically apply to an assessee under the IT Act, unless the assessing officer has tangible material to indicate that certain transactions, which are relevant to the CGST are also relevant and necessary, in so far as the returns filed by an assessee are concerned, and any bogus transactions or anything in relation to such transactions, becomes relevant in so far as in a given case, qua the income disclosed by the assessee under the IT Act is concerned. This can be the case when an assessee in filing his returns does not disclose the true and correct income. It is only when such tangible material is available, the assessing officer would have reason to believe, that income has escaped assessment for such conduct of the assessee.
concerned in relation to the transactions qua a registered person under the CGST Act is being mechanically and without application of mind, taken to be relevant, in so far as the proceedings under the IT Act are concerned, more so, when it is a case of re-opening of the assessment. We say so, as the CGST
regime is governed by the provisions of the Central Goods and Service Tax Act and the State Goods and Service Tax Act as applicable. In so far as the income tax is concerned, it is governed under an independent enactment, namely the Income Tax Act, 1961. Both these Acts operate in different fields, with
independent scheme of taxation, hence, there is no question of any overlapping or intermixing of the jurisdictions of these authorities, which stand compartmentalized.

ISSUE FOR CONSIDERATION BEFORE THE HON'BLE COURT

"This petition under Article 226 of the Constitution of India assails a notice issued to the petitioner under Section 148 of the Income Tax Act, 1961 ("IT Act" for short) dated 31 March 2022. The Assessment Year
("A.Y." for short) in question is A.Y. 2018-2019. The impugned notice is issued to the petitioner after a prior procedure, being followed, namely, of issuance of a notice under Section 148A(b) as also an order passed on such notice under Section 148A(d) of the IT Act"
The primary contention urged by the petitioner is that the entire basis to issue the same is on a report generated by the Central Goods and Service Tax ("CGST" for short) Authorities that certain entities were engaged in issuing/generating/providing fake/bogus invoices to pass on a fraudulent
"Input Tax Credit" ("ITC") without supply of goods. In so far as the petitioner is concerned, this was in relation to an entity M/s Flash Forge Private Limited ("M/s. Flash Forge" for short) which according to the assessing officer has issued fake invoices in favour of the petitioner amounting to Rs.10,97,500/- for the assessment year in question. It is on such count the case of the department is that income in the sum of Rs. 10,97,500/- chargeable to tax had escaped assessment, as the petitioner has not set out as to what kind of professional services were rendered by it to M/s Flash Forge. The assessing officer hence has found it appropriate to reopen the petitioner's assessment.

GIST OF THE DECISION OF HON'BLE BOMBAY HIGH COURT

"16. In our opinion, the approach of the assessing officer was totally unfounded for more than one reason. The primary reason being the assessing officer's understanding of the GST transactions; secondly, the assessing officer's complete mis-reading of the facts, this despite the correct facts being placed on the record of the assessing officer by the petitioner; and thirdly, tangible material in the form of all documents pertaining to the professional services as rendered by the petitioner to M/s Flash Forge and all the details in that regard as reflected in the books of accounts in relation to receipt of fees, the TDS amounts deposited as also the GST amounts deposited in the treasury, have been completely overlooked, misconstrued by the officer.

18. At the outset, we wonder as to how without verifying the petitioner's credentials and merely on the basis of some information which was available with the CGST authorities, the assessing officer without verifying the returns which were filed by the petitioner and the supporting documents, qua the professional fees as received by the petitioner from M/s. Flash Forge, could have proceeded to issue a notice under section 148A(b). In this context, we may observe that the reasons which are set out in the annexure to the notice under section 148A(b) are purely on the information which is gathered under the central information mechanism as per the risk management strategy, which according to the assessing officer indicated that M/s Flash Forge was engaged in issuing, providing bogus invoices for fraudulent income tax without supply of goods. This could be so, however, it was necessary for the assessing officer to verify the nature of petitioner's professional activities qua M/s Flash Forge. On a scrutiny of the record, it ought to have been verified as to whether the petitioner had any connection or has gained income from fradulent ITC so that income in that regard had escaped assessment, so as to initiate such action under Section 148A(b). The information which was gathered by the department indicated that M/s Flash Forge had made payments of Rs.10,97,500/- to the petitioner. However, there was no material for the assessing officer to jump to a conclusion, that having received such amount, the petitioner was deemed to be involved and/or was the beneficiary of any bogus input tax credit as being portrayed by the CGST authorities. In our opinion, when tested on record it was a wholly unwarranted and a wholly erroneous assumption of the assessing officer and the PCIT to reopen the petitioner's assessment on such count. In fact, this is a case depicting a mechanical approach being adopted by both these officers.

20. However, in the present case, certainly the facts demonstrate that this is not a case where the income of the petitioner has escaped assessment on any CGST issue considering what has been pointed out by the petitioner in the reply to the show cause notice issued under Section 148A(b). The assessing officer merely on the basis of the information as found from the CGST authorities could not have proceeded to take steps to reopen the petitioner's assessment, when none of the materials from the CGST portal were relevant qua the assessee/petitioner was concerned.

21. What is more astonishing is that the petitioner, in its reply dated 15 March 2023 (as noted by us hereinabove) submitted every possible detailwhich ought to have completely satisfied the assessing officer not only in relation to professional services/activities of the petitioner but also all the credentials and information as submitted on the books of accounts and on the professional receipts, the amount which are received from M/s Flash Forge, the TDS amount as deposited, the GST amount as deposited, the 26A statement and all other possible information which would show not only the professional standing, but the bona fides of the petitioner.

22. It is also noteworthy that the invoices for professional fees were issued by the petitioner to the said M/s Flash Forge, accordingly amounts were received by the petitioner qua the said invoices and no other amounts were received. However, surprisingly it appears that all this was not considered relevant by the assessing officer. He decided to overlook the detailed reply to the show cause notice submitted by the petitioner, moreover the order passed by the assessing officer under clause(d) of Section 148A would show a gross

non-application of mind, and more particularly, when he makes an observation that the assessee has not mentioned the kind of professional services which were rendered by it to M/s. Flash Forge and since how long the petitioner was associated with M/s Flash Forge. Such observations as made by the assessing officer has created a serious doubt in our mind as to whether the assessing officer can be said to be at all aware on his jurisdiction, under the provisions of the IT Act and more particularly when he decided to issue a notice to the petitioner under Section 148A(b) and also pass an order thereon.

23. The observations as made in the impugned order passed under Section 148A(d) has also shocked our conscience. Further, things do not stop at this, when we noticed the remark which are made by the PCIT, Mumbai 8, Circle 16(2). The PCIT in our opinion has surpassed the assessing officer when he makes his noting/remarks in according an approval, for issuance of a notice under Section 148A to the petitioner. The remarks as made by the PCIT are required to be noted, which reads thus:

"The assessee has made bogus purchases from One World group of entities. In all cases of accommodation entries, the purchases are inflated resulting in suppression of profits and thereby reduction of taxable income while claiming fradulent ITC. In such cases, the paper trial is complete including transactions through bank accounts but contemporaneous corroborative evidences like LR, GRN, entries in stock register. Hence, the purchases cannot be proved. Approval given to issue order u/s. 148A(d). The A.O. may issue notice u/s 148 thereafter."

24. A firm of Chartered Accountants, which is providing to its clients accounting and audit services, certainly cannot be alleged to have made bogus purchases from "One World Group of Entities" and in respect of which there was not a iota of material, over and above this, the petitioner has been alleged of having accommodation entries in regard to these purchases which are stated to be inflated resulting in suppression of profits, thereby reducing of the taxable income of the petitioner, while claiming fraudulent ITC, when there was no ITC whatsoever being claimed by the petitioner. All these remarks being made by the PCIT against the petitioner in granting approval under Section 151 of the IT Act for issuing notice under Section 148 of the IT Act, in our opinion, has crossed all limits of legitimacy in the discharge of the official duties by the PCIT. The norms of prudent and diligent duty to be exercised by the PCIT hence stands breached. Also, such approval crosses all boundaries of the mechanical approach as also of non-application of mind by the PCIT, who needs to act with more circumspection and seriousness.

29. Applying the aforesaid principles to the proceedings in hand, looked from any angle, the impugned show cause notice issued to the petitioner under Section 148A(b) and also the consequent order under Section 148A(d) and the impugned notice dated 31 March 2022 issued to the petitioner under Section 148 cannot be sustained and is required to be quashed and set aside."

FOLLOWIG DECISIONS RELIED

a) **Samp Furniture Private Limited** vs. Income Tax Officer, Ward 3(3)-Thane & Ors WP No. 3290 of 2024, Bombay High Court
b) **Saraswat Co-operative Bank Limited** vs. Assistant Commissioner of Income-tax Circle – 1(3)(1) and Others WP No. 1910 of 2022, Bombay High Court
c) Principal Commissioner of Income Tax -1 vs. **SVD Resins & Plastics Pvt. Ltd**. ITXA No.1662 of 2018, Bombay High Court. 474 ITR 151
d) **Ashok Kumar Rungta** vs. Income Tax Officer 2024] 167 taxmann.com 429 (Bombay) [15-10-2024 474 ITR 160

3. **BHC Ashok Kumar Rungta vs ITO 2024:BHC-OS:16349-DB 474 ITR 160**

"It is evident that the ITAT has returned firm findings that the Respondent-Revenue had accepted the sales effected by the Appellant. The ITAT has also returned a finding that the sales are backed

by compliance with indirect tax requirements such as sales tax returns and VAT audit reports. The ITAT has also held that it cannot be said that goods have not been sold by the Assessee. Most importantly, the ITAT has returned a firm finding that the adverse findings contained in the AO Order were not based on any cogent and convincing evidence. 8. Once such a view has been arrived at by the ITAT, which is the last forum for finding of fact, namely, that the AO Order disallowing 100% of the purchases under cloud, is not based on any cogent and convincing evidence, it would follow that the AO Order has been judicially found to be untenable. Therefore, the foundation on which these proceedings were based stand completely undermined. However, the ITAT went on to state that the Appellant-Assessee has also failed to produce the parties from whom the alleged purchases were made and documents to prove the movement of goods (such as lorry receipts). The ITAT came to a view that goods would have indeed been purchased in the grey market. On this basis, it appears that the ITAT took an easy way out by simply upholding the order of the CIT-A –

by disallowing only 10% of the purchases and adding that amount to the income of the Assessee. 12. In the case at hand, indeed, the sales are not under cloud. The only ground for suspecting the purchases is that they were from suspect persons on the basis of input from the investigation wing and sales tax authorities. The ground in the instant case too is that the persons from whom the purchases were made had not been produced before the Assessing Officer. The ITAT has endorsed the CIT-A's acceptance of the sales tax returns and the VAT audit report. The ITAT has returned a firm finding that there is no cogent or convincing evidence in the AO Order. Against such backdrop, the ITAT believed that the factual pattern of the matter at hand is similar to the factual context of Nikunj. That being the case, the outcome too ought to have been similar to Nikunj, where the disallowance was entirely rejected by the ITAT. In the instant case, the ITAT appears to have found it convenient that the CIT-A had chosen to disallow 10% of the expenses and it appears to be an acceptable consolation to strike a balance. 13. However, we have to note that once there is a quasi-judicial finding that there is no cogent and convincing evidence at all on the part of the Revenue in levelling an allegation, it would be wrong to expect that the Assessee would still have to prove its innocence. The ITAT ought to have gone into this facet of the matter and dealt with why the 10% disallowance was plausible, reasonable and necessary in the context of the facts of the case. Such an analysis is totally absent in the Impugned Order. 14. In our opinion, in adopting such an approach, the ITAT has given credence to the proposition that the law can call for proof of the negative. The ad hoc rejection of 10% of the expenses, found in the

order of the CIT-A, appears to have been a convenient via media that h as been endorsed by the ITAT.

Not only has the Assessing Officer not conducted the exercise as expected of him, the CIT-A has effected a summary measure of disallowing 10% of the expenses and the ITAT has been happy to endorse the same as an equitable middle ground. Such an approach cannot be endorsed as a process known to law to disallow expenses on the premise of their being bogus.

In the instant case, the onus of bringing the purchases by the Appellant-Assessee under cloud was on the Respondent-Revenue, which has not discharged this burden in the first place. Apart from the inputs being received from the investigation wing, there is nothing concrete in the material on record that was used to confront the Appellant-Assessee. If the counterparties in these purchases could not be produced years later, simply adopting a 10% margin for disallowance, without any cogent or convincing evidence, in our opinion, would be unreasonable and arbitrary. It is repugnant for the ITAT to uphold such an addition of 10% of the allegedly bogus purchases to the income of the Appellant-Assessee, despite returning a

firm finding that the AO Order was untenable not being backed by cogent and convincing evidence.

21. Therefore, in our opinion, the substratum of the adverse findings returned in the AO Order having been undermined, we are unable to agree, in the facts and circumstances of the case, with the conclusion of the ITAT. As a result, the Impugned Order deserves to be set aside and these Appeals are disposed of in favour of the Appellant-Assessee and against the Respondent-Revenue

4. BHC *IN Principal Commissioner of Income-tax-1 Vs. SVD Resins & Plastics (P.) Ltd 474 ITR 151*

"11. We may observe that in the facts of the present case, the basic premise on the part of the A.O. so as to form an opinion that the disputed purchases were not having nexus with the corresponding sales, appears to be not correct. It is seen that what was available with the department was merely information

received by it in pursuance of notices issued under section 133(6) of the Act, as responded by some of the suppliers. However, an unimpeachable situation that such suppliers could be labeled to be not genuine qua the assessee or qua the transaction entered with the assessee by such suppliers, was not available on the record of the assessment proceedings. It is an admitted position that during the assessment proceedings, the assessee filed all necessary documents in support of the returns on which the ledger accounts were prepared, including confirmation of the supplies by the suppliers, purchase bills, delivery bank statements etc. to justify the genuineness of the purchases, however, such documents were doubted by the AO on the basis of general information received by the AO from the Sales

Tax Department. In our opinion, to wholly reject these documents merely on a general information received from the Sales Tax Department, would not be a proper approach on the part of the AO, in the absence of strong documentary evidence, including a statement of the Sales Tax Department that qua the actual purchases as undertaken by the assessee from such suppliers the transactions are bogus. Such information, if available, was required to be supplied to the assessee to invite the response on the same and thereafter take an appropriate decision. Unless such specific information was available on record, it is difficult to accept that the AO was correct in his approach to question such purchases, on

such general information as may be available from the Sales Tax Department, in making the impugned additions. This for the reason that the same supplier could have acted differently so as to

generate bogus purchases qua some parties, whereas this may not be the position qua the others. Thus, unless there is a case to case verification, it would be difficult to paint all transactions of such supplier to all the parties as bogus transactions.

12. In our opinion, a full addition could be made only on the basis of proper proof of bogus purchases being available as the law would recognise before the AO, of a nature which would unequivocally indicate that the transactions were wholly bogus. In the absence of such proof, by no stretch of imagination, a conclusion could be arrived, that the entire expenditure claimed by the petitioner qua such transactions need to be added, to be taxed in the hands of the assessee.

13. In a situation as this, the A.O. would be required to carefully consider allsuch materials to come to a conclusion that the transactions are found to be bogus. Such investigation or enquiry by the AO also cannot be an enquiry which would be contrary to the assessments already undertaken by the Sales Tax Authorities on the same transactions. This would create an anomalous situation on the sale-purchase transactions. Hence, in our opinion, wherever relevant any conclusion in regard to the transactions being bogus, needs to be arrived only after the A.O. consults the Sales Tax Department and a thorough enquiry in regard to such specific transactions being bogus, is also the conclusion of the Sales Tax Department. In a given case in the absence of a cohesive and coordinated approach of the A.O. with the Sales Tax Authorities, it would be difficult to come to a concrete conclusion in regard to such purchase/sales transactions being bogus merely on the basis of general information so as to discard such expenditure and add the same to the assessee's income.

*14. Any half hearted approach on the part of the AO to make additions on the issue of bogus purchases would not be conducive. It also cannot be on the basis of superficial inquiry being conducted in a manner not known to law in its attempt to weed out any evasion of tax on bogus transactions. The bogus transactions are in the nature of a camouflage and/or a dishonest attempt on the part of the assessee to avoid tax, resulting in addition to the assessee's income. It is for such reason, the approach of the AO is required to be well considered approach and in making such additions, he is expected to adhere to the lawful norms and well settled principles. After such scrutiny, the transactions are found to be bogus as the law would understand, in that event, they are required to be discarded by making an appropriate permissible addition. ******

16. The assessee has happily accepted such finding as this has benefited the assessee, looked from any angle. However, in a given case if the Income-tax Authorities are of the view that there are questionable and/or bogus purchases, in that event, it is the solemn obligation and duty of the Income-tax Authorities and more particularly of the A.O. to undertake all necessary enquiry including to procure all the information on such transactions from the other departments/authorities so as to ascertain the correct facts and bring such transactions to tax. If such approach is not adopted, it may also lead to assessee getting away with a bonanza of tax evasion and the real income would remain to be taxed on account of a defective approach being followed by the department."

[Emphasis Supplied]

5. ***hon'ble Bombay high court in landmark decision in case of m/s M/s. S V Jadhav vs ITO 2024:BHC-AS:19809-DB 22ND APRIL, 2024 "In this case, the AO has accepted the contention of the assessee and held that the information report by the Insight portal is accounted for by the assessee in his books and income arising out of those transactions is duly offered for taxation. Therefore, the impugned order dated 21st April 2023 under Section 148A(d) of the Act cannot be sustained"***

6. **HON'BLE GUJARAT HIGH COURT landmark DECISION IN CASE OF J.K. BULLIONS PRIVATE LIMITED Versus DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 2(1)(1), AHMEDABAD &**

ANR C/SCA/2924/2022 JUDGMENT DATED: 29/10/2024 ISSUE OF VALIDITY OF *IMPUGNED* REOPENING ACTION U/S 148

A) Petitioner assessee : The petitioner is in the business of trading in gold and silver bullion
B) AY involved : Assessment Years 2014-15, 2015-16 and 2016-17
C) Reasons recorded in these cases: (subject matter of challenge)

Considering the rival submissions made by learned advocates for both the sides, it would be germane to reproduce reasons recorded for all the three assessment years which would be an interesting reading of the reasons recorded by Assessing Officer:

[I} For A.Y. 2015-16 in SCA 3285/2022 the reasons are as under:

"Issues as per reasons recorded for reopening BASIS OF FORMING REASON TO BELIEVE AND DETAILS OF ESCAPEMENT OF INCOME:
As per the information received from the credible sources that the survey action u/.133A of the Income-tax Act, 1961 was carried out on 03.12.2016 at Indore Branch of Dhyanradha Multi State Co-Operative Credit Society Ltd. by the DDIT (Inv.), Ujjain to collect the data regarding the depositors and beneficiaries of such huge deposits. On further verification of information received through Insight Portal, it is seen that, during the year under consideration, the account holder (parties) had deposited cash with the Dhyanradha Multi State Co-Operative Credit Society Ltd. and thereafter the society was depositing cash in the AXIS Bank account bearing number 911010037459714, subsequently, the funds were transferred (returned back) to related parties through RTGS etc.
These parties are finally Overall beneficiaries of such cash deposits. The financial transaction Involved in
this case is Wf Rs4,52,99,000/-. It is further worth to mention here that, on going through the formation available in Insight Portal, the assessee-company found to be the owner of the transacted money. The financial transaction involved In this case is of Rs. 4,52,99,000. Further, for invoking deeming provisions under Section 69A of the act, there should be clearly unexplained money.
On perusal of information so received from Investigation Wing, Indore, it is noticed that the assessee-company J K Bullions Pvt. Ltd. (AACCJ1665K)is found to be the owner and beneficiary of the money to the tune of Rs.4,52,99,000/-as reflected in the information received from Investigation Wing, Indore. The financial transaction as discussed above is clearly attract the provision of section 69A of the Income-tax Act and therefore required to be added back to the total Income of the assessee. As per the Information received from the credible sources that the assesses has deposited cash of Rs.16.80 crores during the year. On perusal of details available, Its found that the assessee has made cash sales to customers v without obtaining complete identity of the customer/purchaser. It Is found that the gold invoices (retail and nonretails) for 01.04.2014 to 31.03.2015, there is no signature of authorized person on sales invoices.
Further, there is no signature of the person who sold the said items. No Signature of persons who have taken delivery in lieu of the cash paid by them for alleged purchase of gold/silver items. All the invoices appear to be prepared by computer just before producing the same before the department for examination. 1 Therefore, books of the account of the subject cant be considered reliable for F.Y, 2014-15. The AR and the accountant of the company contended that there is no legal obligation to maintain name, address, PAN or signature of any customer to whom sales below Rs Rs.2 lakhs was made. In nutshell, it appears that the subject has tried to derive benefit for not keeping the proper documentary evidences and identify of Customers on the pretextthat under no law it is mandatory to to keep such details. On perusal of information so receivedfrom Investigation Wing, Ahmedabad, ***it Is noticed that the assessee J K Bullions Pvt. Ltd. (AACCJ1665K)is found to be the owner of the money appearing in the bank accounts to the tune of Rs.15,35,61,01,414/-and the transaction as discussed above is clearly attract the provision of section 69A of the Income Tax Act and therefore required to be added back to the total income of the assessee."***

D) COURTS ANAYLSIS OF IMPUGNED REASONS/REOPENING ACTION

8. On perusal of the above reasons recorded for the three assessment years, it is apparent that so far as information of Rs. 16.80 Crore is concerned, from credible sources the same is repeated for all the three years. Similarly, the information made available by the Investigation Wing Ahmedabad is also common. Only the information of the Investigation Wing Indore so far as Assessment Year 2015-16 is different which is explained by the petitioner. However, the same is not considered by the Assessing Officer in the order disposing of the objections.
9. On perusal of the reasons recorded, it is apparent that the same are absolutely cryptic and vague. It does not disclose any nexus between the information received and the satisfaction recorded to form reason to believe that income has escaped assessment resulting into non-application of mind by the Assessing Officer while recording reasons to assume jurisdiction to reopen the assessment. It is a trite law that when the reasons recorded are cryptic, vague having no nexus and no application of mind, the Assessing Officer cannot assume the jurisdiction to reopen the assessment. Even the order disposing of the objection is a non-speaking order
***We are unable to understand as to how the deposits made in the bank account would result in escapement of income,more particularly, when the assessee has categorically stated in the objections that the same represent the cash sales which is deposited in the bank account and duly recorded in the books of account**. The Assessing Officer has failed to show even prima facie reason to believe as to how the information received from the Investigation Wing would amount to escapement of income as there is total lack of formation of reason to believe on part of the Assessing Officer to prima facie arriving at a finding that it is a fit case to reopen the assessment for escaping income of more than Rs. 500 Crore for Assessment Year 2014-15, Rs. 1535 Crore for Assessment Year 2015-16, and Rs. 1436 Crore for A.Y. 2016-17. 10. In view of the foregoing reasons, the petitions succeed. Impugned notices dated 31.03.2021 for all three Assessment Years i.e. A.Y. 2014-15, A.Y. 2015-16 and A.Y. 2016-14 are hereby quashed and set aside.*

7. Hon'ble Delhi high court in case of
GYAN MARKETING ASSOCIATES PVT. LTD vs ITO
W.P.(C) 8230/2023
Date of Decision: 18.03.2025

"We are unable to ascertain as to how these transactions have resulted in assessee's income escaping assessment. There is no explanation in the impugned order as to how such transactions would lead to this conclusion. Even assuming that the transactions were found to be non-genuine or non-existent, the same would not result in petitioner's income escape assessment as the petitioner has in fact declared a profit of ₹60,00,000/- on sale of 1600 square feet to ACL and surrendered the same to tax. Thus, even these transactions are held to be paper transactions, as is contended by the learned counsel for the Revenue, the same would not result in petitioner's income escaping assessment. The learned counsel for the Revenue was also unable to explain as to how the facts as narrated in the notice under Section 148A(b) of the Act could lead to the conclusion that the petitioner's income for AY 2016-17 had escaped assessment. "

Hon'ble Delhi high court in case of ANKIT KHANDELWAL vs ITO W.P.(C) 297/2023 *01.04.2025

"16. It is contended by Mr Gupta, the learned counsel appearing for the Revenue that the value of information as set out must be accepted for the purpose of determining the period of limitation under Section 149(1) of the Act. This contention is without merit and is contrary to the scheme of the provisions for initiation of proceedings for assessment/reassessment of income that has escaped

assessment under Section 147 of the Act. It militates against procedure prescribed under Section 148A of the Act. The purpose for sharing the information, which is construed as suggestive of the assessee's income escaping assessment is to enable the assessee to respond to the same and, for the AO to take an informed decision on the basis of the record including the assessee's response. Thus, the question as to the value of income that may have escaped assessment is required to be determined by the AO at the stage of passing of an order under Section 148A(d) of the Act and not at the stage of sharing the information with the Assessee in terms of Section 148A(b) of the Act.

17. In the present case, there can be no dispute that even if the transaction of sale and purchase of equity shares of PMC Fincorp Ltd. is held to be bogus, the only amount that could be brought under the net of tax is the sum of ₹9,43,944.22. This is the only amount received by the Assessee from his broker on account of the said transaction and the AO has no information which suggests otherwise. 18. Undisputedly, the Assessee has surrendered the said amount of ₹9,43,944/- to tax as he had claimed the same as short term capital gains. 19. In view of the above, the impugned order is unsustainable on both the grounds – (i) the impugned notice is beyond the period of three years as stipulated under Section 149(1) of the Act; and, (ii) that there is no material to indicate that the Assessee's income has escaped assessment as the petitioner has declared the amount as received, chargeable to tax and has also paid the tax on the said amount"

8. **Hon'ble Gujarat high court in case of PRAMUKH EXPORT THROUGH ITS PROP. SANJAYKUMAR GANGARAM PATEL Versus INCOME TAX OFFICER WARD 1, MEHSANA OR HIS SUCCESSOR 13/08/2024 SPECIAL CIVIL APPLICATION NO. 7053 of 2024**

"22. Considering the facts of the case and explanation provided by the petitioner, it is apparent that the Assessing Officer has failed to justify any of the reasons assigned to come to the conclusion that it is a fit case to reopen the assessment for the year under consideration. On perusal of the impugned order passed under section 148A(d) of the Act, it is clear that the Assessing Officer has arrived at conclusion to hold that it is a fit case to reopen only on the ground that the petitioner did not furnish the Sales and Purchase Register. The Assessing Officer by considering the total of party-wise purchases and party-wise sales as stated in Form GSTR-I has come to the conclusion that there is escapement of income without there being any material/information on record. Thus the Assessing Officer has passed the impugned order with total non application of mind to hold that the assessee has failed to explain six transactions and the same has remained unexplained and the assessee has failed to prove the genuineness of this transaction and also the source of income. The Assessing Officer however, has accepted the explanation tendered by the petitioner in respect of all the six transactions except observing that the assessee did not furnish the Sales and Purchase Register and therefore, the source for sales and purchase is not known ignoring the fact that the petitioner has filed the return of income for the year under consideration along with audit report and audited balance sheet and Profit and Loss Account.

23. In view of foregoing reasons, the petition is allowed."

9. **<u>hon'ble Delhi High court in case of pcit vs hari steel and general industries Ltd ITA 413/2019 (07.08.2024)</u>** on issue of tenability of reopening made u/s 148 based on sale tax survey action while dismissing revenue appeal and approving impugned itat order and answering question of law against revenue Held "However, and as would be manifest from the reading of the reasons recorded by the AO, it had proceeded solely on the basis of what had come to be recorded in the course of the Sales Tax survey. It becomes evident that the AO not only failed to independently examine those allegations, it also abjectly

failed to enquire and ascertain the status of the proceedings under the Sales Tax statute. If that had been done, it would have found that there existed no demand or assessment against the assessee on the relevant date. 10. Curiously, the CIT (A) while dealing with the aforesaid and while negating the objections relating to the assumption of jurisdiction under Section 148 had chosen to rest its view on a 'prima facie' formation of opinion. The said decision is thus clearly rendered untenable and unsustainable on this ground alone. 11. Ultimately, the Tribunal has on due consideration of the facts as they obtained and existed at the time when the Section 147/148 notice came to be issued has come to hold as follows:- "8. An insight over the above chronological events and position of demands/suppression at various stages of Sales Tax Proceedings and Income-tax proceedings, as noted above, goes to show that on the basis of same survey report various authorities have taken different stands. The impugned information regarding survey by Sales Tax Department has been solely used by the Assessing Officer in letter and spirit for formation of belief of escapement of income without making any enquiry or application of mind, particularly when subsequent proceedings before various authorities of Sales Tax Department were available before issuance of notice u/s. 148 and were got acknowledged to the AO before passing the reassessment order. In presence of these facts, the reasons recorded by the AO cannot, in any way, be said to be proper to form a belief of escapement of income, as the information so received was neither found well founded nor the AO made any efforts to make any verification or application of his mind on the same. The provisions of Section 147 do not give unfettered powers to reopen the assessment and the AO is required to satisfy the pre-conditions as given in the said section, which is lacking in the present case. For this, there are several decisions of Hon'ble Courts, as also cited by the assessee before the ld. CIT(A). In view of this, the reassessment u/s. 147 cannot be said to be valid." Following question answered against revenue /appellant : We had in terms of our order dated 24 January 2024, admitted the appeal on the following question of law:- "2.1 Whether ITAT was legally justified in holding that reopening made by the Assessing Officer was without application of mind ignoring the fact that reopening was madeb y the Assessing Officer based on credible facts of suppression of turnover as unearthed during the survey conducted by the Enforcement branch of Trade & Taxes?"

10. <u>Delhi A Bench ITAT decision in case of ITO vs B.C.Enterprises</u>
<u>ITA No.4972/Del/2024 (CO 08/DEL/2025) AY 2018-2019</u>
<u>04.04.2025</u>

"In the instant case, from the perusal of the notice issued u/s 148A(b) it appears that though the said notice was issued with the prior approval of the PCIT, Delhi-20, however, no material whatsoever was supplied nor the results of the enquiries, if any, conducted were confronted to the assessee and it is merely stated that based on the information received through insight portal it was found that assessee was having accommodation entry in the shape of bogus purchases. It is also seen that assessee in reply to the said notice had filed a detailed reply on 24th March, 2020 which was sent through email to the AO, however, such reply was not considered and the order was passed u/s 148A(d) recording the satisfaction that it is a fit case for issue of notice u/s 148 of the Act. 13. Further from the perusal of the order passed u/s 148A(d), we observed that the AO in para 3 of the order observed that the information was self-sufficient and it was considered that further enquiries u/s 148A(a) of the Act are not required. However, when we see the information as provided to assessee along with notice u/s 148A(a) as "Annexure" and reproduced herein above, we find that such information did not speak about the real transactions. It is simply stated that assessee has made

bogus purchases in the form of accommodation entries provided by Ahok Kumar Gupta and other entities operated and controlled by him. It is also stated that such information was received through insight portal. However, nowhere it is stated as to how department was having such information, who is Ashok Kumar Gupta, what is the nexus between assessee and Ashok Kumar Gupta, which are the entities managed and controlled by him and which of such entities had sold good to assessee alleged as accommodation entry. Further the details of purchases made, date of transactions, item, value of each individual transaction of purchases etc. were never brought on record as provided in sub-section (a) to section 148A of the Act. Further, AO has never provided the statements of such Ashok Kumar Gupta and the other relied upon material based on which of transactions were alleged as accommodation entry of purchases alongwith the notice u/s 148A(b) of the Act. It appears that the AO simply proceeded to reopen the case of the assessee based on the information available on the insight portal which is uploaded under Risk Management Strategy formulated by CBDT and no independent application of mind by AO before using such information against the assessee nor any enquiry was made as provided in section 148A(a) of the Act. This action of AO is highly arbitrary as he failed to appreciate the intent of the legislation behind introduction of provisions of section148A before issue of notice u/s 148 of the Act. The AO not only proceeded to issue notice u/s 148A(a) without making verification of the vague and insufficient information available with him to satisfy himself that income chargeable to tax has escaped assessment but at the same time also failed to provide the material relied upon to the assessee along with notice u/s 148A(b) of the Act. The Hon'ble Supreme Court in the case of Ashish Agarwal (supra) has held that AO should supply the relied upon material to the assessee so as to enable him to respond the show cause notice issued by AO. We also observed that ld. CIT(A) while dismissing this plea of the assessee in para 5.4.3 of the order has observed that department was in possession of the material which also include the statement of Shri Ashok Kumar Gupta. However, at no stage of proceedings u/s 148A of the Act, such statements were supplied to the assessee for rebuttal

14. Further, from the perusal of the assessment order, it is seen that the Assessing officer has relied upon the statements of Sh. Ashok Gupta and also referred the results of the enquiry conducted u/s 133(6) of the Act from the respective parties, however, despite of request made by the assessee for cross examination of all such parties, no such opportunity was provided to assessee. It is settled proposition of law that if the Revenue is using the statement of third parties, the assessee should have been allowed an opportunity to cross examine those witnesses as has been held by the Hon'ble Supreme Court in the case of Adman Timber Products reported in 281 CTR 241

The Co-ordinate Bench of Tribunal in the case of Best City Infrastructure Ltd. vide order dated 31.05.2016 has held that not providing opportunity of cross examination makes the addition invalid. This order is upheld by Hon'ble Delhi High Court as reported in 397 ITR 82. Similar view is expressed by Hon'ble High Courts in following cases:

-PCIT vs. Pavitra Realcom Pvt. Ltd. in ITA No.579/2018 (Delhi)

-PCIT vs. Esspal International Pvt. Ltd. in ITA No.25/2024 (Rajsthan)

-Dr. M. Malliya vs. ACIT in TCA No.284/11 (Madras).

Therefore, not providing the opportunity to cross examine the witness whose statements are relied upon by the Revenue is gross violation of principal of natural justice. Moreover, the AO has failed to consider the reply filed by the assessee in response to notice issued u/s 148A(b) of the Act. Thus, non-consideration of the reply filed by the assessee also render the reassessment order passed as invalid.

16. After considering the above discussion, we are of the view that the Assessing Officer has failed to comply with the direction given by the Hon'ble Supreme Court in the case of Rajiv Bansal (supra) and also the assessee Ashish Agarwal (supra) wherein it is held that AO should provide all the information and relied upon material available with him to the assessee alongwith notice u/s 148A(b) of the Act. Nor the reply of the assessee was considered before passing order u/s 148A(a) of the Act. Accordingly, in our considered view notice u/s 148 is bad in law and thus, the entire reassessment proceedings is held as invalid and is hereby quashed."

11. ***Hon'ble Patna high court decision in case of Narayan Kumar vs PCCIT Civil Writ Jurisdiction Case No.9206 of 2023 (16.04.2024)***

SUBJECT MATTER OF CHALLENGE: "The petitioner, an assessee under the Income Tax Act, 1961 (for brevity, the Act) is aggrieved with an assessment order passed after a notice issued under Section 148 of the Act."

AY : 2017-2018; Later in the year 2021, the petitioner received a notice under Section 148 of the Act; later, on 19.05.2022 the petitioner was issued with Annexure-6 notice based on the judgment of the Hon'ble Supreme Court in **Union of India & Ors. v. Ashish Agarwal; (2023) 1 SCC 617**. "7. The above decision of the Hon'ble Supreme Court prompted the department to issue Annexure-6 notice. Again in Annexure-6 notice, there was a mere statement that information pertaining to one M/s Aryan Trading Company was received by the department from "Special Commissioner of Revenue, Bureau of Investigation, South Bengal and Nodal Officer, Enforcement". It was based on this information indicated, that the transactions of M/s Aryan Trading Company for the assessment years 2017-18 were found to be bogus. There was also a list of beneficiaries attached, which included the petitioner and, hence for the assessment year 2017-18, an amount of Rs. 50,40,218/- was sought to be included in the total income. Again, we have to notice that there was no information supplied to the petitioner as would be required as per the decision of the Hon'ble Supreme Court, cited above, which required providing of the information and material relied upon by the revenue to the respective assessees." "8. The petitioner was then issued with a notice under Section 148-A(d) as is seen from Annexure-7, and then a notice under Section 148 at Annexure-8, which was followed up with Annexure-10 notice issued under Section 142(1) leading to the assessment order produced as Annexure-14. The objections filed by the petitioner were not considered is the contention of the petitioner nor was there any supply of the relevant information and material."

Revenue counter affidavit status " 9. The counter affidavit of the respondents also does not indicate any information or materials supplied other than informing the petitioner that the tax authorities in West Bengal found a registered entity in that State to be a bogus one with bogus transactions and that the said bogus entity had transactions with the petitioner amounting to sales of more than Rs. 50 lakhs. There is nothing stated as to what was the goods purchased, the dates on which such purchases were made, the

invoices relating to the same and any documentary evidence of whatever materials were recovered in the State of West Bengal, which establish that the entity in West Bengal, a bogus one, had transaction with the petitioner."

NOTABLE POINT: "10. More importantly, the petitioner was also not confronted with any evidence establishing his transactions with that bogus entity but for the mere statement that the Special Commissioner of Revenue, Bureau of Investigation, South Bengal had passed on some information. Even the information passed on has not been relayed or communicated to the petitioner. We are clear in our minds that there is no supply ofinformation and material as is required in **Ashish Agarwal** (supra)."

HON'BLE COURT IMPORTANT OBSERVATIONS

" 11. We specifically queried the learned Senior Standing Counsel as to the grounds on which the assessment is made. The learned Senior Standing Counsel would only say that the reason which prompted the proceedings, is the bogus transactions of one M/s Aryan Trading Company, and information supplied to the department from West Bengal. The learned Senior Counsel would also take us to one paragraph of the order produced as Annexure-19, which is extracted hereunder:- *The assessee was issued show cause notice dated 27.05.2023. The assessee vide reply dated 28.05.2023 submitted details of partywise purchases. However, these details do not contain the PAN of the parties. Therefore, it was not possible to establish their genuineness. The assessee was provided with an opportunity to present its explanation vide video conferencing on 29.05.2023. The assessee attended the VC and after VC submitted its reply dated 29.05.2023, the purchase register,freight charges ledger and carriage & transport ledger. However, the purchase register only contains the name of the parties and not the PAN. Therefore, it is not possible to establish the genuineness of these transactions. Although, this list does not contain the name of M/s. Aryan Trading Company but due to non availability of the PANs of the parties mentioned in the list it cannot be confirmed whether these transactions have taken place or not.*

There is no co-relation between the transactions alleged against M/s Aryan Trading Company and that found in the petitioner's books of accounts. The mere statement that the petitioner has not stated the PAN No. does not take the department anywhere, since

the PAN No. of M/s AryanTrading Company was also not supplied to the petitioner by the department. For that definitely, the transactions of M/s Aryan Trading Company on the various dates, with the value of the invoices, should be available and co-related with the books of accounts of the petitioner. This exercise has not been carried out by the department.

14. There is absolutely no reliable material, which the department has obtained for the purpose of initiating proceedings under Section 148 of the Act. No such material has been supplied to the assessee to get his response on the same. As we noticed above, the report of the Special Commissioner was also not given to the assessee and it is not produced in the present writ proceedings by the department. The petitioner's contention all through has been that he has no business transactions with M/s Aryan Trading Company and ***he cannot be asked to prove the negative***. 15. We find the proceeding under Section 148-A of the Act to be a clear abuse of process of law and not coming within the scope and ambit of Section 148. The assessment order, hence, is set aside and the writ petition stands allowed."

PART C : PROJECT FALCON

HON'BLE GUJARAT HIGH COURT

IN MATTER OF RAAJRATNA STOCKHOLDINGS PVT. LTD VS ASSISTAN T COMMISSIONER OF INCOME TAX CIRCLE 1(1)(1

25.11.2024 **SPECIAL CIVIL APPLICATION NO. 3700 of 2022**

ON ISSUE OF VALIDITY OF REOPENING ACTION U/S 148 BASED ON MERE INSIGHT PORTAL AND SOME OTHER AGENCY INFORMATION

HELD NOT PERMISSIBLE (PROJECT FALCON CASE)

Brief Factual background

Assessee filed petition under Article 226 of the Constitution of India, the petitioner has challenged a notice dated 30.03.2021 for reopening of assessment for A.Y.2014-15
issued under section 148 of the Income Tax Act,1961 [for short 'the Act'].
Assessee is engaged in the activity of trading in shares and securities.
During the Financial Year 2013-14 relevant to Assessment Year 2014- 15, the petitioner had also entered into

transaction in Futures & Options [F & O] and derivatives, which resulted into profit of Rs. 3,33,33,242/-. The
petitioner disclosed the same in the Profit and Loss Account and filed return of income for the year under consideration on 30.09.2014 declaring total income at Rs. (-)37,26,445/-.
Case of the petitioner was selected for scrutiny the assessment order under section 143(3) of the Act was passed on 15.12.2016 accepting the returned income.
IMPUGNED REOPENING ACTION FOUNDED on the information received on the insight portal in March 2021 regarding
coordinated and premediated trading Bombay Stock Exchange by engaging in reversal trade and illiquid stock options
resulting in non-genuine business loss/gain to the beneficiary assessee and it was found that the petitioner is a party to such manipulation and from the data made available under ***Project Falcon on ITBA****, it was found that the petitioner has created a profit of Rs. 6,35,02,700/-*
by buy and sale trades executed on the Bombay Stock Exchange.
After analysis of the information and report of the Security Exchange Board of India as well as the decision of the Hon'ble Apex Court in case of SEBI vs. Rakhi Trading Private Limited delivered on 08.02.2018 in CA No. 1969 of 2011, the Assessing Officer formed a reason to believe that there is escapement of income by the petitioner in generating nongenuine profit amounting to
Rs. 6,35,02,700/-.
Petitioner has raised the objections vide letter dated 12.07.2021 against the reopening of the assessment contending that the respondent has no jurisdiction to reopen the assessment. Assessing Officer however, by order dated 25.11.2021, disposed of the objection holding that the reopening was justified.
HELD
10. Moreover, from the reasons recorded it appears that the initiation of reopening proceedings are on the ***borrowed satisfaction*** *as* ***no independent opinion*** *is formed and on bare perusal of the reasons recorded, it emerges that the Assessing Officer, considering the* ***information received from the insight portal****, has issued impugned notice forming reason to believe that the income has escaped the assessment* ***on the presumption*** *that the petitioner has been involved in creating the* ***non-genuine profit which is already offered to tax*** *in the return of income which is accepted in the regular course of assessment by passing the order under section 143(3) of the Act.*
It is also pertinent to note that there is no basis to form reasonable belief for escapement of income ***except the information made available on the insight portal. Therefore, on the basis of the information received from***

another agency on insight portal or from the SEBI report, there cannot be any reassessment proceedings unless the respondent, after considering such information/material received from other sources, consider the same with the material on record in the case of the petitioner assessee and thereafter, is required to form independent opinion that income has escaped assessment. Without forming such opinion solely and mechanically relying upon the information received from the other sources, the
respondent-Assessing Officer could not have assumed the jurisdiction to reopen the assessment based on such information. This view is fortified by the decision of this Court in case of Harikishan Sunderlal Virmani vs. Deputy Commissioner of Income Tax reported in 394 ITR 146.
we are of the opinion that the respondent-Assessing Officer could not have assumed the jurisdiction merely and solely relying upon the information made available on the insight portal without forming any independent opinion on the basis of the material on record vis-a-vis the petitioner is concerned

ALSO REFER

Hon'ble Gujarat high court in case of Bharatkumar Nihalchand Shah vs ITO *463 ITR 94* (LANDMARK DECSION ON HOW REASONS FOR REOPENING ARE TO BE RECORDED BY AO)
"5. Without going into any aspect on the merits of reopening, the ground of assailment by the petitioner-assessee that the reasons are cryptic and that they did not furnish details, on the basis of which the petitioner could defend his case, merited acceptance. Looking at the reasons again, what is only stated by the Assessing Officer is that, "From the data made available under Project Falcon, it is seen that the assessee has created a profit/loss of Rs. 74,62,860/-". Both buying and selling of trades have been are executed at the Bombay Stock Exchange". This statement is a non-detailed and completely escapist. It does not give any fact regarding the transactions or other attendant facts except saying that assessee had engaged in the trading at the Bombay Stock Exchange to create profit or loss. Though styled as reasons, the ground of reopening is unreasoned.

6. The necessity to incorporate reasons in the administrative, quasi judicial or judicial orders are repeatedly emphasised by the supreme court.

6.6 On the basis of the propositions laid down in different decisions by the supreme court above referred and others, the following legal principles on the point in issue may be enlisted,

(i) "Reasons" are of paramount importance. "Reasons" are heartbeat of every conclusion. It introduces clarity in any order. Without the reasons, the order is lifeless.
(ii) The concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of procedural law.
(iii) It is only clarity of thoughts that leads to proper reasoning, which becomes a foundation of a just and fair decision
(iv) Insistence for recording of reasons is intended to subserve the wider principle that justice must not only be done but it must also seen to have been done. The reasons are requirement for ensuring judicial accountability.

(v) Reasons reflect candidness on part of decision maker. The decision making process becomes transparent by virtue of reasons. In absence,, it is impossible to know whether the person decidingthe issue is faithful to the doctrine of precedent or to the principles of incrementalism.

(vi) Reasons in support of decisions must be cogent, clear and succinct. A pretense of reasons or "rubber-stamp reasons" cannot be equated with a valid decision-making process.

(vii) Reasons also facilitate the process of judicial review by superior courts.

7. In light of the above discussion highlighting the indispensability of reasons in the order passed by any authority administrative, quasi judicial or judicial, when it comes to exercise of powers under sections 147 and 148 of the Income Tax Act, 1961, there has to be a greater thrust for necessity of recording reasons. The entire exercise of reopening hinges on the reasons recorded by the Assessing Officer. It is the 'reasons' which weigh with him.

7.1 When the concluded assessment is to be revisited with by the Assessing Officer, recording of reasons for exercise of such powers has to be viewed as vested rights for the assessee. While exercising powers under the Act to reopen the assessment, the Assessing Officer would harbour reasons to believe that on particular set of facts, the income had escaped assessment and tax was not paid in relation to the year under consideration.

7.2 All the reasons which hold good in the eye of and with the Assessing Officer must be made known to the assessee. Assessee has right to refute the reasons for reassessment by filling objections. Unless the Assessing Officer appropriately delineates and communicates the reasons for reassement, right of the assessee to file objections would remain an eye-wash.

7.3 Whether the reassessment powers are adverted to on objective basis, whether the element of assessment of income is noticed from the facts and whether formation of opinion by the Assessing Officer is based on some relevant facts or not, could be judged provided the reasons are properly recorded and the details are given with regard to reopening of assessment that the reasons to believe with the Assessing Officer must be reflected in recording of such reasons to be communicated to the assessee.

7.4 The cryptic way of recording of reasons like found in the instant case, would render the exercise of powers vitiated. With such vague reasons the respondent could be said to have failed to demonstrate that there was any escapment of income chargeable to tax. He could demonstrate such element, if he gives reasons for the same

8. In the aforesaid view, notice issued to the petitioner under section 148 of the Act in respect of the Assessment Year 2015-2016 is liable to be set aside on the aforesaid ground alone