

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

RESERVED ON: 26.07.2022
DELIVERED ON: 25.08.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK

MAT 1020 OF 2022

WITH

IA NO. CAN 1 OF 2022

SWAL LIMITED

VERSUS

UNION OF INDIA & ORS.

Appearance:-

**Mr. Ranjeet Kumar Murarka, Senior Advocate
Mr. Vivek Murarka, Adv.
Mr. Dibanath Dey, Adv.**

.....For the Appellant

Ms. Smita Das De, Adv.

.....For the Respondents

JUDGMENT***(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)***

1. This intra Court appeal filed by the writ petitioner is directed against the order dated 22.06.2022 passed in WPA 10858 of 2022. The appellant who shall be hereinafter referred to as assessee, filed the writ petition challenging the order passed under Section 148A (d) of the Income Tax Act, 1961 (The Act) dated 12th April, 2022 on various grounds. The learned Single Bench was of the opinion that the order impugned in the writ petition has been passed after compliance of all the formalities required under the Act, there is no procedural irregularities or violation of principles of natural justice. Further, the learned Writ Court held that notices were issued to the assessee under Section 148A (b) of the Act and in response to which the assessee filed their objection and thereafter the Assessing Officer has passed the order under Clause (d) of Section 148A with elaborate discussion and reasons. Further, the learned Writ Court held that it cannot act as an appellate authority over the order impugned in the writ petition, more particularly, when there is no procedural irregularity or violation of principles of natural justice or the officer had contravened any of the statutory provisions and the reasoning and finding given by the Assessing Officer should not substituted by the Writ Court. Aggrieved by the same, the assessee is before us by way of this appeal.

2. Mr. R. K. Murarka, learned Senior Advocate appearing for the appellant submitted that the notices dated 21.03.2022 and 30.03.2022 are not notices issued under Section 148A (b) of the Act, but were notices of initial enquiry

under Section 148A (a) of the Act. Further, the notices did not disclose any reasons / materials to suggest, in its Annexure “A” or otherwise that any income of the assessee had escaped assessment within the meaning and purposes of Section 148 Explanation 1(i) read with Section 148A (b) of the Act. It is further submitted that in the main page of the notices which is a pre-printed form, it has been falsely alleged that the details of the information and enquiry, if conducted are enclosed with the notice in annexure. Further, it is submitted that Annexure A appended to the notices merely required the assessee to furnish all bank accounts maintained during the period under consideration and details of alleged funds received with documentary evidence and therefore, it is in the nature of general initial enquiry and not notice under Section 148A (b) of the Act. Further, it is submitted that the information/ material/ facts mentioned in the order dated 12.04.2022 were never disclosed to the assessee and they were not given any opportunity of being heard to deal with and rebut and furnish its submission in response to the alleged materials which has resulted in violation of principles of natural justice rendering the proceedings void ab initio. Further, it is submitted that the alleged materials referred to in the order dated 12.04.2022 are in fact, requisite information under Section 148 Explanation 1(i) of the Act and, therefore, the order is without jurisdiction. It is further submitted that the respondent has failed to discharge the initial burden which lies upon them to establish that conditions precedent to confer jurisdiction existed and were satisfied in the assessee’s case. The appellant disputed the factum of the existence of legality and validity

of alleged approvals of the third respondent to the impugned notices and the orders. It is further contended that in the scrutiny assessment under Section 143(3) of the Act, enquiry was conducted about the materials which were referred to in the notices dated 21.03.2022 and 30.03.2022 and the assessee had disclosed the requisite information under Section 142(2) of the Act and the present attempt of the respondent to re-open the assessment is a change of opinion. In support of his contention, the learned Senior Advocate referred to the decision of the Hon'ble Supreme Court in ***Union of India & Ors. Versus Ashish Agarwal***¹ wherein the procedure which has been stipulated under Section 148A of the Act has been elaborately dealt with and submitted that such procedure was not adopted in the assessee's case. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Kanwar Natwar Singh and Anr. Versus Directorate of Enforcement & Anr.***² Though the said decision arose out of proceedings initiated under the provisions of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, the decision was pressed into service for the proposition that materials are to be disclosed to the person concerned. In this regard, reference was also made to the CBDT Instruction No. 1 of 2022 dated 11th May, 2022 which states the procedure which is required to be followed by the Assessing Officer in compliance with the order passed by the Hon'ble Supreme Court in ***Ashish Agarwal*** and in the case on hand the Assessing Officer failed to follow the said procedure. In support of his contention that the order passed by the authority should be a

¹ 444 ITR 1 (SC)

² (2011) 330 ITR 374 (SC)

speaking order after considering objections filed by the assessee, reliance was placed on the decision in the case of ***Roquette Riddhi Siddhi (P.) Ltd. Versus Deputy Commission of Income Tax Circle 3(1)(2), Ahmedabad***³. Reliance was placed on the celebrated decision in the case of ***Calcutta Discount Co. Ltd. Versus Income Tax Officer***⁴ for the proposition that jurisdictional fact is a condition precedent before proceedings are initiated for re-assessment. For the proposition that it is not sufficient for the Assessing Officer to merely state that he has reasons to believe that income escaped assessment but he has to set out the material based on which he arrived at such belief, reliance was placed on the decision of the Hon'ble Supreme Court in ***Income Tax Officer Versus Madnani Engineering Works Ltd.***⁵ With regard to the need for recording satisfaction by the Assessing Officer, reliance was placed on the decision in ***Chhugamal Rajpal Versus S.P. Chaliha & Ors.***⁶ For the proposition that independent decision is required to be taken by the authority, reliance was placed on the decision in ***Johri Lal (H.U.F.) Versus CIT, U.P.***⁷ Decisions of this Court in ***Giridhar Gopal Dalmia Versus The Union of India & Ors.***⁸, dated 21.06.2022 and ***Babcock Borsig Limited Versus Union of India & Ors.***⁹, dated 21.06.2022 were referred to support the contention that without affording an opportunity of hearing the Assessing Officer, cannot

³ (2021) 130 taxmann.com 237 (Gujarat)

⁴ (1961) 41 ITR 191 (SC)

⁵ (1979) 118 ITR 1 (SC)

⁶ (1971) 79 ITR 603

⁷ (1973) 88 ITR 439 (SC)

⁸ MAT 727 of 2022

⁹ MAT 849 of 2022

decide the matter. Further, by referring to Explanation 1(i) in Section 148, information flagged in the case of the assessee with a risk management strategy formulated by the Board has to be disclosed to the assessee which has not been done in the instant case. On the above grounds, the learned Senior Counsel sought for setting aside the order passed in the writ petition and allowing the same.

3. Ms. Smita Das De, learned Standing Senior Counsel, appearing for the respondent sought to sustain the order passed in the writ petition and has drawn our attention to the notices issued under Section 148A (b) of the Act. It is submitted that the information based on which the Assessing Officer formed an opinion that income chargeable to tax for the Assessment Year 2018-19 has escaped assessment within the meaning of Section 147 of the Act have been clearly spelt out in the annexure to the notices and opportunity was granted to the appellant to furnish the material and make submissions and in the said annexure the assessee was also called upon to explain as to why the notice under Section 148 should not be issued in the assessee's case to reopen the assessment. It is submitted that the reply dated 30.03.2022 has been considered by the Assessing Officer and well reasoned order has been passed which was rightly not interfered by the learned Writ Court and consequently the learned Writ Court was fully justified in dismissing the writ petition. Further, it is submitted that the decisions in **Giridhar Gopal Dalmia** and **Babcock Borsig Limited** are clearly distinguishable on facts and cannot be

applied to the assessee's case. With the above submission, the learned Senior Standing Counsel prayed for dismissal of the appeal.

4. We have heard Mr. Ranjeet Kumar Murarka, learned Senior advocate along with Mr. Vivek Murarka and Mr. Dibanath Dey, learned Advocates for the appellant and Ms. Smita Das De, learned Advocate for the respondents.
5. The assessee filed return of income for the assessment under consideration, A.Y. 2018-19 on 31st October, 2018. An intimation under Section 143(1) of the Act was issued on 31.08.2019. Thereafter, notice under Section 143(2) of the Act was issued on 22nd September, 2019. Stating that there are certain issues which need further clarification for which the return of income filed by the assessee has been selected for scrutiny and such issues initially are regarding method of accounting and ICDS compliance and adjustment. The assessee was directed to submit its response with supporting documents, if any, to the Assessing Officer on or before 07.10.2019. The assessee submitted their response on 6th January, 2020 stating that they are following mercantile system of accounting and have stated closing stock of shares as on 31st March, 2018. That they have calculated market price of listed shares as on 31st March, 2018 and in order to comply with the provisions of ICDS, they have shown decrease in profit of Rs. 24,09,54,283.70/-. It was further stated that due to ICDS compliance and adjustment in their computation of income, their income is reduced by Rs. 24,09,54,283.70/-. A working of the cost of the shares and market price of the shares as on 31st March, 2018 was attached to the reply. It is thereafter, the Assessing Officer

issued notice under Section 142(1) of the Act dated 18.01.2021, which contained an annexure stating that on perusal of the reply (dated 6th January, 2020) and the return, it is seen that the assessee has made substantial investment in stock during the year under consideration and have earned exempt income amounting to Rs. 1,58,157/-, however, while computing the total income, they have not disallowed expenses attributable to earning of exempt income and in this regard, they were directed to furnish the details such as type of investment and specific description of investment; name, address, PAN of the concerns who invested; investment made as on 01.04.2017; sources for making the investments; investment made during the year; sources for the same; investment made as on 31.03.2018; income earned and related expenditure, if any. Apart from the above details, the assessee was directed to state the monthly opening and closing balance during the year with respect to the investment, why the provision of Section 14A read with Rule 8D of the Rules should not be applied to the case and computation of expenses attributable to earning of exempt of income under Section 14A read with Rule 8D. The assessee submitted their reply on 2nd February, 2021. Apart from furnishing the details called for it was stated as follows:

- *We are following mercantile system of accounting.*
- *We have made compliance with ICDS and accordingly claimed loss of Rs. 24,09,54,283.70/-, we are attaching calculation of the same as separate enclose, we have earned dividend of Rs. 1,58,157/- from various shares held a stock in trade, we have not entered any expenses specifically relatable to earning of dividend income. We could have incurred same expenditure even if we have no dividend income.*

- *We have investment of Rs. 3,95,820/- at the beginning of the year which is same the end of the year also. However, we have share held as stock in trade details of which in desired format we are attaching as separate enclose.*
- *Since we have no expenses attributable to earning of dividend income no expenses shall be disallowed under Section 14A r.w. Rule 8D.*

6. The reply submitted by the assessee was not accepted by the Assessing Officer and by order dated 07.06.2021 the assessment was completed under Section 143(3) read with Section 144B of the Act, by making a disallowance under Section 14A read with Rule 8D of the Rules. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax Appeals, National Faceless Appeal Centre, Delhi. The grounds raised before the Appellate Authority are as follows:

- *For that the Ld. A.O. erred in not providing reasonable and sufficient opportunity to the appellant to make reply/ submission against the draft assessment order.*
- *For that the Ld. A.O. erred in making disallowance of Rs. 34,13,888/- u/s 14A read with Rule 8D on alleged grounds.*
- *For that there being exempt income amounting Rs. 1,58,157/- claimed by the appellant, the disallowance u/s 14A of the Act shall be restricted to Rs. 1,58,157/-*
- *For that the disallowance of Rs. 34,13,888/- is otherwise high and/or excessive.*

7. At that juncture, the Assessing Officer issued notice dated 21.03.2022 under Clause (b) of Section 148 of the Act directing the assessee 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. Since the details contained in the

annexure are relevant to take a decision in this appeal we quote the same hereunder:

Annexure

You had invested in penny scrip M/s Sunstar Reality Development Ltd. having scrip code 535141 and Stampede Capital Limited during the F.Y. 2017-18 relevant to A.Y. 2018-19 to the tune of Rs. 58,62,110/- and 2,19,000/- respectively. It is also found from information that you had received an amount of Rs. 10,00,000/- from M/s Gokul Vintrade Pvt. Ltd.

You are requested to furnish over online all relevant bank accounts maintained by you during the period under consideration, nature of business carried on by you during the period under consideration and details of above funds received with documentary evidence.

In view of such fact you are also requested to furnish your own submission explaining the matter along with certain clarification/information as mentioned below:

➤ *From your ITR and accounts it is not clear how such amount has been reflected there and actual nature of such receipt.*

➤ *Please mention the details of that person and the nature of your financial transaction with that entity. Please furnish its name and current address and whether said money paid back to such entity in*

➤ *Please furnish all evidence/details to establish the identity, creditworthiness and genuineness of this transaction, in order to establish the creditworthiness, you are requested to explain the immediate source of funds out of which mode had been transferred to you.*

➤ *Please explain how such amount has been utilized by you after its receipt. If the money has been transferred to some other entity thereafter, mention the name of that person, the reasons for such payment and its present address with all supporting documents.*

➤ *Please furnish names and addresses of the Directors of your company who were holding that position at the time of receipt of such money.*

➤ *Please furnish statement of your Bank A/c, for the relevant period showing receipts of such money and its subsequent transfer, if applicable.*

You are requested to furnish your written submission on all the matters, as asked for, in detail along with all supporting documents within 07 days from the date of receipt of this communication.

You are also requested to explain as to why Notice u/s 148 would not be issued in your case to reopen your assessment for the relevant year on the basis of adverse information received against you.

This communication has been made on receiving prior approval from the Competent Authority.

Your compliance and cooperation in this regard will be highly appreciated.

8. The assessee submitted their response dated 28.03.2022 by e-proceedings. The assessee also submitted his written reply dated 30.03.2022 to the notice issued under Clause (b) of Section 148 (A) of the Act. After mentioning about the transaction in the shares done by them and the amounts received the assessee requested for the following documents/information:-

- ❖ *Please provide us the verbatim copy of information suggesting escapement of income available with you on which notice u/s 148A of the Act had been issued in terms of explanation 1 to section 148.*
- ❖ *Please provide us the copies of adverse material and adverse statements, if any based on which you say in notice that there is information with you suggesting escapement of income.*
- ❖ *Please provide us with the copy of material gathered by you on the basis of enquiry, if any, conducted under clause (a) of Section 148A.*
- ❖ *Please give the opportunity to cross examination of the persons who might have given the adverse deposition in connection with*

this mater upon which this under Section 148A of the Act had been issued.

- ❖ *Please provide us with the copy of approval of specified authority which had been given to you before issuance of this notice to show cause under Section 148A of the Act.*

9. There was no response to the request made by the assessee for providing the documents/information as mentioned above. Once again, another notice dated 30.03.2022 was issued under Clause (b) of Section 148A of the Act containing the very same allegation and the very same annexure as annexed to the earlier notice dated 21.03.2022. In response to the said notice, the assessee reiterated their earlier request for supply of documents and information by communication dated 31.03.2022. The assessee did not receive any reply but was served with an order under Clause (d) of Section 148A of the Act dated 12.04.2022 along with a notice under Section 148 of the Act dated 12.04.2022.
10. The assessee by letter dated 09.06.2022 sent through their authorised representative once again reiterated their earlier request for supply of materials and documents and pointed out that they have not been given an opportunity of hearing as prescribed under Section 148A(b) of the Act. Further the assessee pointed out that, it appears that the assessing officer has not conducted any enquiry as mandated under Section 148A(a) of the Act. The assessee requested the said letter to be treated as the application under Section 154 of the Act, afford them an opportunity of hearing after withdrawing the order passed under Clause (d) of Section 148A. Since there was no response from the

department, the assessee filed the writ petition which has been dismissed by the impugned order.

11. As could be seen from what we have stated above, the assessee has been consistently pleading that they should be furnished with documents and information so as to ensure fair plain action. The request was to provide verbatim copy of the information suggesting escapement of income available with the assessing officer allegedly based on which the notice under Section 148A of the Act has been issued in terms of Explanation 1 to Section 148. The assessee requested for providing copies of adverse materials and adverse statements, if any based on which notice was issued. Further the assessee requested for copy of the materials gathered on the basis of enquiry, if any conducted under Clause (a) of Section 148A. The assessee requested an opportunity to cross examine the persons who might have given adverse deposition in connection with the subject matter upon which notice under Section 148A has been issued. The assessee also requested for the copy of the approval of the specified authority which had been given to the assessing officer before issuance of the notice to show cause under Section 148A of the Act. This request has been consistently reiterated by the assessee. It has to be seen as to what the assessing officer has to do in such circumstances. To our mind, there are two options, the first of which is to furnish the information and documents as sought for by the assessee in full. The second option is to intimate the assessee the reason for not being able to furnish the documents or information as sought for by the assessee. The assessing officer did neither of

the above two but proceeded to pass the order under Clause (d) of Section 148A of the Act. Thus, the facts clearly show that there has been gross violation of the principles of natural justice.

12. In the earlier part of this judgment, we had verbatim extracted the annexure to the notices issued under Clause (b) of Section 148A. The allegation as mentioned in the annexure is that the assessee has invested in penny scrips of *M/s. Sunstar Reality Development Limited* and *Stampede Capital Limited* during the financial year 2017-2018 relevant to the assessment year 2018-2019 to the tune of Rs. 58,62,110/- and Rs. 2,19,000/- respectively. Further it was stated that the assessee has received an amount of Rs. 10,00,000/- from *Gokul Vintrade Private Limited*. In respect of the said allegations, the assessee was requested to furnish all relevant bank accounts maintained by them during the period under consideration, nature of business carried on by the assessee during the period under consideration and details of the funds received with documentary evidences. That apart the assessee was also requested to furnish their submissions explaining the matter along with certain clarifications/information which are mentioned in Clauses (a) to (f) in the annexure. The assessee was directed to furnish written submissions and all the matters as called for, in detail with all supporting documents within seven days from the date of the receipt of the communication. Added to that, assessee was also requested to explain as to why notice under Section 148 would not be issued in their case to re-open the assessment for the relevant year on the basis of adverse information received against the assessee. The annexure

further stated that the said communication has been made on receiving prior approval from the competent authority.

13. The question would be whether the allegation contained in the annexure and the questions posed therein is for the purpose of conducting an enquiry under Clause (a) of Section 148 (A) of the Act or is it the information based on which the notice under Clause (b) of Section 148 of the Act was issued. The first paragraph of the annexure may suggest that it is forming part of the notice under Clause (b) of Section 148A of the Act. However, on reading the other paragraphs, it leaves no doubt in our mind that what the assessing officer proposed was to conduct an enquiry in terms of Clause (a) of Section 148A of the Act. This is so because several details have been called for from the assessee and they were requested to submit their explanation with clarification and necessary information. If such is the tenor of the notice, it pre-supposes that the assessing officer was desirous of conducting an enquiry after receiving clarifications and information on the issues mentioned in Clauses (a) to (f) as contained in the annexure. Therefore, we agree with the submissions of the learned senior advocate for the assessee that the notice dated 21.03.2022 and the subsequent notice dated 30.03.2022 though purported to have been issued under Clause (b) of Section 148A are in fact, notices under Section (a) of Section 148A. Pursuant to information furnished by the assessee on the various queries made, the assessing officer would be at liberty to enquire into the same and then take a decision as to whether materials are available to issue a notice under Clause (b) of Section 148 of the Act. There appears to have

been some confusion in the matter and the authority proceeded further in the matter construing the notice to be a notice under Clause (b) of Section 148A of the Act. Thus, a fundamental error has occurred thereby vitiating the entire proceedings. We had noted that the assessee has been repeatedly requesting for information and documents in its entirety. The assessing officer did not reject the request made by the assessee nor sent any reply. Though the assessment is a faceless proceeding yet the elementary principles of natural justice cannot be dispensed with. The assessee is entitled to access to all the adverse materials based on which the authority proposed to take action under Section 148 of the Act, unless and until the assessing officer is of the view that such information pertains to third party information which cannot be furnished to the assessee, such information should be furnished to the assessee. In the instant case, the assessing officer cannot take umbrage by mentioning that it is the third-party information since it is based on such information the annexure to the notice has been drawn. Therefore, principles of natural justice will be met only if the request made by the assessee in their representation dated 30/31.03.2022 is furnished so as to enable the assessee to submit an effective reply. In this background, if we peruse the order impugned in the writ petition dated 12.04.2022 passed under Clause (d) under Section 148A, it is clear that the said order is based on certain information which was privy only to the assessing officer and not disclosed to the assessee. This once again, is in violation of the principles of natural justice. The Hon'ble Supreme Court in **Ashish Agarwal** had elaborately dealt with the procedure

which has been stipulated under Section 148A of the Act. After the said decision, the CBDT had issued instruction No. 01 of 2022 dated 11.05.2022. In paragraph 8.1 of the said instruction, the procedure required to be followed by the jurisdictional assessing officers have been set out. It has been stated that in view of the observation of the Hon'ble Supreme Court all defences under the new law are available to the assessee and if the assessee makes a request by making an application that more time be given to him to file the reply to the show cause notice then such a request shall be considered by the assessing officer on merit and time may be extended by the assessing officer as provided in clause (b) of Section 148A of the Act. It has been further stated that after receiving the reply, the assessing officer shall decide on the basis of materials available on record including the reply of the assessee, whether or not it is a fit case to issue notice under Section 148 of the Act. At this juncture, it would be relevant to take note of few paragraphs of the decision in **Ashish Agarwal**:

- ❖ *However, by way of Section 148A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall (i) conduct any enquiry, **if required**, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment; (ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority; (iii) consider the reply of the assessee furnished, if any, in respect to the show-cause notice referred to in clause (b); and (iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit*

case to issue a notice under Section 148 of the IT Act and (v) the AO is required to pass a specified order within the time stipulated.

- ❖ *Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per Section 148A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under Section 148A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry, the assessing officer may do so and conduct any enquiry. Thus, if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.*

14. In the said decision, while considering the correctness of the orders passed by various High Courts, the Hon'ble Supreme Court directed the notices issued under erstwhile Section 148 of the Act to be deemed to have been issued under Section 148 of the Act as substituted by Finance Act, 2021. More importantly, the direction was issued to the assessing officers to provide the assessee with the information and materials relied upon by the revenue so that the assessee can reply to the show cause notices. With regard to the enquiry to be conducted under Clause (a) of Section 148A of the Act, it is not mandatory but it is for the concerned assessing officer to hold an enquiry if required.

The facts which we noted above and in view of the discussions contained in preceding paragraph, the only irresistible conclusion that can be arrived at is to state that the assessing officer has failed to comply with the directions issued by the Hon'ble Supreme Court or in other words failed to appreciate the purport, intent and scope of the directions and more importantly, violated the directions issued in the instructions given by the CBDT dated 11.05.2022. Admittedly, no opportunity of hearing was granted to the assessee and even assuming the assessee was heard such opportunity is of no consequence as the assessee was not provided with the full information sought for by them. This view is supported by the decision of this Court in the case of **Babcock Borsig Limited Versus Union of India in MAT No. 849 of 2022** dated 21.06.2022 and the decision in **Girdhar Gopal Dalmia Versus Union of India & Others in MAT No. 727 of 2022** dated 21.06.2022.

15. Mr. Muraka had also stressed the point with regard to the approval which is stated to have been granted by the competent authority. In fact, the assessee has sought for a copy of the order granting such approval, in the opinion of the assessee there is no such prior approval.

16. In **Chhugamal Rajpal**, the Hon'ble Supreme Court while setting aside the re-assessment proceedings also took note of the importance of the permission which was required to be granted by the Commissioner and after noting the facts therein, it was held that the Commissioner has mechanically accorded permission and he did not himself record that he was satisfied that it was the fit case for the issue of notice under the erstwhile Section 148 of the

Act. Though the said decision arose under the pre-amended Section 148, yet the decision can be referred to stress the importance of the approval to be granted by the competent authority. To the same effect, the decision in **Johri Lal (HUF)**, wherein the Hon'ble Supreme Court held that the Commissioner or the Board of Revenue while granting sanction for proceeding under Section 34 (1) (a) of the Indian Income Tax Act, 1922 will have to examine the reasons given by the Income Tax Officer and come to an independent decision and the authority in question should not act mechanically.

17. Mr. Muraka had argued that the assessing officer merely stated his belief but they did not set out any material on the basis of which he arrived at such belief and more importantly, in the order based under Clause (d) of Section 148A, several fresh information stands incorporated and therefore the entire proceedings are required to be set aside for want of reasons to believe that part of the income of the assessee has escaped assessment. To support such arguments, the decision in **Madnani Engineering Works Limited** was referred to.

18. In the case on hand, we are not required to examine the correctness of the said contention qua the facts of the case as it is premature since the assessee's case is largely pitched on the grounds of unfairness in action and violation of principles of natural justice. Therefore, we refrain from expressing any opinion on the said issue.

19. Mr. Muraka also referred to the decision in the case of **Roqutte Ridhi Sidhi Private Limited** to support his contention that the procedure to file

objection to reasons for reopening and the decision thereon is not empty formality. The Hon'ble Supreme Court after referring to the celebrated decision in ***GKN Driveshafts (India) Limited Versus Income Tax Officer*** ¹⁰ observed that while disposing of the objections against the notice issued under Section 148 of the Act (prior to amendment) it is obligatory on the part of the assessing officer to deal with the issues raised therein and pass a speaking order. Though these observations were made in the case arising out of the proceedings under the erstwhile Section 148 of the Act yet the legal principles laid down by the Hon'ble Supreme Court in ***GKN*** has to be borne in mind by the assessing officer while disposing of the objections filed by the assessee.

20. Thus, we are fully satisfied that there has been gross violation of the principles of natural justice and the assessee did not have adequate opportunity to put forth their objection in an effective manner as the information sought for by the assessee was not furnished. Further we have held that the notices dated 21.03.2022 and 30.03.2022 though purported to have been issued under Clause (b) of Section 148A, on a reading of the annexure, it is clearly seen that the annexure does not contain information but it is a questionnaire. If that is so, then it goes without saying that what was intended by the assessing officer is to conduct an enquiry after receiving information from the assessee and the notice is deemed to be a notice under Section 148A (a) of the Act.

¹⁰ (2003) 259 ITR 19

21. Thus, there is gross procedural error from the very inception of the proceedings rendering the same as bad in law.

22. In the result, the appeal is allowed, the order passed in the writ petition is set aside. Consequently, the writ petition is allowed to the extent indicated:-

- (i) The order under Clause (d) of Section 148A of the Act dated 12.04.2022 is set aside and the matter is remanded to the assessing officer.
- (ii) For the reasons mentioned above, the notices dated 21.03.2022 and 31.03.2022 though stated to have been issued under Clause (b) of Section 148A of the Act, they are in fact, notices under Clause (a) of Section 148A of the Act and be treated as such, and accordingly direction is issued to the assessing officer to conduct an enquiry after receipt of the explanation from the assessee.
- (iii) The assessing officer, before conducting enquiry as directed in Clause (ii) above, is directed to furnish full information as sought for by the assessee by their representation dated 30/31.03.2022 within 15 days from the date of the receipt of the server copy of this order.
- (iv) On receipt of the such information, the assessee is granted 10 days' time to submit their written response/reply after which the assessing officer shall proceed to conduct an enquiry as provided for under Clause (a) under Section 148 A of the Act and thereafter proceed in accordance with law.

- (v) In the light of the above directions, the notice issued under Section 148 of the Act dated 12.04.2022 cannot be enforced.
- (vi) No Costs.

(T.S. SIVAGNANAM, J.)

I agree.

(BIVAS PATTANAYAK, J.)



(P.A.-PRAMITA/SACHIN)