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HIGH COURT OF ORISSA : CUTTACK.

W.P.(C) No. 15102 of 2022

(in the matter of an application under
Articles 226 & 227 of the Constitution of India, 1950)

AUROGLOBAL COMTRADE

PRIVATE LIMITED

PLOT No.303/304

PUNJABI COLONY, SATYANAGAR

BHUBANESWAR – 751 007

Petitioner

Mr. Jagamohan Pattanaik,
Advocate

-versus-

THE CHAIRMAN, CENTRAL BOARD OF ...
DIRECT TAXES & OTHERS

Opposite Parties

Mr. Tushar Kanti Satapathy,
Senior Standing Counsel (Income Tax)

Date of Hearing and Judgment : 06.09.2022

CORAM:

MR. JUSTICE JASWANT SINGH

AND

MR. JUSTICE MURAHARI SRI RAMAN

JUDGMENT

Murahari Sri Raman, J.—

This matter is taken up by virtual/physical mode.

P.T.O.

2. The Petitioner, alleging non-consideration of its application, dated 18th May, 2022 submitted before the Deputy Commissioner of Income-tax, Circle-1(1), Bhubaneswar, in response to the notice dated 15.03.2022 issued under Section 148A of the Income-tax Act, 1961 (for brevity herein after referred to as “IT Act”) pertaining to Assessment Year 2018-19 [Previous Year 2017-18], has filed this writ petition craving for following relief:

*“*** quash the notice under Section 148 of the IT Act, 1961 dated 26.03.2022 under Annexure-4***.”*

3. Shorn off detailed narration of facts, suffice it to describe that based on information which suggests that income chargeable to tax for the Assessment Year 2018-19 has escaped assessment within the meaning of Section 147 of the IT Act, notice dated 15.03.2022 under Section 148A was issued calling upon the petitioner-assessee, bearing PAN AAJCA0870E, to furnish response on or before 22.03.2022. Enclosed to said notice was the following material particulars facilitating filing of show-cause by the petitioner:

“As per information gathered, you have inflated your expenses by showing bogus purchase from M/s. Mideast Integrated Steel Pvt. Ltd. and suppressed income amounting to Rs.31,64,58,088/-, which needed to be added back to your income during the Financial Year 2017-18.”

- 3.1. There was no response from the assessee nor was any step taken for extension of time on or before 22.03.2022 as stipulated in the aforesaid notice dated 15.03.2022. *Vide* Order dated 26.03.2022 passed under Section 148A(d) of the Income Tax Act a detailed discussion has been made based on available material which is to the following effect:

“The case was flagged for the Assessment Year 2018-19 by DIT (Systems) in Insight Portal in accordance with the risk management strategy formulated by the Board with certain underlying information.

‘From the information it is noted that, you have inflated your expenses by showing bogus purchase from M/s. Mideast Integrated Steel Pvt. Ltd. and suppressed income amounting to Rs.31,64,58,088/- during the Financial Year 2017-18, which needed to be added back to your total income for the Assessment Year 2018-19.’

Accordingly, a show cause notice was sent to the assessee under clause (b) of Section 148A of the Income-tax Act, 1961 for assessee’s response with supporting documents (if any) on the above mentioned issues electronically in ‘e-proceeding’ facility through his account in e-filing portal on or before 22.03.2022. Prior approval of the PCIT-1, Bhubaneswar was obtained before issuance of show cause notice on date 12.03.2022.

The assessee has not complied with the show cause notice on or before due date which means assessee has nothing to say in this regard.

In view of the above, I have reasons to believe that income chargeable to tax has escaped assessment to the extent of Rs.31,64,58,088/- within the meaning of Section 147 of the Income-tax Act, 1961 and this is a fit case to issue a notice under Section 148 of the Income-tax Act, 1961.”

- 3.2. The Assessing Officer-Deputy Commissioner of Income-tax, Circle-1(1), Bhubaneswar, after passing such an Order on 26.03.2022, initiated proceeding under Section 148 of the IT Act by issue of notice dated 26.03.2022 (Annexure-4) specifying the reason therefor, which is impugned in the writ petition.
- 3.3. Annexure-5 enclosed to the writ petition by the petitioner would go to show that Original Return in Form ITR-6 filed [by: Self] on 26.09.2018 under Section 139(1) was processed and intimation of refund was issued on 14.04.2019. However, in response to the

notice dated 26.03.2022, the petitioner-assessee has filed its revised return in Form ITR-6 [filed by: Representative] for the Assessment Year 2018-19 on 23.04.2022 under Section 148 which was successfully e-verified on 25.04.2022.

- 3.4. After having participated in the proceeding, the petitioner-company has filed an application/reply on 18.05.2022 pursuant to notice dated 15.03.2022 issued under Section 148A(b) of IT Act requesting the Deputy Commissioner of Income-tax to refrain from proceeding with reassessment.
- 3.5. Mr. Jagamohan Pattanaik, learned Advocate for the petitioner-company submitted that the assessee could not furnish its reply to notice dated 15.03.2022 issued under Section 148A as inadequate time of seven days only was given. Furthermore, there was absence of reason with material particulars for proposed reassessment under Section 148 of the IT Act.
4. Mr. Tushar Kanti Satapathy, learned Senior Standing Counsel for Income-tax Department submitted that had the petitioner being sanguine about its rights and prejudice, it could have sought for further time on or before 22.03.2022 in response to notice dated 15.03.2022 under Section 148A enclosed as Annexure-2 to the writ petition. It is too late in the day to raise contention that the time granted to furnish response to notice dated 15.03.2022 under Section 148A was inadequate, more so when Order dated 26.03.2022 had already been passed under Section 148A(d) based on material available on record and in absence of any step being taken by the assessee on or before 22.03.2022. Still there is scope for the petitioner-assessee to place its own material to rebut the

evidence collected by the Assessing Officer during the course of assessment under Section 148.

- 4.1. If the grounds are relevant and have a nexus with the formation of opinion regarding escaped assessment, the Assessing Authority would be clothed with jurisdiction to take action under Section 148 of the IT Act. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court, for the sufficiency of the grounds which induced the Assessing Authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency or reasons for the belief. It is submitted that non-response of the assessee to the notice dated 15.03.2022 under Section 148A speaks volumes about the conduct of the petitioner-company. Amplifying such submission, it is said that the details of material based on which the action under Section 148 has been initiated was made known to the petitioner, which it itself has enclosed to the writ petition at Annexure-4. Said Annexure contains “Case Related Information Detail” which *inter alia* shows as follows:

S. No.	Source PAN	Source PAN Name	Information FY	Information Type	Information Value	Information Date	Remarks
1	AAACM0846	M/s. Mideast Integrated Steels Limited	2017-18	Others	316458088		ITC (Input Tax Credit) fraud above 50 crores

- 4.2. The petitioner, thus, being well within its knowledge the content and context of assessment under Section 148, no prejudice would ensue if it participates in the assessment proceeding. During the course of assessment there shall be ample opportunity to contest the matter and the petitioner would have sufficient time to produce

its books of account as also adduce evidence. Therefore, interference at this juncture by this Court is not warranted.

5. This Court finds force in the submission of Mr. Tushar Kanti Satapathy, Senior Standing Counsel for Income-tax Department inasmuch as the record reveals there has been laches on the part of the petitioner-assessee in responding to the notice dated 15.03.2022. It is unwholesome for the petitioner to urge that there was inadequate time allowed by the Assessing Officer to respond to notice dated 15.03.2022 under Section 148A.

- 5.1. Section 148A which deals with conducting inquiry, providing opportunity before issue of notice under Section 148 reads thus:

“The Assessing Officer shall, before issuing any notice under Section 148,—

- (a) *conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*
- (b) *provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being **not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf**, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*
- (c) *consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*

- (d) ***decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:***

Provided that the provisions of this section shall not apply in a case where,—

- (a) *a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or*
- (b) *the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*
- (c) *the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.*

Explanation.—

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

[Emphasis supplied]

- 5.2. Bare reading of aforesaid provisions suggests that the Assessing Officer has to provide an opportunity to the assessee with the prior approval of specified authority; and such opportunity is required

to be for a period not less than 7 days, but not exceeding 30 days from the date on which such notice was issued. Opportunity is afforded to the petitioner by serving notice requiring it to explain as to why a notice under Section 148 should not be issued on the basis of information, which suggest that income chargeable to tax has escaped assessment in the case for the relevant assessment year and as a result of inquiry conducted, if any, as per clause (a) of Section 148A.

- 5.3. The connotation of “information” in the context of reopening of assessment has succinctly been laid down in the case of *Larsen & Toubro Limited Vrs. State of Jharkhand*, (2017) 103 VST 1 (SC) (Paragraphs 21, 22 & 27) = (2017) 13 SCC 780 which is as follows:

“21. It is also pertinent to understand the meaning of the word ‘information’ in its true sense. According to the Oxford Dictionary, ‘information’ means facts told, heard or discovered about somebody/something. The Law Lexicon describes the term ‘information’ as the act or process of informing, communication or reception of knowledge. The expression ‘information’ means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment. We agree that a mere change of opinion or having second thought about it by the competent authority on the same set of facts and materials on the record does not constitute ‘information’ for the purposes of the State Act. But the word “information” used in the aforesaid Section is of the widest amplitude and should not be construed narrowly. It comprehends not only variety of factors including information from external sources of any kind but also the discovery of new facts or information available in the record of assessment not previously noticed or investigated. Suppose a mistake in the original order of assessment is not discovered by the Assessing Officer, on further scrutiny, if it came to the notice of another assessor

or even by a subordinate or a superior officer, it would be considered as information disclosed to the incumbent officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the Officer in such circumstances is in one sense extraneous to the record. It will be information in his possession within the meaning of Section 19 of the State Act. In such cases of obvious mistakes apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment or wrong assessment.

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

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

- 5.4. In the present case, it is admitted fact that the petitioner never approached the Assessing Officer for extension of time by way of application as required to do so under clause (b) of Section 148A.

Therefore, this Court finds justification in passing order under clause (d) *ibid.* by the Assessing Officer on 26.03.2022. The Assessing Authority having waited for the response proceeded on 26.03.2022 by recording reason to initiate proceeding under Section 148 of the IT Act. Therefore, once *quasi* judicial function is commenced by issue of notice under Section 148, the same is subject to limitation contained in Section 149 of the IT Act and there is no scope for set the clock ante-clock-wise.

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

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

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

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

5.7. The term "proceeding" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed

mode in which judicial business is conducted. Refer: *Babu Lal Vrs. Hazari Lal Kishori Lal*, AIR 1982 SC 818 = (1982) 1 SCC 525.

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

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

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

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

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

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

The term “Legal Proceedings” is explained as :

‘Legal Proceedings’ mean *prima facie* that which the words would naturally import— *i.e.*, legal process taken to enforce the rights of the *Shipowner, Runchiman & Co. v. Smyth & Co., 1994 (20) T.L.R. 625, per Lord Alverstone, C.J., at P.626.*”

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

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

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

- 5.9. The dictionary meaning of the word “proceeding” is “the institution of a legal action, any step taken in a legal action”. In a general sense, the form and manner of conducting juridical business before a Court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus or the like. See: *Most Rev. P.M.A. Metropolitan & Others*

Vrs. Moran Mar Marthoma & Another, 1995 Supp (4) SCC 286 = AIR 1995 SC 2001.

5.10. In *P.L. Kantha Rao Vrs. State of AP, AIR 1995 SC 807 = (1995) 2 SCC 471*, it is stated that the word ‘proceeding’ would depend upon the scope of the enactment wherein the expression is used with reference to a particular context where it occurs. It may mean a course of action for enforcing legal right. In the journey of litigation, there are several stages, one of which is the realisation of the judicial adjudication which attained finality.

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

5.12. The term ‘proceeding’ is a very comprehensive term and generally speaking, means a prescribed course of action for enforcing a legal right. It is a term giving the widest freedom to a Court of law so that it may do justice to the parties in the case. See: *Kantaru Rajeevaru Vrs. Indian Young Lawyers Association, Review Petition (Civil) No. 3358 of 2018 in Writ Petition (Civil) No. 373*

of 2006 vide Judgment dated 10.02.2020 of the Supreme Court of India, reported at (2020) 9 SCC 121 [9-Judge Bench].

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

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

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

5.15. The word ‘initiate’ has been employed in Section 20 of the Contempt of Courts Act, 1971, which provides that no Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In the *Pallav Sheth Vrs. Custodian*, (2001) 107 Comp Cas 76 (SC) =

(2001) 7 SCC 549 it has been held that in the case of suo motu proceedings contempt proceeding must be initiated by the Court by issuing a notice and in other cases initiation can only be by a party filing an application. Under Section 20 of the Contempt of Courts Act, 1971 action can be initiated, either by filing an application or by the Court issuing notice *suo motu*, within a period of one year from the date on which the contempt is alleged to have been committed.

5.16. In *Kishan Lal & Co. Vrs. Additional Commissioner of Commercial Tax*, (2017) 102 VST 343 (Chhatisgarh) = 2017 SCC OnLine Chh 584 the initiation of proceeding has been described. The word 'initiate' or 'initiation' has not been defined in the Act. Since it has not been defined in the Act, it would be appropriate to refer to the dictionary meaning of the word 'initiate'. In *Webster's Third New International Dictionary*, the word 'initiate' has been defined as to begin or set going; make a beginning of; perform or facilitate the first actions, steps or stages of. Likewise, in *Shorter Oxford English Dictionary*, the word 'initiate' has been defined as to begin, commence, enter upon; to introduce, set going, originate. *Black's Law Dictionary, 6th Edition*, defines the words 'initiate' and 'initiative' as: "Initiate: commence; start; originate; introduce; inchoate. Thus, the word 'initiation' of *suo motu* revision as stated in proviso (a) to Section 9(3) of the Chhatisgarh Value Added Tax Act, 2005, has a definite connotation. Initiation of revisional proceeding is the time when the revisional authority applies its mind to the facts / materials on record and decides to direct issuance of notice in accordance with Rule 61 of the Rules proposing the proposed order and intimating the assessee his

intention to take the proceeding in *suo motu* proceeding. Proviso (a) to Section 49(3) of the Act is the condition precedent to exercise the power of revisional authority under that procedure. It merely contemplates initiation of proceeding by the revisional authority on its own or otherwise. The proceeding can be said to be initiated only when the revisional authority on its own motion or on the motion made otherwise decides to issue notice to the other side. Therefore, what is required and condition precedent for initiation of proceeding by invoking Section 9(3) of the Chhatisgarh Value Added Tax Act, 2005, would be initiation of proceeding under Section 9(3) of the Act and initiation can be done only when the revisional authority applies its mind to the facts of the case on his own motion or on the information received. Once there is application of mind by the revisional authority for *suo motu* proceeding or on the basis of the information received and he decides to issue notice as contemplated under Rule 61 of the Chhatisgarh Value Added Tax Rules, then the exercise of initiation is complete and initiation cannot be said to be made only when the notice is received under Rule 61 by the assessee.

- 5.17. Having filed revised returns for the Assessment Year 2018-19 after receiving the notice dated 26.03.2022 under Section 148 issued consequent upon Order dated 26.03.2022 passed under Section 148A, the petitioner is said to have participated in the proceeding and surrendered to the jurisdiction of the Assessing Authority who was competent to initiate proceeding under Section 148. Therefore, it is unbecoming on the part of the petitioner to turn around to contend to the contrary. Acceding to the contention

of the petitioner would be rendering violence to provisions of Section 148 and will provide a handle to persons trying to avoid proceedings initiated with justification. It can be said to be taking advantage of one's own wrong inasmuch as there is no explanation whatsoever to explain the circumstance which prevented the petitioner from filing reply or making application for extension of time as required under Section 148A at the relevant point of time.

5.18. Looking the present case in the above perspective, it can be candidly said that in absence of rebuttal to the contents and material particulars supplied to the assessee by specifically mentioning that expenses have been inflated by making bogus purchases from M/s. Mideast Integrated Steel Pvt. Ltd., thereby suppressing income to the tune of Rs.31,64,58,088/- pertaining to Financial Year 2017-18 in the notice dated 15.03.2022, neither the Order dated 26th March, 2022 passed under clause (d) of Section 148A can be faulted with nor does the issue of notice under Section 148 suffer from any infirmity in law. The fact that the petitioner after receipt of the Order dated 26.03.2022 passed under Section 148A and the notice dated 26.03.2022 issued by initiating proceeding for assessment under Section 148, furnished revised return for the Assessment Year 2018-19 on 23.04.2022 in response thereto, leads to construe that the petitioner was conscious about material based on which the reassessment proceeding is stated to have been initiated under Section 148. Therefore, the contention of the petitioner that it was unaware of the evidence based on which the proceeding for assessment under Section 148 is initiated is misconceived and misleading.

5.19. It is pertinent to refer to *Anshul Jain Vrs. Principal Commissioner of Income Tax*, CWP No.10219 of 2022, vide Judgment dated 02.06.2022 delivered by the High Court of Punjab and Haryana at Chandigarh. In the said case by way of writ petition the petitioner had challenged the order dated 31.03.2022 issued under Section 148A(d) of the IT Act and notice dated 31.03.2022 under Section 148 whereby the objections raised by the petitioner to the notice issued under Section 148A(b) were rejected.

The said Court framed the following issue:

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

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

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

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

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

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

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

No interference of this Court is called for.

The present Special Leave Petition stands dismissed.

Pending applications stand disposed of.”

- 5.21. It is seen that in the case of *Anshul (supra)* the grievance of the petitioner was that his objection raised against notice under Section 148A was not taken care of. Yet, the Hon'ble Supreme Court did not interfere with the order of dismissal of writ petition by the High Court of Punjab & Haryana. Nonetheless, in the instant case, the petitioner has not furnished objection to the notice dated 15.03.2022 issued under Section 148A of the IT Act. Therefore, this Court finds that no case is made out by the petitioner for interfering with the issue of notice under Section 148 by the Adjudicating Authority after taking decision to initiate proceeding on passing order under Section 148A(d) of said Act.

6. Further argument is advanced by Mr. Jagamohan Pattanaik, Advocate for the petitioner on the basis of pleading that “in the

event it is found not sufficient to drop the proceedings, then he may be provided the documents/materials based on which the learned Assessing Officer reached the conclusion 'reason to believe' and approval was accorded by the learned Principal Commissioner of Income-tax for reopening of assessment thereby giving the assessee an opportunity to rebut and meet the points that the documents/materials based on which such a conclusion is reached is not in fact correct".

- 6.1. In this respect it would be apt to say that the petitioner is required to participate in the assessment proceeding and produce materials and documents like books of account, vouchers, invoices, *etc.* maintained in terms of statutory requirement before the Assessing Authority so as to rule out manipulation.
- 6.2. In this regard the principle propounded by this Court in the case of *Lakhiram Jain Vrs. Sales Tax Officer*, (2009) 21 VST 280 (Ori) = 2008 SCC OnLine Ori 63 = 107 (2009) CLT 107 is relevant. It has been stated in the said case as follows:

“6. So far as the first question is concerned, Law is well-settled that if any person is likely to be affected by the use of any material against him those are to be brought to his notice for rebuttal. This is the requirement of the natural justice. The principles of natural justice are based on two basic pillars, i.e., (i) nobody shall be condemned unheard (*audi alteram partem*), and (ii) nobody shall be judge of his own cause (*nemo debet esse judex in propria sua causa*).

14. This Court in *Mitra Trading Company (supra)* [*Mitra Trading Company Vrs. Commissioner of Sales Tax, Orissa*, OJC No. 252 of 1968 dated 9th November, 1971] held as follows:—

“4. The main question for consideration is whether the Petitioner should be given opportunity to take copy of the seized account book. The answer to such a question would depend upon whether principle of natural justice would be violated unless such opportunity is given. It is well settled that principles of natural justice cannot be confined within close jackets. What would be the principle in a particular case would depend on the facts and circumstances of that case. One thing, however, is certain that in an assessment proceeding if any particular material is used against an assessee then the assessee must be given full opportunity to rebut any adverse inference that could be drawn from use of that particular material. This was fully discussed by us in 26 (1970) S.T.C. 22 (Muralimohan Prabhudaval v. State of Orissa) wherein a question arose as to whether the assessee could be given opportunity for cross-examination with reference to account books of third parties used against the assessee. In paragraph 5 of our Judgment we referred to the fourth proposition as follows:

‘In case he proposes to use against the assessee the result of any private enquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilized to such extent as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it, if possible.’

15. Needless to say that an assessing authority is entitled to collect the materials behind the back of the assessee. It is not necessary that all the materials so collected by the assessing authority need be confronted to the assessee. Only those materials which the assessing authority wants to utilize against assessee in assessment he is bound to disclose the same to the assessee. In appropriate cases, the assessee can also demand for cross-examination of any person who stated something adverse to him which the Assessing authority wants to utilize against the assessee.

16. *Therefore, we are of the considered opinion that a dealer is entitled to be supplied with the materials intended to be used against him in assessment proceeding for rebuttal and the dealer's explanation with regard to those materials is bound to be considered by the assessing officer in the assessment order either accepting or rejecting the same.*
17. *The second question relates to the stage at which the copy of the seized documents should be supplied to the Petitioner-dealer. Whether it should be supplied before or after production of books of account for verification by the assessing officer? We should keep in mind that in order to plug the leakage of the Revenue the fiscal statutes provide various measures to be taken by the departmental officers including surprise visit to the place of business, audit visit, establishment of check post, inspection of goods in transit etc. Pursuant to such provisions, very often departmental officers use to pay surprise visit to the business premises of the dealer to find out whether all the transactions effected by a dealer in his day today business are recorded in his regular books of account maintained for the purpose of paying tax. It is not uncommon that unscrupulous businessmen who effect purchase and sale outside the regular books of account keep note of the same in some slips/chits or secret account for the purpose of their own reference. The inspecting officers while conducting inspection at the place of business of the dealer, invariably try to trace out such duplicate accounts. If any such account comes to their possession, they cross-verify the same with regular books of account maintained by the dealer and submit their verification report to the assessing officer alleging suppression of purchase and/or sale, if any, found on such verification. In such event, the assessing officer is not bound to accept the view of the inspecting officer in respect of the allegations raised against the dealer in the report in entirety. He may not accept the report at all. He may accept the report in part. Therefore, the part of the report containing allegation against the dealer and the materials on the basis of which such allegation has been made must have to be disclosed to the dealer for his rebuttal, if the assessing officer wants to utilize the same against the dealer.*

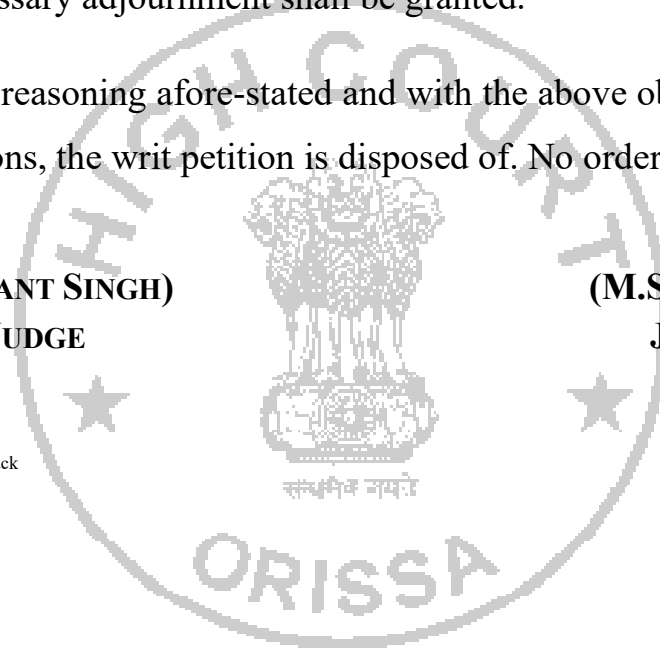
21. *The Hon'ble Apex Court in GKN Driveshafts (India) Ltd. Vrs. Income-tax Officer, (2003) 259 ITR 19 held that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the notice is to file a return and, if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish the reasons within a reasonable time.*
 22. *Therefore, it cannot be said that the assessing officer has committed any error in insisting upon production of books of account before issuing the certified copy of the seized materials. Production of books of account prior to issuance of certified copy of the seized materials is necessary to rule out the possibility of preparation of accounts in line with the seized documents. This has become further necessary in this case as at no stage books of account were produced earlier at the time of inspection or before the assessing officer. However, we make it clear that where in course of inspection the inspecting officer seizes incriminating materials as well as regular books of account from the business premises of a dealer, the assessing officer or the inspecting officer shall supply copies of the seized regular books of account and incriminating material(s) to the dealer if he asks for the same before asking the dealer for furnishing his explanation in connection with any proceeding under the OVAT Act."*
- 6.3. Therefore, since the petitioner has already filed revised return for the Assessment Year 2018-19 in compliance of the terms of notice under Section 148, the Assessing Officer is required to verify the books of account of the relevant year and examine any other evidence adduced by the petitioner with reference to the materials available in record. While doing so, he will confront the adverse material, if any, he wishes to utilize against the assessee-petitioner and record a preliminary statement with regard to such verification. He may also record statement whether the alleged transactions are incorporated in the regular books of

account/statements on the basis of which returns have already been filed. After such verification, if he comes to the conclusion that the petitioner is liable to be levied with tax, he shall allow the petitioner to take copy of such materials which he wants to utilize against the petitioner. Needless to say that the petitioner shall be allowed reasonable opportunity for stating its case, which shall be considered by the Assessing Officer in the order of assessment. The petitioner for the purpose of assessment may participate in the proceeding initiated under Section 148 of the IT Act and no unnecessary adjournment shall be granted.

7. On the reasoning afore-stated and with the above observations and directions, the writ petition is disposed of. No order as to costs.

(JASWANT SINGH)
JUDGE

(M.S. RAMAN)
JUDGE



Laxmikant

High Court of Orissa, Cuttack
September 6, 2022