

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8343 of 2022

Alkem Laboratories Limited a Limited Company incorporated under the Companies Act, 1956, having its office at Exhibition Road, Patna G.P.O., P.S. Gandhi Maidan, in the town and District of Patna through its Regional Director, Ashok Kumar, son of Lalan Kumar Singh aged about 55, resident of F-145, P.C. Colony, Kankarbagh, Patna-800020, P.O. and P.S.-Kankarbagh, District-Patna. Petitioner/s

Versus

1. Principal Commissioner of Income Tax-1, Patna, 2nd Floor, Central Revenue Building, Beer Chand Patel Path, Patna.
2. The Deputy / Assistant Commissioner of Income Tax, Circle-1, 3rd Floor, Lok Nayak Jai Prakash Bhawan, Dak Bungalow Chowk, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Sr. Adv Ms. Smriti Singh, Adv
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Sr. Standing Counsel, Income Tax

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 28-03-2023

Heard learned counsel for the parties.

Section-147 of the Income Tax Act as amended by Act 13 of 2021 (Act in short) permits an Assessing Officer, to assess or re-assess/recompute the loss, or determination of allowances or any other allowance or any income chargeable to tax in case of an assessee, if it has escaped the assessment, for any assessment year. The said jurisdiction under section 147 of the Act is apparently subject to the requirements under Section 148 to 153 of the Act. Section 148 of the Act mandates that before making the assessment or re-assessment or re-computation under Section 147 of the Act, the Assessing Officer is under an



obligation to serve upon the assessee a notice along with a copy of the order passed, if required, under Clause (d) of Section 148A of the Act, subject to the provisions of Section 148A of the Act, requiring him to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

The proviso to Section 148 ordains that no notice under Section 148 can be issued unless there is an 'information' with the Assessing Officer which suggests that an income chargeable to tax has escaped assessment in the case of assessee for the relevant assessment year and the Assessing Officer had obtained prior approval of the specific Authority to issue such notice.

Explanation: For the purposes of Section 148 of the Act and Section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means—(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;(ii) any final objection raised by the Comptroller and



Auditor General of India to the effect that the assessment in the case of an assessee for the relevant assessment year had not been made in accordance with the provisions of the Act.(See explanation to Section 148 of the Act.

On close reading of Section 148 of the Act, it can be easily culled out that the requirement of fulfilling the conditions under Section 148A of the Act is an essential pre-requisite for issuance of notice under Section 148 of the Act. Section 148A of the Act read as under:-

“148A. 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, 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; or

(d) the Assessing Officer has received any information under the scheme notified under Section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]

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

In a recent decision of the Supreme Court in **Union of India & Ors Vs. Ashish Agarwal** reported in **(2023) 1 SCC 617**, while considering Section 148A of the Act has observed that procedure has been laid down to streamline and simplify the process of re-assessment under Section 147 of the Act before issuance of notice under Section 148 of the Act and has held in paragraph no. 19 as under:-



"19. However, by way of Section 148-A, 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 response 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 specific order within the time stipulated."

(underscored for emphasis)

The Supreme Court has reiterated in the said decision that if the Assessing Officer is of the opinion that any inquiry is required, the Assessing Officer can do so, however, with prior approval of the specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment.

The petitioner is a company and an income tax assessee, being assessed to tax by the Assistant Commissioner of Income Tax Circle-1, Patna. It is carrying on business in manufacture and marketing of pharmaceuticals formulations. It is its case that for the Assessment Year-2018-19, the petitioner had filed return of income on 25.09.2019 declaring total income of Rs. 676,45,52,460/- and had paid tax of Rs. 213,53,81,156/-.



In addition to it, it has earned capital gain of Rs. 2,67,21,631/- on which security transaction tax was paid and therefore, the same was claimed as exemption of income under Section 10(38) of the Act. The exempted income of Rs. 2,67,21,631/- was totally reflected in Schedule-EI, details of exempt (income not to be included in total income) RoI. The company has filed the present writ application under Article 226 of the Constitution of India seeking quashing of the show-cause notice issued under Section 148A(b) of the Act by the Assessing Authority of Income Tax (Assessing Officer in short) for the Assessment Year-2018-19. The petitioner has also put to challenge the order passed under Section 148A(d) of the Act, holding it to be a case for issuance of notice under Section 148 of the Act. Notice under Section 148 of the Act came to be issued on 31.03.2022 by the Assessing Officer calling upon the petitioner to furnish a return of income within 30 days of service of notice. The said notice issued under Section 148 of the Act is also under challenge in the present writ application.

We have heard Mr. Ajay Kumar Rastogi, learned Senior counsel appearing on behalf of the petitioner assisted by Ms. Smriti Singh learned Advocate and Mrs. Archana Sinha, learned Senior Standing Counsel for the Income Tax



Department.

The main thrust of the submission advanced on behalf of the petitioner is that providing an opportunity under Section 148A(b) of the Act for the purpose of issuance of notice under Section 148 of the Act must be based on an information(which must be tangible information) capable of suggesting that the income chargeable to tax had escaped attention for the relevant financial year.

Per contra, it has been argued on behalf of the Income Tax Department that not only the petitioner was given information as contemplated under Section 148A(b) of the Act, the petitioner had also responded to the same and therefore the challenge set up by the petitioner is untenable. We will elaborate their submissions later.

In the background of rival submissions made on behalf of the parties, we have considered it desirable to reproduce the three orders/notices which have been put to challenge in the present writ application. Relevant portion of which reads thus:-

A. Notice under clause(b) of section 148A of the Income-tax Act, 1961

Sir/Madam/M/s

Whereas I have 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 Income-tax Act, 1961. The details of the information and enquiry, if conducted, are enclosed with this notice in Annexure A.



2. You are required to show-cause as to why, in view of the details contained in Annexure A, a notice section 148 of the Income tax Act, 1961 should not be issued.

3. You may, to the extent technologically feasible, submit your response with supporting documents (if any) on the above mentioned issues electronically in 'e-proceeding' facility through your account in e- filing portal at your convenience on or before 22/03/2022.

4. This notice is being issued after obtaining the prior approval of the PCIT, Patna-1 accorded on date 13/03/2022 vide Reference No. 100000028923508.

DARP NARAYAN
MISHRA DC/AC
CIRCLE 1, PATNA.

ANNEXURE

As per information received from another Income tax authority that the assessee has capital gain of Rs. 2,67,95,850/- during the previous year relevant to A/y 2018-19 which is not properly shown in the ITR.

I have information which suggests that income of Rs. 2,67,95,850/- chargeable to tax for A/y 2018-19 has escaped assessment within the meaning of section 147 of the Income tax Act 1961.

DARP NARAYAN
MISHRA DC/AC,
CIRCLE 1, PATNA:
(emphasis added)

B. [Order under clause (d) of section 148A of the Income-tax Act, 1961

The assessee is a company. The return of income for the year under consideration has been filed by the assessee on. Assessment in this case was completed by the NFAC determining total income at Rs.685.61 crores.

In this case information was received from the INSIGHT portal/which suggested that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. The information received by the AO was within the Explanation I(i) of proviso to section 148 and the information in the instant case is categorized under head 'any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time'

2. The information available with the AO was analyzed and duly verified as per xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx



7. Therefore, based on the above observations which originate from the material/information available on record with the AO, it is found that Rs. 2,67,21,631/- was not allowable as exempt income and should have been included in income of the assessee. The income to the tune of Rs. 2,67,21,631/- has escaped assessment for the year under consideration.

8. The requirements to initiate proceedings u/s.147 of Income Tax Act, 1961 as provided by sections 148A r.w.s. 148 of the Act have been duly followed and the prior approval of specified authority as provided u/s 151 of the Act have been taken during the different steps of the procedure entailed by section 148A of the Act.

In view of the above, provisions of section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a fit case where income chargeable to tax has escaped assessment."

It is manifest from the notice under Section 148A(b) of the Act, as has been quoted hereinabove that the following was the only statement in the form of information supplied to the petitioner in purported compliance of Section 148A(b) of the Act.

"ANNEXURE

As per information received from another Income tax authority that the assessee has capital gain of Rs. 2,67,95,850/- during the previous year relevant to A/y 2018-19 which is not properly shown in the ITR.

I have information which suggests that income of Rs. 2,67,95,850/- chargeable to tax for A/y 2018-19 has escaped assessment within the meaning of section 147 of the Income tax Act 1961.

DARP NARAYAN MISHRA
DC/AC, CIRCLE 1,PATNA:"

Mr. Rastogi has contended that the information furnished to the aforesaid effect cannot be said to be due



compliance of furnishing information as stipulated under Section 148A(b) of the Act. He has argued that it is statutory requirement that a definite, and not vague and uncertain, information must be there suggesting that income chargeable to tax had escaped attention in case of the petitioner for the relevant Assessment Year i.e. 2018-19. It is his submission with reference to the Supreme Court's decision in the case of Ashish Agarwal (supra) that in the absence of any tangible/relatable information in possession of the Assessing Officer leading to the formation of belief that the income had escaped assessment, the impugned notice under Section 148 of the Act is without jurisdiction being violative of the mandatory requirement under Section 148A(b) of the Act.

Mrs. Archana Sinha, learned counsel appearing on behalf of Income Tax Department on the other hand has placed heavy reliance on the Supreme Court's decision in the case of **Commissioner Of Income Tax & Ors vs Chhabil Dass Agarwal** reported in **(2014) 1 SCC 603**, with special reference to para 15 to 17 to contend that the present writ application is premature, which has been filed against the notice under Section 148 of the Act.

Paragraphs no. 15 to 17 of the decision in the case of



Chhabil Dass Agarwal (supra) read as under:-

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

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana* [(1985) 3 SCC 267] this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.



17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-eficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon."

She has further submitted that petitioner has remedy of raising all such issues as are being raised in the present writ application by contending that no income chargeable to tax had escaped assessment in the case of petitioner for the Assessment Year-2018-19. She has placed reliance on a decision rendered by a co-ordinate bench of this Court on 02.08.2018 in CWJC No. 10859 of 2018 (Alkem Laboratories Limited vs Principal Commissioner of Income Tax & Ors), which was preferred by the same petitioner. She contends that the co-ordinate bench in the case of Alkem Laboratories (supra) has placed reliance on Supreme Court's decision in the case of **Chhabil Dass Agarwal (supra)**. Reliance has also been placed by Mrs. Sinha on the Supreme Court's decision in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Ors** reported in



(2003) 1 SCC 72 and has argued that the petitioner could raise the objection before the Assessing Officer and therefore, the writ application was premature. She has also drawn our attention to a Division Bench decision of Punjab & Haryana High Court dated 02.06.2022 rendered in CWP No. 9142 of 2022 (**Anshul Jain Vs. Principal Commissioner of Income Tax**) to contend that as the proceedings have not even been completed by the statutory authority, the writ Court should not interfere at such premature stage. She has contended that it is not a case of exercise of jurisdiction which is not vested with the authority for issuance of notice under Section 148 of the Act. She would argue that no reason exists for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, at this stage when the proceedings initiated are yet to be completed with by a statutory authority. She has also drawn our attention to the Supreme Court's decision dated 02.09.2022 in the case of **Anshul Jain Vs. Principal Commissioner of Income Tax (supra)**, relevant portion of which reads as follows:-

"What is challenged before the Hihg court was the re-opening notice under section148a(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."

She has argued that the Supreme Court's decision in the case of Ashish Agrawal (supra) has no application in the present facts and circumstances of the case and the observations made in the said case on which the petitioner's are placing reliance were made in different set of facts and circumstances.

As we have noticed, the Supreme Court's decision in the case of Ashish Agrawal (supra) has unequivocally held in paragraph no. 12 that under the substituted provisions of the Act vide Finance Act, 2021, no notice under Section 148 of the Act could be issued without following the procedure prescribed under Section 148A of the Act. Section 148A of the Act has been held by the Supreme Court in the case of Ashish Agarwal (supra) to be containing the provisions which are in the nature of condition precedent, evidently for issuance of notice under Section 148 of the Act. Section 148A(B) requires disclosure of information by the Assessing Officer before issuance of any notice under Section 148A(b) of the Act, which suggests that income chargeable to tax has escaped assessment.

In our view, conduct of inquiry as contemplated under Section 148A(b) of the Act is apparently in respect of



information/material suggesting that the income chargeable to tax had escaped assessment. The information, as contemplated under Section 148A(a) must contain clear basis cannot be in abstract for the reason that Section 148A(b) of the Act requires notice to be issued under the said section i.e. 148A(b) as to why notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment.

We find in the present case that only information which was supplied to the petitioner while issuing notice under Section 148A(b) of the Act was that as per the information received from 'other Income Tax authority' the petitioner's capital gain of Rs. 2,67,97,850/- during the previous relevant Assessment Year-2018-19, was not shown properly in the Income Tax Return. The said Annexure with the notice under Section 148A(b) of the Act did not at all disclose as to what information was in fact there with Assessing Officer suggesting that the said capital gain during the Assessment Year-2018-19 was not shown in the ITR.

In our view, it was incumbent upon the Assessing Officer to disclose the nature of information received by it for due compliance of the requisite condition prescribed under



Section 148A(b) of the Act. The submission that this writ application is premature having been filed against issuance of notice under Section 148 of the Act is not acceptable to this Court in the admitted facts and circumstances of this case. The power of re-assessment/re-computation vested in the Assessing Officer under Section 148 of the Act, cannot be undertaken lightly or casually as it amounts to reopening of closed transactions. Apparently, with a view to streamline and simplify the procedure of exercise of jurisdiction under Section 147 of the Act; detailed procedure has been laid down under Section 148A of the Act.

We do not find substance in the submission made on behalf of the Income Tax Department that in response to the notice issued under Section 148 of the Act, the petitioner can raise the issue of correctness of the notice itself on the ground of non compliance of Section 148A(b) of the Act. The Assessing Officer's decision to issue a notice for re-assessment under Section 148 of the Act attains finality after passing of the order under Section 148A(d) of the Act, which aspect he cannot revisit while exercising his jurisdiction under Section 147 of the Act.

It has rightly been submitted by Mrs. Archana Sinha



learned counsel appearing for the Income Tax Department relying on the Supreme Court decision in the case of **Chhabil Dass Agarwal (supra)** and **GKN Driveshafts (India) Ltd. (supra)** that the Court exercising writ jurisdiction is not required to interfere with a notice issued under Section 148 of the Act. However, subsequent to the aforesaid decisions relied upon by her, amendments have been made in the Income Tax Act which obligate the Assessing Officer to strictly adhere to the requirements under Section 148A(b) of the Act. The order or notice issued for invoking the provisions of re-assessment/re-computation under Section 147 and 148 of the Act is under statutory obligation to adhere to the requirements as stipulated under Section 148A of the Act. As the illegality in issuance of notice, is manifest, we have considered it just and proper to nip in the bud by giving the revenue authorities an opportunity to correct what was incorrectly done. This we consider to be in the interest of revenue as also in the interest of the assessee.

Considering the nature of information as furnished to the petitioner with notice under Section 148A(b) of the Act, in our view, the challenge to the notice dated 14.03.2022 is sustainable. Situated thus, the petitioner's challenge to the order dated 31.03.2022 passed under Section 148A(b) of the Act is



also sustainable. As a consequence thereof, the notice dated 31.03.2022 issued under Section 148 of the Act cannot be sustained.

In the result the notice dated 14.03.2022, issued under Section 148A(b) of the Act, the order dated 31.03.2022 passed under Section 148A(d) of the Act and the notice dated 31.03.2022 under Section 148 of the Act are hereby set aside. The matter is remitted back to the Assessing Officer to consider issuance of fresh notice under Section 148A(b) of the Act and proceed, accordingly in accordance with law upon furnishing clear information to the petitioner stipulated under Section 148A(b) of the Act.

The application is allowed with the aforesaid observations and direction.

There would be, however, no order as to cost.

(Chakradhari Sharan Singh, ACJ)

Jitendra Kumar, J;

(Jitendra Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
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