IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14188 of 2022

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Anju Singh, Wife of Nawal Kishore Singh, permanent resident of Main Road, Budha Colony, P.O., GPO, P.S. - Budha Colony, District - Patna - 800001.

... ... Petitioner/s

Versus

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

... ... Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 21-06-2023

The petitioner is an assessee, who has been allotted Permanent Account Number (PAN) AYKPS5218E within the meaning of Section 2(7) of the Income Tax Act, 1961("the Act" for short), has filed the present writ application seeking following reliefs:-

> *"I) quashing the show cause notice dated 05.07.2022 (Annexure-1) issued to the petitioner under section 148A(b) of the Income Tax Act, 1961 (hereinafter "the Act") by the respondent Assistant Commissioner of*

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Income Tax (hereinafter referred to as "the Assessing Officer" for the Assessment Year 2018-19.
II) quashing the order dated 19.08.2022 passed under section 148A(d) of the Act (Annexure-2) holding it to be a fit case for issuance of notice under section 148 of the Act."I) quashing the show cause notice dated 05.07.2022 (Annexure-1) issued to the petitioner under section 148A(b) of the Income Tax Act, 1961 (hereinafter "the Act") by the respondent Assistant Commissioner of Income Tax (hereinafter referred to as "the Assessing Officer" for the Assessment Year 2018-19.
II) quashing the order dated 19.08.2022 passed under section 148A(d) of the Act (Annexure-2) holding it to be a fit case for issuance of
III) quashing the notice dated 22.08.2022 issued under section 148 of the Act (Annexure-3 Series) by the respondent Assessing Officer calling upon the petitioner to furnish a return of income within 30 days of service of the notice"

2. It is the petitioner's case that she had voluntarily filed her return of income for the assessment year 2018-19 in terms of Section 139(1) of the Act declaring a total income of ₹4.12 crores on which income tax of ₹65.64 lakhs was duly paid. In return, the dividend income of ₹4.04 crores received during the year from a mutual fund, namely, JM Equity Hybrid Fund-Regular-Annual IDCW Option, was duly claimed as exempt under Section 10(35) of the Act. The return was duly processed under Section 143(1) of the Act in terms of the intimation dated 02.02.2019 and no further demand by way of tax was ever raised against the petitioner. Further, a show cause notice dated 23.03.2022 was issued under Section 148A(b) of

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the Act by the Assessing Officer on the ground that he had information which suggested that the income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. The information was received from the Investigation Wing to the effect that the petitioner had received dividend of ₹4,04,55,592/- from equity-based mutual fund which was claimed as exempt under Section 10(35) of the Act which was a sham transaction generated using colourable devices, being not on account of appreciation of the investment but a return of a part of capital itself. The dividend being sham and capital loss being artificial, it was not eligible for set off and therefore, the dividend was also required to be reduced from the cost of investment and, accordingly, capital loss was also to be reduced.

3. The petitioner, responding to the said notice had filed a reply on 27.03.2022 demanding copies of all the relied upon documents which had not been enclosed, so as to enable her to file the detailed objection against proposed initiation of reassessment proceeding for the year under consideration. However, an order was passed on 30.03.2022 under Section 148A(d) of the Act, holding that there was information with the Assessing Officer which suggested that the income chargeable to tax had escaped assessment and,

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accordingly, it was a fit case to issue notice under Section 148 of the Act. It is the petitioner's case that her request for supply of documents was though noticed in the order dated 30.03.2022, the same was glossed over with a bald assertion that the present proceeding was based on the information in the form of a report of Investigation Wing (DDIT, Mumbai) in the light of survey conducted in the case of M/s JM Financial Assets Management Ltd. ("JM Financial" for short). Consequently, the Assessing Officer issued a notice dated 31.03.2022 under Section 148 of the Act calling upon the petitioner to furnish a return of income within 30 days of the service of the said notice. The petitioner approached this Court by filing a writ petition giving rise to C.W.J.C. No. 7795 of 2022 which was disposed of by an order dated 21.06.2022 by setting aside the said impugned notice dated 31.03.2022 issued under Section 148A(b) of the Act with liberty to the authorities to issue a fresh notice within 15 days in terms of Section 148 of the Act.

4. In the light of the liberty granted by this Court by the said order dated 21.06.2022, the Assessing Officer issued a fresh notice dated 05.07.2022 under Section 148A(b) of the Act. It is the petitioner's case that the subsequent fresh notice dated 05.07.2022 was virtually a replica of the similar earlier

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notice dated 31.03.2022. By the said notice dated 05.07.2022, the petitioner was again asked to show cause as to why a notice under Section 148 of the Act be not issued. Again, the petitioner responded to the show cause notice by filing a reply on 19.07.2022 reiterating her request for supply of information received from the Investigation Wing together with other material/evidence relied upon in such information. The Assessing Officer, responding to the petitioner's request, supplied copies of the information/report from DDI, Mumbai and the information from Insight Portal, through communication dated 10.08.2022. The petitioner again raised an objection through letter dated 10.08.2022 asserting that the key persons as well as the list of beneficiaries referred to in the report of DDI, Mumbai had not been supplied and, accordingly, she requested for supply of the documents referred to in those statements. The petitioner's request was declined by the Assessing Officer through a communication dated 11.08.2022 on the ground that the complete statement might have had confidential contents having no relation to the petitioner's case and, therefore, the office was not in a position to provide the copies of such statements. The petitioner once again, relying upon relevant judicial pronouncements through her letter dated 16.08.2022,

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demanded supply of those documents. The petitioner also took a plea that it would be imperative on the part of the Department to ascertain whether SEBI had passed any order and/or adverse order for the infraction of its law/SOP by JM Financial before proceeding further in the petitioner's case. The petitioner pointed out that the time limit for issuance of notice under Section 148 for the year under reference was not to expire until March 2029. The Assessing Officer, however, passed the impugned order dated 19.08.2022, refusing to supply further information/documents sought by the petitioner in following terms:-

> *"8. The reply of the assessee is considered and the information and material available on record has been analyzed. All the information available with AO has been provided to the assessee and reasonable time has been allowed to the assessee for submission of reply. The assessee's allegation as mentioned in para 7(0) is nothing but a contention for contention's sake. The information relevant to the case has been provided to the assessee and her reply was desired on the above information only. Also the notice was issued on 05.07.2022 and the compliance was desired by 20.07.2022. On the request of the assessee the whole report of the investigation wing was also provided on 08.08.2022 and the final reply of the assessee was received on 16.08.2022. Thus there is no contradiction of the provision of the section 148A as claimed by the assessee. The present proceedings is based on the information in the form of report of the Investigation wing (DDIT, Mumbai) in the light of survey conducted in the case of M/s JM financial Assets Management limited. In this survey it was found that JM Financial had manipulated accounting*

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methodology so as to artificially inflate the distributable surplus. The company has flouted SEBI guidelines by classifying a portion of capital as distributable surplus and artificial payout to the investor in form of dividend. Here the department is not bound to wait for the SEBI's Order in the case of JM Finance as is clearly evident with the survey findings that the company has manipulated distributable surplus. As per the facts available with the department merely chain of documents was created to show that all guidelines are followed. The company has neither followed prospective dividend distribution guidelines and has been passing hints to the distributors in advance to lure prospective clients.

9. The assesses has claimed an amount of Rs.4,04,55,592/- as exempt u/s 10(35) in his return of A.Y. 2018-2019 on an investment of Rs.10,00,00,000 in the same A.Y. in JM Financial Assets Management Limited. This dividend amount as claimed exempt by the assesse is in question here as the same is just a sham transaction. As explained in the above para the company has inflated distributable surplus to give these dividends. But as stated by the assesse in his reply dated 16.08.2022, that if the company has no distributable surplus he is getting back his own capital and capital receipts cannot be taxed in income tax is irrelevant and unfounded here. The terminology used by the AO in the proposal that the company is having no distributable profits and has been distributing the share capital of the assesse was misused by the assesse to prove that the dividend received by the assesse is his own capital and thus not taxable. If it was a part of the capital introduced by the assessee the same would have reduced the liability of the company as well as the assessee's NAV units thus held. The balance units of the NAV held by the assesse on 21/03/2018 and the day of receipt of dividend on 22/03/2018 is same, i.e. 31,11,968.631, which clearly establishes the fact that the money received is dividend payout and the assesse has claimed it to be exempt u/s 10(35). The receipt amount does not qualify to be treated as dividend to claim exemption u/s 10(35). No company can

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distribute dividend amount equal to 40% of the investment to its shareholders in a single dividend payout, that too the next day of investment when the company is not earning any profit. Thus, it's clearly a camouflage arrangement between the assesse and JM Financial Assets Management Limited for escapement of tax in garb of dividend. So, there is enough evidence to show that income chargeable to tax has escaped assessment, in the case of the assessee for the relevant assessment year."

5. The Assessing Officer concluded that in the petitioner's case, the requirements to initiate proceedings under Section 147 of the Act, as provided under Section 148A read with Section 148 thereof, had been duly followed and the prior approval of the specified authority as provided under Section 151(i) of the Act had been taken during the different steps of the procedure entailed by Section 148A of the Act. The Assessing Officer, accordingly, concluded that there being information which suggested that the income chargeable to tax, had escaped attention and, accordingly, it was a fit case to issue notice under Section 148 of the Act. The consequential show cause notice came to be issued on 22.08.2022. The said order dated 19.08.2022 and the notice dated 22.08.2022 are under challenge in the present writ application.

6. The case of the petitioner to question the legality of the impugned order dated 19.08.2022 is based on the main premise that it is in violation of principles of natural

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justice, inasmuch as, the relevant information said to be available with the Assessing Officer was not made available to the petitioner, despite repeatedly demanded and thus, there has been violation of principles of natural justice since the petitioner did not have the adequate opportunity to object to initiation of a proceeding under Section 148 of the Act. Reliance has been placed on the Supreme Court's decision in the case of **Union of India & Ors. Vs Ashish Agarwal** reported in **(2023) 1 SCC 617**.

7. A counter affidavit has been filed on behalf of the respondents stating, *inter alia,* therein that an information was received from the Insight Portal which suggested that the income chargeable on tax had escaped assessment in the case of the assessee for the relevant assessment year. The information so available with the Assessing Officer was analyzed and found that the assessee had received dividend from J.M. Equity Hybrid Fund amounting to ₹4,04,55,592/-. Dealing with the petitioner's assertion of non-supply of the information relied upon by the Assessing Officer, it has been stated that the earlier notice was set aside by this Court on the ground that mandatory provision of allowing not less than 7 days time to submit reply to the notice under Section 148A(b) was not afforded to her and,

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accordingly, in the light of the Court's order, the assessee was allowed reasonable time of 15 days to submit her reply to the notice under Section 148A(b) dated 05.07.2022. It has further been stated that the information available with Assessing Officer was already provided to the petitioner in the Annexures of notice under Section 148A(b). However, a copy of the report of the Investigation Wing available to Assessing Officer in the form of note on J.M. Balanced Fund-Annual Dividend Option beneficiaries was provided to the assessee on 08.08.2022 with a request to submit her reply as to why a notice under Section 148 of the Act should not be issued in her case. It is accordingly the case of the respondents that the information sought by the petitioner was already supplied to her. In the counter affidavit, the petitioner's demand of the copies of the statements of the key persons in the information/report of the Investigation Wing has been acknowledged. It has however been stated that the said request of the assessee was denied as the relevant portion of statement of key persons which had been incorporated in the report of the Investigation Wing had been supplied to the assessee on 08.08.2022 and the complete statement might be having confidential contents having no relation with the assessee's case.

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8. It is thus the petitioner's case that the statements of key persons for which heavy reliance was being placed in the information/report of the Investigation Wing, Mumbai was required to be supplied to the petitioner so as to enable her to submit her effective reply. It is the case of the revenue, *per contra*, that the said statements might have had confidential contents having no relation with the assessee's case. It is the case of the Department that upon due consideration of the petitioner's reply and the materials on record, speaking order under Section 148A(d) was passed on 19.08.2022 with the prior approval of the specified authority.

9. A rejoinder has been filed on behalf of the petitioner to the counter affidavit filed on behalf of the Department. It is the petitioner's case in the rejoinder to the counter affidavit that the dividend was earned by the petitioner on the units of mutual fund purchased at prevailing Net Asset Value (NAV) in the ordinary course in a fully verifiable manner and there is not even a whisper or allegation of nexus between the said mutual fund and the petitioner. Further, the units of mutual fund had not been redeemed during the assessment year 2018-19 and hence, no capital loss had been incurred, rather these were redeemed only during the following assessment year

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2019-20. It is accordingly the petitioner's case that demonstrably the capital loss had not been set off even during following assessment year 2020-21 and thus, the transaction of ₹4,04,55,592/- cannot be termed as a sham transaction.

10. Mr. Ajay Kumar Rastogi, learned senior counsel appearing on behalf of the petitioner has placed heavy reliance on the Supreme Court's decision in the case of **Ashish Agarwal** (supra) and has submitted that it was incumbent upon the Assessing Officer to have given the petitioner a due opportunity of hearing before issuance of a notice under Section 148A(b) of the Act. He has submitted that it is the evident from the counter affidavit itself that the assessing officer was not knowing the complete statements of key persons named in the information/report of the Investigation Wing, Mumbai and he was not sure whether the same were having confidential contents or not. He has submitted that in any event, the decision of the assessing authority while passing the impugned order dated 19.08.2022 without supplying to the petitioner information relevant to the petitioner's income escaping assessment is in violation of principles of natural justice and binding directions issued by the Central Board of Direct Taxes (CBDT) in its notification dated 01.08.2022. He has also

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submitted, with reference to the averment made in paragraph 15 of the counter affidavit regarding prior approval of the specified authority, which is a statutory condition precedent stipulated under Section 148A(d) of the Act that the petitioner had made a request through letter dated 27.08.2022 for supply of the approval of the specified authority under Section 148A(d) of the Act which was required to be enclosed alongwith the notice under Section 148 in terms of paragraph 2.2 of the CBDT notification dated 01.08.2022, in response thereto, a copy of the approval of the Chief Commissioner of Income Tax (*In Situ*) Patna dated 19.08.2022 has been supplied. He contends that such approval on the face of it was granted for the purpose of issuance of notice under Section 148 of the Act which is required under the first proviso thereto. He has contended that Section 148A(d) stipulates that an order thereunder has also to be preceded by an approval of the specified authority. He has submitted that both these approvals are separate and independent of each other and in the present case, the prior approval under Section 148A(d) has not been obtained by the Assessing Officer which is a pre-requisite for passing an order thereunder.

11. Mrs. Archana Sinha, learned Senior Standing

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Counsel for the Income Tax Department on the other hand, has submitted with reference to various Supreme Court's decisions including the decision in the case of **Commissioner of Income Tax & Ors. Vs. Chhabil Dass Agarwal** reported in **(2014) 1 SCC 603** in support of her contention that the present writ application is premature which has been filed against a notice under Section 148 of the Act. She has placed heavy reliance on the observations made by the Supreme Court in paragraphs 15 and 16 in the case of **Chhabil Dass Agarwal** (supra). She has also placed reliance on the Supreme Court's decision in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors.** reported in **(2003) 1 SCC 72** and a Division Bench decision of Punjab and Haryana High Court dated 02.06.2022 in C.W.P. No. 9142 of 2022 (**Gian Castings Pvt. Ltd. Vs. Central Board of Direct Tax & Ors.**) to argue that as the proceedings have not even been completed by the statutory authority, the writ court should not interfere at such a premature stage. He has drawn our attention to Supreme Court's order dated 17.06.2022, whereby the Supreme Court declined to interfere with the decision of Punjab and Haryana High Court in the case of **Gian Castings Pvt. Ltd.** (supra).

12. From the pleadings on record, it appears that

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non-supply of statements of key persons and the list of beneficiaries referred to in the report of the Investigation Wing, which is apparently the basis for initiation of proceeding under Section 148A of the Act, is one of the primordial issue in the present writ application. Whereas, it is the petitioner's case that because of non-supply of such statement, she could not effectively submit her reply and was thus deprived of the opportunity of being heard as contemplated under Section 148A(b) of the Act; it is the case of the Department that the information which was available with the Assessing Officer was sufficient to form an opinion on the point of issuance of notice under Section 148 of the Act. It is the main contention of the Department that the present writ application under Article 226 of the Constitution of India is premature and the submissions which are being advanced on behalf of the petitioner in the present writ application can be advanced by her in response to the notice issued to her under Section 148 of the Act and other relevant provisions dealing with reassessment of such income in accordance with the provisions under the Act.

13. As has been noticed hereinabove, Mr. Rastogi has submitted that the "prior approval of specified authority" of the stipulated under Section 148A and the same expression used

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in the *proviso* to Section 148 are two different stages. According to him, in the present case, the approval dated 19.08.2022 of the specified authority is only in respect of notice under Section 148 of the Act, though, subject to such approval is incorrectly mentioned as approval under Section 148A(d) of the Act which is evident from concluding portion of the letter which reads "I hereby grant approval to the Assessing Officer to issue notice under Section 148 of the Act, 1961 considering them to be fit for issuing notice under Section 148". He has reiterated that approval to notice under Section 148 would not mean automatic grant of approval to an order under Section 148A(d) of the Act.

14. We are examining the first question as to whether we should entertain this writ petition at this juncture assailing the notice issued under Section 148 of the Act, in the present facts and circumstances of the case on the sole ground that the statement referred to in the report of the Investigation Wing was not supplied to the petitioner, despite repeatedly demanded. To answer the question, it would be pertinent to reproduce the four requirements stipulated under Section 148A of the Act, which read as under:-

> ***"148A. Conducting inquiry providing opportunity before issue of notice under section 148****.-The Assessing Officer shall, before issuing any notice under section 148,-*
>
> *(a) conduct any enquiry, if*

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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:"

x x x x x

15. An assessee does not come in picture at the first stage stipulated in Clause (a) hereinabove which relates to an enquiry to be conducted if required with respect to an information which suggests that the income chargeable to tax has escaped assessment. For an enquiry under Clause (a) of Section 148A, the Assessing Officer must have some

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information, for conducting an enquiry. Conducting an enquiry under Clause (a) of Section 148A is not mandatory and as is clear from the language of the provision, which can be done, 'if required'. The second stage stipulated in Clause (b) of Section 148A requires service of notice on the basis of the information suggesting that income chargeable to tax has escaped assessment for a relevant assessment year, with the result of the enquiry conducted, if any, as per Clause (a). By issuance of notice under Clause (b), an opportunity of hearing is provided to the assessee so as to enable the assessee to object to the proposed issuance of notice under Section 148 of the Act. Clause (c) mandates consideration of reply of the assessee furnished in response to the show cause notice issued under Clause (b) of Section 148A. An assessing authority is ordained to 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. An Assessing Officer, in our opinion, exercising power under Clause (d) of Section 148A does not conclusively hold that any income chargeable to tax has in fact escaped assessment for any assessment year. He simply decides, based on the material available before him, by passing an order as to whether or not

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"it is a fit case to issue a notice under Section 148 of the Act".

16. Here is not a case where the Assessing Officer did not have any information based on which a notice was issued to the petitioner under Clause (b). It is not in dispute that the copy of the report of the Investigation Wing available to the Assessing Officer in the form of "not on J.M. Balanced Fund-Annual Dividend Option beneficiaries" was provided to the petitioner well in advance on 08.08.2022. It is not the petitioner's case that the said information/report was wholly irrelevant for exercise of power under Section 147 of the Act. We reiterate that at the stage of taking decision under Section 148 of the Act, the Assessing Officer is required to form an opinion based on information available before him, other materials on record and reply of an assessee submitted under Clause (b) of Section 148A of the Act, regarding "fitness of a case" for issuance of notice under Section 148A of the Act.

17. It would have been different matter had there been no information at all or information available with the Assessing Officer were though irrelevant, still the Assessing Officer reached a conclusion that it was a fit case for issuance of notice under Section 148 of the Act.

18. We find force in the submissions made on

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behalf of the Income Tax Department that the points which the petitioner is raising can be raised in response to the notice issued under Section 148 of the Act. It is not a case where the impugned order suffers from the vice of total non-application of mind or violation of principles of natural justice. The decisions in the case of **Maharaja Edifice Pvt. Ltd. Vs. Union of India & Ors.** reported in **[(2022) 446 ITR 508 (Cal)]** and that of Delhi High Court in case of **Best Buildwell Pvt. Ltd. Vs. Income-Tax Officer & Anr.** reported in **[(2022) 447 ITR 26 (Del)]** have no application in the facts and circumstances of the present case. In the case of **Maharaja Edifice Pvt. Ltd.** (supra), the documents said to have been appended to the notice were found to have not been supplied to the assessee. Similarly, in the case of **Best Buildwell Pvt. Ltd.** (supra), the information which the assessment was proposed to be reopened was not provided to the assessee. In such circumstance, the Courts had interfered with the respective assessment orders. Similarly, in the case of **Divya Capital One Pvt. Ltd. Vs. Assistant Commissioner of Income-Tax & Anr.** reported in **[(2022) 445 ITR 436 (Del)]**, the Delhi High Court found from the notice that the reassessment in that case was sought to be initiated merely for verification. The Delhi High Court in the said case held that it

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was incumbent upon the Assessing Officer to thoroughly scrutinze the contention and submissions advanced by the assessee while passing an order under Section 148A(d) of the Act. In the present case, we find due application of mind by the assessing authority.

19. We, accordingly, do not find it a fit case for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India. In any event, the petitioner is at liberty to raise all the aspects which are being raised in the present writ application before proceeding, consequent upon issuance of notice under Section 148 of the Act.

20. We now come to the next contention on behalf of the petitioner that there was no prior approval of the specified authority taken under Section 148(d) of the Act and the approval which was taken was under the proviso to Section 148 of the Act and for the said reason also, the impugned order is bad, according to Mr. Rastogi. To answer the said submission, we need to reproduce relevant portion of Section 148 of the Act, which reads as under:-

> *"**148. Issue of notice where income has escaped assessment.-** Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A,*

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requiring him to furnish within such period, as may be specified in such notice, 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; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice."

21. On comparative examination of Sections 148 and 148A of the Act, it can be easily culled out that Section 148A lays down the requisite conditions before issuance of a notice under Section 148 of the Act. The *proviso* to Section 148 restricts the Assessing Officer from issuance of a notice without prior approval of the specified authority. Section 148A lays down a procedure as a condition precedent for issuance of a notice under Section 148. The condition of prior approval of specified authority under Section 148 is satisfied once prior approval of specified authority is granted under Clause (d) of Section 148A of the Act, in our considered opinion.

22. We do not find breach of any mandatory requirement stipulated under Section 148A of the Act which

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would require this Court's interference at the stage of issuance of notice, in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India.

23. We do not find any merit in this application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

I agree.
Jitendra Kumar, J

(Jitendra Kumar, J)

Rajesh/Sachin/-

AFR/NAFR	NA
CAV DATE	22.02.2023
Uploading Date	21.06.2023
Transmission Date	NA

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