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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

47 WRIT PETITION NO. 10075 OF 2023

SATGURU SAI EXTRUSIONS PRIVATE LIMITED THROUGH ITS
AUTHORIZED PERSON MANAGING DIRECTOR

VERSUS

UNION OF INDIA THROUGH MINISTRY OF FINANCE AND OTHERS

WITH

87 WRIT PETITION NO. 10078 OF 2023

SAI BALAJI EXTRACTION AND ALLOYS PVT LTD THROUGH ITS
AUTHORIZED PERSON MANAGING DIRECTOR

VERSUS

UNION OF INDIA AND OTHERS

Mr.Prasanna Namboodiri a/w Mr.D.A.Madake, Advocate for the
Petitioner.

Mr.S.W.Munde, Advocate for Respondent No.1.

Ms.Kalpalata Patil Bharaswadkar, Advocate for Respondent Nos.
3 and 4.

(CORAM : RAVINDRA V. GHUGE AND
Y.G.KHOBRADE, JJ.)

DATE : JANUARY 8, 2024

PER COURT :

1. In both these matters, the Petitioners have raised 2 issues.
Firstly, that Section 148A(b) of the Income Tax Act, r/w the proviso
thereunder, shall be read to mean that, an opportunity of being heard to
the Assessee should necessarily and mandatorily include a personal

hearing in the matter. The **second issue** raised is that, before a notice is issued u/s 148A to the Assessee by the Assessing Officer, the latter shall conduct an enquiry and the words "*if required*", as appearing on internal page No.48 of the 'Memorandum Explaining the Provisions in the Finance Bill 2021', shall be read to mean that an enquiry should be necessarily and mandatorily conducted as a precondition before issuing a notice to the Assessee.

2. In so far as the facts of the case are concerned, they are not in dispute to the extent of the Petitioners having been issued with a notice of hearing u/s 148A(b) and after filing of detailed replies by the Petitioners, orders having been passed u/s 148A(d). It is also not in dispute that a notice u/s 148 of the Income Tax Act, 1961 has now been issued to the Petitioners and the proceedings are underway.

3. For brevity, we are reproducing the chronological dates and events as are tendered by the individual Petitioners in their synopsis (*verbatim*).

4. In WP No.10075/2023, the dates and events read

(verbatim) as under :-

Sr.No.	Date	Particulars	Exhibit	Page No.
1.	31.10.2019	Petitioner filed Income Tax Return for the Assessment Year 2019-20.	A	28 to 108
2.	01.03.2023	Respondent No.4 issued a Notice under clause (b) of Section 148A of the Income Tax Act, 1961.	B	109 to 118
3.	13.03.2023	Petitioner's Director requested Respondent No.4 to allow an additional 8-10 days to file a response to the Notice dated 01.03.2023 vide mail	C	119 to 120
4.	23.03.2023	Petitioner submitted a Written Reply in response to the Notice dated 01.03.2023	D	121 to 127
5.	29.03.2023	Respondent No.3 granted approval under Section 151 of Income Tax Act, 1961	E	128
6.	30.03.2023	Respondent No.4 issued order under clause (d) of Section 148A of the Income Tax Act, 1961	F	129 to 135
7.	30.03.2023	Respondent No.4 issued a Notice under Section 148 of Income Tax Act, 1961	G	136

5. In WP No.10078/2023, the dates and events are reproduced (verbatim) as under :-

Sr.No.	Date	Particulars	Exhibit	Page No.
1.	31.10.2019	Petitioner filed Income Tax	A	30 to

		Return for the Assessment Year 2019-2020		111
2.	01.03.2023	Respondent No.4 issued a notice under clause (b) of Section 148A of the Income Tax Act, 1961.	B	112 to 138
3.	10.03.2023	Respondent No.4 issued letter thereby providing certain additional information.	D	141 to 146
4.	13.03.2023	Petitioner requested Respondent No.4 to allow an additional 8-10 days to file a response to the Notice dated 01.03.2023 vide mail.	C	139 to 140
5.	23.03.2023	Petitioner submitted a Written Reply in response to the notice dated 01.03.2023	E	147 to 153
6.	31.03.2023	Respondent No.3 granted approval under Section 151 of Income Tax Act, 1961	F	154 to 156
7.	31.03.2023	Respondent No.4 issued order under clause (d) of Section 148A of the Income Tax Act, 1961.	G	157 to 163
8.	31.03.2023	Respondent No.4 issued a Notice dated 31.03.2023 under Section 148 of Income Tax Act, 1961.	H	164

FIRST ISSUE - PERSONAL HEARING

6. In both these matters, after notices were issued, the Petitioners approached the Authorities for extension of time, keeping in view that the period of 30 days is available u/s 148A(b). It is also

conceded that extension of time was granted to these Petitioners, who have submitted their detailed written replies within the extended time. It is undisputed that the last sentence in these replies so filed, indicates a request made by these Petitioners to the Authority for a personal hearing.

7. Section 148A reads 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, 70 [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.]

8. It is, thus, obvious from the language used in sub-clause (b), that serving of a show cause notice within such time as is specified, is the mandate. A time line of not less than 7 days and not exceeding 30 days, is to be granted to the Assessee to submit a reply. Beyond 30 days, extended time can be granted if an application is made in this behalf. Un-disputedly, the two words “personal hearing” do not appear in the entire section.

9. The golden rule of interpretation is that one should not read what does not meet the eyes. A meaning as is ordinarily understood on a plain reading, has to be extended to a particular provision. It is now well settled principle of interpretation of statute that plain language engrafted in a Section, must be given its ordinary meaning.

10. The learned Advocate for the Petitioners has relied upon a consenting order passed by this Court at the Principal Seat dated

22.12.2023 in **WP No.15215/2023 (Babitha Bhaskar Prabhu Vs. Union of India and Others)**, wherein the Respondent agreed to grant a personal hearing. On such premises, the order passed u/s 148A(d) was quashed and set aside. It does not call for a debate that a consenting order is not a precedent and normally should not be cited.

11. The learned Advocate for the Petitioners has then relied upon an order passed by the Calcutta High Court dated 13.10.2023 in **Nitin Agarwal Vs. the Income Tax Officer, Ward-46(1), Kolkata and Others (APO/79/2023, IA No.GA/1/2023)**. In the said matter, the ground for challenging the order u/s 148A(d) was that it was passed in violation of the principles of natural justice, in as much as, the appellant was not granted an opportunity of a personal hearing. After considering the facts of the case, the Calcutta High Court recorded that, *“As pointed out earlier, the notice dated 27.03.2023 is not a notice of personal hearing. Therefore, the authority while passing the order impugned in the writ petition has violated the principles of natural justice and inasmuch as the statute also provided that opportunity be granted to the assessee before an assessment is reopened. Therefore, we are satisfied that there has been violation of principles of natural*

justice and, therefore, the assessee has to be provided an opportunity of personal hearing and also be given liberty to furnish additional documents to support their stand.” We say with respect that, we do not find that the issue raised before us, as regards interpretation of Section 148A(b) to mean that a personal hearing is mandatory, was actually raised before the Calcutta High Court. The contention of the Petitioners that the principles of natural justice have been violated by not granting a personal hearing, was accepted by the Court, without going into the issue as to whether the statute mandates such a personal hearing.

12. The learned Advocate for the Petitioners has relied upon an order passed by the Delhi High Court dated 22.11.2023 in the case of **Deepak Modi Vs. Assistant Commissioner of Income Tax Circle 46(1) and another (WP (c) 5737/2023 and CM No.22472/2023**. The Delhi High Court noted that one of the grievances articulated on behalf of the Petitioners was that even though a personal hearing was sought by the Petitioners, the same was not granted. In this backdrop, the admission of the Revenue Department that no personal hearing was granted before passing the order u/s 148A(d), was noted. The Delhi High

Court, therefore, considered it to be appropriate to permit a re-hearing in the matter and granted the opportunity to the Assessee to have a personal hearing. In this case as well, the issue was not raised as to whether a personal hearing is to be mandatorily and necessarily granted.

13. We have perused sub-Section (c) below Section 148A, which requires the Department to consider the reply of the Assessee as may be furnished, if any, in response to the show cause notice referred to in clause (b). The learned Advocate for the Income Tax Department is right in contending that sub-clause (b) cannot be read in isolation by ignoring sub-clause (c). According to her, when sub-clause (b) permits a notice to show cause, without using the actual words “*and a personal hearing*”, the Department is bound only to consider the reply of the Assessee furnished in response to the show cause notice referred to in Clause (b) on a conjoint reading of sub-clause ‘(c)’.

14. The learned Advocate for the Petitioners has placed reliance upon the “MEMORANDUM EXPLAINING THE PROVISIONS IN THE FINANCE BILL, 2021”, more particularly, Clause (vii) appearing on

internal page no.48 of the Memorandum. We deem it appropriate to reproduce clauses (vii) and (viii) appearing on internal page No.48 and the portion there below appearing on page no.49, including clause (ix) and clause (x) on internal page No.50, hereunder :-

“(vii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

(viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

- *in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.*
- *in specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to*

fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;

- *Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.*

- *Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.*

- *It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.*

(ix) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for

issuance of notice under section 148 of the Act are proposed to be --

(a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

(x) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

These amendments will take effect from 1st April, 2021.”

[Emphasis supplied]

15. After perusing the language used in the above reproduced portions of the memorandum, we find that the learned Advocate for the Respondent / Department is fortified in contending that the Legislature has specifically excluded the word “and a personal hearing” in addition to the words appearing in clause (b) as “providing an opportunity of being heard to the Assessee”. Even in clause (c), it has been noted as

“After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee.” As such, with the conjoint reading of Section 148A(b and c) and clauses 7 and 8 of the Memorandum, it is apparent that a ‘personal hearing’ in addition to the show cause notice of hearing, is not mandated.

16. We find assistance in a judgment delivered by the Single Judge Bench of this Court (Coram : Dama Sheshadri Naidu, J.) at Goa in **LD-VC-CW-81-2020 (Sunil Garg Vs. Munnalal Halwai and Others)** with regard to the procedural aspect of the Statute Book. It has been held in paragraph Nos. 3, 4, and 5 as under :-

“Procedure: A Friend or a Foe?”

3. *Indian legal fraternity's love affair with the procedural codes is legendary, it has transcended the temporal bounds and resisted, to a great extent, the temptation for reform. Though we have borrowed the procedural codes from the British, we can teach them a lesson or two on how inviolable the procedure is, even if the substantive law suffers. In our country, a lawyer's forensic finesse gets measured by his command of the procedural codes. And in most cases-though not in this one one or the other party engages a counsel for his skills to drag the*

proceedings. There is a premium in prolonging any judicial proceeding; sometimes the procedural panoply- with all its rigours and rigmaroles gives the litigant what he could not have, under the substantive law, bargained for. A case in point is Bharat Petroleum Corporation Ltd., v. Champalal Vithuram Jajoo'.

4. Who else can I quote than the venerable Vivekananda on how we fall into these endless procedural pits and make a virtue of our failure to climb over? He says, "[b]ut there is yet time to change our ways. Give up all those old discussions, old fights about things which are meaningless, which are nonsensical in their very nature. grown-up men by hundreds have been discussing for years whether we should drink a glass of water with the right hand or the left, whether the hand should be washed three times or four times, whether we should gargle five or six times. What can you expect from men who pass their lives in discussing such momentous questions as these and writing most learned philosophies on them!" For Vivekananda, it is a "sure sign of softening of the brain when the mind cannot grasp the higher problems of life; all originality is lost, the mind has lost all its strength, its activity, and its power of thought, and just tries to go round and round the smallest curve it can find." Sans religious overtones, let us apply that aphorism to the judicial way of life. It fits. The procedure is our perennial curve. It is time we grappled with and grasped the higher problems of law. Let us preserve the judicial strength, activity, and vigour to do justice-the eventual jurisprudential destiny. The procedure is only a path, not the destination; only a means, not the end.

5. Indeed, judges have been entrusted with the discretion, and the suitor should trust them in their exercising it."

17. In Sunil Garg (supra), the Court has finally concluded in paragraph Nos.62 to 66 as under :-

“Is oral hearing a facet of natural justice?”

62. In his celebrated commentary on Administrative Law", the learned author C. K. Thakker, after examining English and Indian case law, opines that "oral or personal hearing is not considered to be constituent of natural justice". With that prefatory observation, he agrees that an adjudicatory authority is bound to give a reasonable opportunity of hearing to the person against whom an action adversely affecting him is sought to be taken. Whether this reasonable opportunity of hearing should also include oral or personal hearing, according to him, is "an important and complicated question". After referring to standard commentaries on administrative law, such as de Smith's Judicial Review of Administrative Action, Wade & Forsyth's Administrative Law, Thakker CK concludes that "a fair hearing does not necessarily mean personal hearing and it cannot be urged that there must be an opportunity to be heard orally". As is the case with the English courts, even in the USA, the courts have not considered oral hearing to be a part of natural justice. To conclude, Thakker CK reckons that "in the absence of statutory requirement about oral hearing, courts will have to decide the matter taking into consideration the facts and circumstances of each case and decide the question."

63. As we may see, at the home front, in FN Roy v. Collector of Customs, the Supreme Court has held that "there is no rule of natural justice that at every stage person is entitled to a personal hearing .

Closer to our case is MP Industries Ltd. Union of India. In that case, the Supreme Court has held that the issue of an oral hearing is a matter of the tribunal's discretion. In that case, Rule 55 mandates that "no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the state government or other authority". Then, the court per Subba Rao J (as his Lordship then was) has held that "the said opportunity need not necessarily be by personal hearing. It can be by written representation or by personal hearing. It depends on the facts of each case, and ordinarily it is on the discretion of the tribunal". Numerous are the judicial pronouncements on the lines of MP industries. Let us not burden this judgment with any more.

64. Indeed, as the Supreme Court has held time and again, an oral hearing is a facet of fair hearing, but it is not an indispensable part of it. In a proceeding, a court in a tribunal may modulate its procedure--sometimes allowing oral arguments and some other times requiring the parties to file their written arguments. More particularly, when the statute confers wide procedural powers and allows a judicial or quasi-judicial authority to regulate its own proceedings, we cannot read into those proceedings the requirement of oral hearing at every stage of the proceedings, it is, then, sure to defeat the legislative purpose, as well as the mandate.

65. A case in point is the Supreme Court's decision in Ch. Rama Rao v. The Lokayukta. In that case, the petitioner contended that he had had no opportunity before the Lokayukta recommended actions against him. The Supreme Court disagreed, however. After referring to the relevant statutory provision, Ch. Rama Rao has distinguished between

the preliminary investigation and regular investigation. Avoiding elaboration, I may note that Ch. Rama Rao underlines the fact that even when the Lokayukta recommends penal action after the preliminary inquiry, still notice is not an essential feature of the preliminary inquiry.

Conclusion:

66. Going by the settled precedential position, when a statute provides for an oral hearing, it is indispensable. On the contrary, when it is silent-coupled with a legislative declaration that the tribunal concerned will have the powers to regulate its procedure - it lies in the tribunal's discretion. In the name of natural justice, we cannot read a provision into a statute, which the legislature has consciously avoided or omitted. It is, indeed, fallacious to insist that a court or a tribunal should follow throughout the life of a case the procedure it adopted at the beginning. Every case, as we know, has many stages. At some stages, the tribunal adjudicates issues which involve disputed questions of fact; at other stages it adjudicates disputed questions of law; still at some other stages, it adjudicates questions of both law and fact. At every stage, whether a party should be allowed to advance oral documents lies in the tribunal's discretion."

CONCLUSION ON THE FIRST ISSUE

18. Not a single judgment has been cited before us specifically taking up the issue of interpretation of Section 148(b) with regards to whether a show cause notice of hearing would mean and necessarily

include a personal hearing or for interpreting the said provision in a manner different than the view being taken by us. When the specific words “and a personal hearing” having not been engrafted in Section 148A(b) and since sub-clause ‘c’ indicates that the reply tendered by the Assessee has to be considered before passing an order u/s 148(d), we conclude that it is not the mandate of Law that a show cause notice u/s 148A (b) would necessarily and mandatorily include a personal hearing. The Income Tax Department, on its own volition or on a request made by the Assessee, may grant a personal hearing. However, refusal to grant a personal hearing would not mean that the assessee has been deprived of an opportunity of hearing, in the absence of any specific provision or the language in the statute book mandating such a hearing.

SECOND ISSUE - ENQUIRY

19. The second issue raised by the Petitioners is as regards an enquiry to be conducted before issuance of a notice by the Assessing Officer u/s 148A(a). The contention of the Petitioner is that the enquiry is mandatory. The contention of the Department in the specific facts of this case is, that an enquiry was never conducted and it is not a mandate to conduct an enquiry, more so, in the light of the averments

set out in the affidavit in reply filed by the Deputy Commissioner of Income Tax, Circle-I, Aurangabad, dated 30.09.2023. The specific averments which are articulated for our consideration, are as under :-

“The Assessee has filed written reply on 23.03.2023. The AO considered the reply of the assessee and on verification of reply of the assessee, it was seen that assessee company has made transaction with M/s Hitakrit Trading Private Limited. The assessee company has filed copies of sales bills, transport bills and copy of account extracts of purchases in its books of account. It was seen that the assessee company has purchased goods of Rs.84,53,550/- (84,53,550/- + GST) and has filed transport records and bills but, the credentials of the M/s Hitakrit Trading Private Limited were doubtful. To ascertain the financial credibility of the above mentioned entity efforts were made, however, it was observed that most of the parties were found to be non-filers. Out of the persons who have filed their ITR they have shown very meager profit over a very high turnover which also indicates that these entities were involved in issuance of bogus bills.

The AO has issued summons to all these entities seeking explanation regarding the purchases and sales made by them. Most of summons issued were returned un-served by the postal department. In cases where summons were served no response was received from these entities. All these are a shell entities which are not having any business and have booked bogus bills without supply of any goods.

The reply filed by the assessee was insufficient to explain the purchases made from M/s Hitakrit Trading Private Limited as genuine one. On the basis of the information available on record and after considering the

reply of the assessee, it was noticed that the case of the assessee is a fit case for issuance of notice u/s 148 of the Act.

The Deponent relies on the following judgments of Hon'ble Supreme Court :

In the case of Anshul Jain Vs. Pr. Commissioner of Income Tax and another, the assessee had filed SLP before Supreme Court of India vide SLP no 14823 of 2022. The Hon'ble Supreme Court of India has dismissed the SLP vide order dated 02.09.2022 and stated as under :

"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."

Also Hon'ble Supreme Court Judgment in the case of Raymond Woollen Mills Ltd it has been held that

"In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage."

20. Having considered the language in sub-clause (a) , we find that the Assessing Officer, before issuing any notice u/s 148, shall

conduct an enquiry, **if required**, with the prior approval of the specified authority.....”. The words “if required” actually indicate a discretion under sub-clause (a). The opening words of Section 148A require the Assessing Officer to do a particular thing before issuing notice u/s 148. The acts that are to be performed by the Assessing Officer would include conducting any enquiry, if required. Under clause (b), an opportunity of being heard is to be provided to the Assessee. Clause (c) requires that the reply of the Assessee has to be taken into account and clause (d) requires an order to be passed for forming an opinion that a notice u/s 148 has to be issued, on the basis of the material available on record, which includes the reply of the Assessee.

21. The question that begs for an answer is as to whether the conducting of an enquiry should be deemed to be a mandate, meaning thereby that an enquiry has to be mandatorily conducted prior to issuing a show cause notice. If this meaning, in the form of a mandate, to be lent to the issuance of a notice under clause (b) was the intent and object of the legislation, the words “if required” would not have been added to the words “conduct an enquiry” under clause (a). Clause 7 of the Memorandum reproduced above also indicates that before

issuing a notice by the Assessing Officer under clause (b), Section 148 of the Act proposes conducting of an enquiry, “if required”.

22. The learned Advocate for the I T Department has cited the law laid down by the Hon’ble Supreme Court vide the order dated 02.09.2022 delivered in **SLP No.14823/2022 (Anshul Jain Vs. Pr. Commissioner of Income Tax and another)** wherein the Hon’ble Supreme Court noted as under :-

“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.”

23. The I T Department has then relied upon the judgment delivered by the Hon’ble Supreme Court in **Raymond Woolen Mills Ltd., Vs. Income Tax Officer, Center Circle [2008(14) SCC 218]** as under :-

“In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case.

The sufficiency or correctness of the material is not a thing to be considered at this stage.”

24. In **Bhavnagar University Versus Palitana Sugar Mill (P) Ltd, and others [(2003) 2 SCC 111]**, the Hon’ble Supreme Court while dealing with the principle of construction of Statute has concluded in paragraph Nos. 23 to 27 as under :-

“23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.

24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfill the statutory purpose and not to frustrate it.

27. An owner of a property, subject to reasonable restrictions which may be imposed by the Legislature, is entitled to enjoy the property in any manner he likes. A right to use a property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under statute would not be presumed.”

25 In the **State of Karnataka Versus Viswabharathi House Building Coop.Society and Others [(2003) 2 SCC 412]**, the Hon’ble Supreme Court has observed in paragraph Nos. 63 and 64 as under :-

“63. The terminology used in [Section 25](#) of the Act to the effect "in the event of its inability to execute it" is of great significance. [Section 25](#), on a plain reading, goes to show that the provision contained therein presuppose that the Forum or the Commission would be entitled to execute its order. It however, may send the matter for its execution to a court only in the event it is unable to do so. Such a contingency may arise only in a given situation but in our considered opinion the same does not lead to the conclusion that the Consumer Courts cannot execute its own order and by compulsion it has The terminology used in [Section 25](#) of the Act to the effect "in the event of its inability to execute it" is of great significance. [Section 25](#), on a plain reading, goes to show that the provision contained therein presuppose that the Forum or the Commission would be entitled to execute its order. It however,

may send the matter for its execution to a court only in the event it is unable to do so. Such a contingency may arise only in a given situation but in our considered opinion the same does not lead to the conclusion that the Consumer Courts cannot execute its own order and by compulsion it has to send all its orders for execution to the civil courts. Such construction of [Section 25](#) in our opinion would violate the plain language used therein and, thus, must be held to be untenable.

It is now well settled principle of interpretation of statute that plain language employed in a Section must be given its ordinary meaning.”

26. In **B.Premanand and Others Vs. Mohan Koikal and Others [(2011) 4 SCC 266]**, the Hon’ble Supreme Court has concluded on the issue of interpretation of statutes in paragraph Nos. 24 to 28 as under :-

"24. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a CIVIL APPEAL NO. 2684 OF 2007 pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will

become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean.

25. In this connection, we may also refer to the Mimansa Rules of Interpretation which were our traditional principles of interpretation used for thousand of years by our jurists. It is deeply regrettable that in our law courts today these principles are not cited. Today, our so called educated people are largely ignorant about the great intellectual achievements of our ancestors, and the intellectual treasury which they have bequeathed to us. The Mimansa Rules of Interpretation are one of these great achievements, but regrettably they are hardly ever used in our law courts.

26. It may be mentioned that it is not stated anywhere in the Constitution of India that only Maxwell's Principles of Interpretation can be utilised. We can utilise any CIVIL APPEAL NO. 2684 OF 2007 system of interpretation which can help to resolve a difficulty. Principles of interpretation are not principles of law but are only a methodology for explaining the meaning of words used in a text. There is no reason why we should not use Mimansa Principles of Interpretation in appropriate occasions.

27. In Mimansa, the literal rule of interpretation is known as the 'Shruti' or Abhida' Principle. This is illustrated by the Garhapatya nyaya (In Mimansa Maxims are known as nyayas). There is the vedic verse:

"Aindrya garhapatyam upatishthate", which means "By the Mantra addressed to Indra establish the household fire." This verse can possibly have several meanings viz. (1) worship Indra (2) worship Garhapatya (the household fire) (3) worship both, or (4) worship either. However, since the word 'Garhapatyam' is in the objective case, the verse has only one meaning, that is, 'worship Garhapatya'. The word 'Aindrya' means 'by Indra', and hence the verse means that by verses dedicated to Indra one should worship Garhapatya. The word 'Aindrya' in this verse is a Linga, (in Mimansa Linga means the suggestive power of a word), while the words 'Garhapatyam Upatishthate' are the Shruti. According to the Mimansa principles, the Shruti (literal meaning) will prevail over the Linga (suggestive power).

28. It is not necessary to go into details, but reference can be made to the Book 'Mimansa Rules of Interpretation' by K.L.Sarkar which is a collection of CIVIL APPEAL NO. 2684 OF 2007 Tagore Law Lectures delivered by him in 1909. According to the Mimansa Principles, the Sruti Principle or literal rule of interpretation will prevail over all other principles, e.g., Linga, Vakya, Prakarana, Sthana, Samakhya etc."

CONCLUSION ON THE SECOND ISSUE

27. In the absence of any specific judicial pronouncement dealing with the aspect of interpretation on this issue, considering the language of the provision and noticing the law enunciated in the above discussed reports, we are of the view that the words "if required" have

been set out in 148A(a) so as to leave it to the discretion of the Assessing Officer as to whether he desires to conduct an enquiry. If the Legislature had the intent and object of mandating an enquiry before issuing a show cause notice under clause (b), the Legislature would not have specifically used the words “if required”, following the words “conduct an enquiry”. In these circumstances, if a harmonious interpretation is to be arrived at without rendering the words “if required” meaningless, in our view, the word ‘shall’ would mean ‘may’ as Section 148A(a) grants discretion to the Assessing Officer to conduct an enquiry.

28. With the aforesaid conclusions, **both these Petitions are disposed off.**

29. We, however, deem it appropriate to record that since Section 148 permits an assessee to raise all issues at the time of the hearing. in view of the pronouncement of the Hon’ble Supreme Court in **Anshul Jain (supra)**, the Department shall follow the due procedure laid down in Law and ensure that the Petitioners are extended an adequate and reasonable opportunity to contest the notice u/s 148, as

is permissible in Law. All contentions of the parties are, therefore, kept open.

(Y.G.KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)