IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO 638 of 2025

LAKSHMAN PRASAD AGARWAL
VS
UNION OF INDIA & ORS.

For the petitioner	:	Mr. Pranit Bag, Adv. Mr. Anujit Mookherji, Adv. Mr. Prothish Chandra, Adv. Mr. Vinaayak Chaturvedi, Adv.
For the respondents	:	Mr. Aryak Dutt, Sr. Standing Counsel Mr. Soumen Bhattacharjee, Sr. Santding Counsel
Heard on	:	27.10.2025 & 28.10.2025
Judgment on	:	**3rd November, 2025**.

RAJA BASU CHOWDHURY, J:

1. The instant writ petition has been filed, inter alia, challenging the order dated 26th June 2025 issued under section 148A(3) of the Income Tax Act 1961 (hereinafter referred to as 'the said Act) for the assessment year 2019-20.

2. Mr. Bag, learned Advocate appearing in support of the writ petition by drawing attention of this Court to the notice issued under section 148A(1) of the said Act dated 31st March, 2025 and the order impugned, has stressed on the fact that though search and survey action was conducted at various spots of finance brokers and evidence was collected during such

proceedings and though incriminating material and statement of Sri Sarbejeet Thakur alias, Pathakji, Hitesh Kanodia and Sri Jai Bhagwan Agarwal were recorded, under section 132(4) of the said Act and the statement of one Parveen Kumar Kasera was recorded under section 132(4) of the said Act, the same had not been furnished to the petitioner.

3. Mr. Bag further by placing before this Court the response to the show cause has claimed that the petitioner had specifically requested and sought for permission to cross-examine Sri Jai Bhagwan Agarwal. Unfortunately, the same was not allowed. According to Mr. Bag the allegation that the assessee has two separate bank accounts maintained with the Yes Bank, bearing account nos.064661900001248 and 064663500001103 wherein allegedly huge cash deposits had been made are incorrect. In so far as the account no.064663500001103 is concerned, the same does not belong to the assessee at all and the said account is of a private limited company, namely, Champa Impex Private Limited wherein the assessee is one of the directors.

4. The PAN of the said Champa Impex Private Limited is different from that of the assessee. According to the petitioner, the return of income of the company has also been disclosed. In so far as the receipt of cash in the account no. 064661900001248 maintained with Yes Bank to the extent of Rs.90,25,000/- for the financial year 2018-19 is concerned, the same has been duly explained. The entire cash deposits have been accounted for and there has been no suppression.

5. According to Mr. Bag, failure to afford opportunity to cross-examine the persons who had made statements constitutes violation of principles of natural justice. In support of his aforesaid contentions, he has placed reliance on the following judgments:

a. ***Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II***, reported in **(2016) 15 SCC 785**
b. An unreported judgment delivered by the Division Bench of this Court in the case of ***Krishna Tisses Pvt. Ltd. v. Union of India*** dated 28th April, 2023, in MAT 648 of 2023.

6. Independent of the above, there was no material based on which the notice under section 148 of the said Act could have been issued and on such ground, the order issued under section 148A(3) of the said Act and the notice issued under section 148 of the said Act, both dated 26th June, 2025 in respect of the assessment year 2019-20 should be set aside.

7. Mr. Dutt, learned Advocate assisted by Mr.Bhattacharjee, learned Advocate appears on behalf of the income tax department. According to the department, neither the show cause nor the order is solely based on the statements of the third parties. It is submitted that there is enough material based on which the notice under section 148 has been issued. Simply because the petitioner has not been offered opportunity to cross-examine Sri Jai Bhagwan Agarwal, the same cannot have the effect of vitiating the order. The aforesaid at best can be said to be an irregularity, though according to him, the stage to offer cross-examination is not over. In support of his aforesaid contention, reliance has been placed on the

judgment delivered by the Division Bench of this Court in the case of ***Principal Commissioner of Income Tax-V vs. Swati bajaj,*** reported in **2022 SCC Online Cal 1572**.

8. Having heard the learned Advocates appearing for the parties and considering the materials on record, I find that in the instant case notice under Section 148A(1) of the said Act had been issued for the assessment year 2019-20 on the petitioner. From the above, it is seen that on the basis of an inquiry made in the case and the subsequent information made available on the portal of the department, the above show cause notice has been issued. The show cause records that the statements had been obtained from third party witnesses in respect of the cash transactions.

9. Independent of the above, in the show cause in paragraph 9, it has been highlighted that the petitioner has two separate bank accounts maintained with Yes Bank and huge cash deposits have been made in such accounts which does not commensurate with the cash deposits made into the bank accounts. A financial analysis has also been provided in the show cause notice. I find that the petitioner had responded to the said show cause and had categorically denied that the account no.064663500001103 maintained with Yes Bank was that of the petitioner. In fact, it was contended that the said account was of one Champa Impex Pvt. Ltd. wherein the assessee is one of the directors.

10. Incidentally, in this case, the jurisdictional assessing officer did not afford opportunity to the petitioner to cross-examine the third parties. Though failure to give opportunity to cross-examine may constitute an

irregularity, and could have invited consequences, I, however, notice that the order that was passed was not solely based on the statements of the aforesaid persons. Admittedly, in this case, though the petitioner has denied to have any connection in respect of the bank account no.064663500001103, however, it is seen that the petitioner's bank account bearing no. 064661900001248 maintained with Yes Bank Ltd., is linked with the current account of Champa Impex Pvt. Ltd. having account no.064663500001103 which was opened on 20th March 2017. There has been no denial of such fact.

11. The petitioner has also not disclosed the bank statement in relation to the aforesaid bank account, though both the accounts were linked. This apart, it would also transpire that the petitioner happens to be a signatory in respect of the bank account being no.064663500001103. It is also found that huge cash deposits have been made in such account in different financial years which are not accounted for. Further the petitioner as assessee also could not explain the treatment of sundry debtor balance written off in the books of account, since the assessee did not declare any bad debts or add back income in the books of account for the relevant assessment year. Though from the statement of the assessee it is clear that the assessee had written off the debtors in his ledger, but the same is not included in the audited books of account of the assessee.

12. Having regard to the above, it cannot be said that the order is based on no evidence or is perverse. There appears to be enough material for issuance of notice under section 148 of the said Act. As rightly pointed out

by Mr. Bhattacharjee that even for sake of argument, failure to afford cross-examination would only constitute an irregularity which does not have the effect of vitiating the order.

13. This apart, I find that since the basis of the order is not solely dependent on the third party statements, the judgment delivered in the case of ***Krishna Tissues Private Limited*** (supra) does not assist the petitioner. In the said case a fundamental error had been committed by the assessing officer in not providing third party information which was the basis for issuance of the show cause notice. Such is not the case here. The third party evidence does not form the only basis for issuance of either the show cause or the order impugned. The case of ***Andaman Timber Industries*** (supra) deals with a case of the witness not being subject to cross-examination by the adjudicating authority. In this case before an assessment order is passed at appropriate stage cross-examination can be offered. The judgment is thus, also distinguishable on facts.

14. Having regard thereto, the writ petition fails and is accordingly dismissed.

15. There will be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(RAJA BASU CHOWDHURY, J.)

akg/R.Bose