IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.09.2024
Pronounced On	20.2.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6068 of 2022
and
W.M.P.Nos.6152 and 6153 of 2022

M.K.Rajagopalan ... Petitioner

Vs.

1.The Deputy Commissioner of Income-tax,
Central Cir 3(4),
3rd Floor,
Investigation Building,
No.46 (Old No.108),
Mahatma Gandhi Road,
Chennai,
Tamil Nadu – 600 034.

2.Pr.CIT (Central), Chennai -1
Room No.301, New Building-III Floor,
Investigation Building,
No.46 (Old No.108),
Mahatma Gandhi Road,
Chennai,
Tamil Nadu – 600 034. ... Respondents

<u>Prayer</u>**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in DIN No.ITBA/AST/S/148/2020-21/1032079001(1) dated 31.03.2021 on the file of the 1st respondent for the Assessment Year 2013-14 and the consequential order in DIN No.ITBA/AST/F/17/2021-22/1040217067(1) dated 01.03.2022 on the file of the 1st respondent for the Assessment Year 2013-14 and quash the same.

For Petitioner	: Mr.R.V.Easwar Senior Counsel for M/s.R.Sandeep Bagnar
For Respondents	: Mr.A.P.Srinivas Senior Standing Counsel

<u>ORDER</u>

The Petitioner is before this Court against the Impugned Notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2013-2014 and the Order dated 01.03.2022 passed by the Assessing Officer, disposing of the objection of the Petitioner.

2. Operative Portion of the Impugned Order dated 01.03.2022 reads as under:-

> *"2. Assessee has stated that "the reasons recorded are incomplete, as it has not been pointed out in which document belongint to M/s.MKR Enterprises, viz. Book of account or bank*

account, the impugned accommodation entries are appearing".

The above statement appears to be a premature submission. The submission is more suitable after the completion of assessment proceedings. Assessee has forgotten the fact that the case has been reopened for the purpose of conducting detailed enquiry based on actionable information received by this office, after providing reasonable opportunities to the assessee. This office has received a confirmed information that assessee has involved in bogus transactions with in accommodation entry provider in Kolkata. However, assessee is provided an opportunity is prove its genuineness through the proceedings. Therefore, simply stating that assessee has not involved in any transaction with the parties mentioned in the reasons or trying to prove the genuineness of the parties (Nectar Dealtrade Pvt. Ltd. & Moonview Vintrade Pvt. Ltd.) can never be a cause of objection. Assessee can submit the same with documentary evidence which would only substantiate its claim.

It was in the welfare of assessee that a detailed questionnaire u/s 142(1) of the Income Tax Act, 1961, was served to prove its state. However, till date no submission has been made, rather such baseless objections are being raised only with the intention of derailing the proceedings.

And it is also to be clarified here that the proceedings are not initiated merely to verify the genuineness, but to provide the assessee a fair chance to represent itself against the findings. Nevertheless, the reasons recorded are based on concrete information from ADIT, Kolkata, who has fairly proved that the parties involved are shell companies."

3. The Impugned Notice dated 31.03.2021 appears to have been digitally signed at around 5.14 p.m., and was received by the Petitioner on the following day on 01.04.2021 at around 7.16 a.m.

4. The reasons for reopening the assessment were furnished to the Petitioner vide Notice dated 15.11.2021 issued under Section 142 (1) of the Income Tax Act, 1961. The reasons stated in the aforesaid Notice dated 15.11.2021 reads as under:-

> "Your case has been selected for scrutiny for the Assessment Year 2013-2014 by issuing notice u/s 148 dated 31.03.2021. Reasons for the same are stated as follows:
>
> It is found that Shri Rajagopalan [MKR Enterprises (AAEPR4969B)] with a total information value of Rs.1.25 Cr in respect of accommodation entries from shell entities namely Nectar Deal Trade Private Ltd. (PAN: AADCN5751F) and Moonview Vintrade Private Ltd. (AAHCN7679K).
>
> The information received in respect of above companies reveal that the status of both the companies as per MCA is 'strike off'. Financial analysis of the said concern establish that these are paper/jamakharchi concerns and do not have credit worthiness to do that quantum of transactions they have done. They were being solely used to provide accommodation entry."

S. No	***Source PAN***	***Source PAN Name***	***Information FY***	***Information Type***	***Information value***	***Remarks***
1	AADCN5751F	Nectar Dealtrade Private Limited	2012-13	Others	5000000	Accommodation entry taken
2	AAHCM7679K	Moonview Vintrade Pvt Ltd	2012-13	Others	7500000	Accommodation entry taken
3	AAHCM7679K	Moonview Vintrade Pvt Ltd	2012-13	Others	7500000	Accommodation entry taken

> In this regard, you are required to furnish:
>
> 1.Details of sources of income derived by you (with a detailed note) under each heads of income as provided u/s 14 of the

IT Act, 1961.

2.Details of income not includible in total income and which is claimed as exempt income, derived by you with a detailed note of income as provided u/s 10 of the IT Act, 1961.

3.Cash flow statement for the previous year 2012-13.

4.Copies of all bank account (including deposits) held and operated by your including the accounts operated as a power attorney holder of any other person with account no's, name of the bank and its branch.

5.Details of books of accounts maintained for the different source of income derived.

6.Furnish a hard copy of P&L, Balance Sheet and Schedules.

7.Detailed note on business activities/investments/loan happened/made/given to M/s.Nectar Dealtrade Private Limited and M/s.Moonview Vintrade Private Limited during the year under consideration.

8.You are required to furnish a copy of RoI filed for the A.Y.2011-12 and 2012-13."

5. The Petitioner appears to be a proprietor of a Petrol Bunk under the name and style of M/s.MKR Enterprises, engaged in the sale of petroleum products and a Trustee of M/s.Sri Balaji Educational and Charitable Public Trust.

6. The dispute in this case pertains to the Assessment Year 2013-2014. It is the case of the Petitioner that the Notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 was time barred even if the extensions provided under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 and the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) ('TOLA') Act, 2020 were

applied.

7. It is submitted that the Impugned Notice dated 31.03.2021 issued under Section 148 of the Act has been issued in a hurry as the time for completing the assessment would have expired on 31.03.2021 after the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) ('TOLA') Act, 2020 extensions.

8. The further case of the petitioner is that the discretion provided for reopening the assessment after the assessment was completed under Section 143(1) of the Income Tax Act, 1961, there was no case made out for escapement of income warranting invocation under Section 148 of the Income Tax Act, 1961.

9. Learned Senior Counsel for the petitioner would submit that the impugned proceeding was without jurisdiction and it was beyond the period of limitation prescribed under Section 149 of the Income Tax Act, 1961 as it stood then.

10. It is submitted that there was no tangible material available for reopening the assessment barring a bald assertion that the petitioner had resorted

to jamakharchi transaction.

11. It is submitted that there are no records to substantiate that the petitioner had received any amounts by way of accommodation during the Financial Year 2012-2013 for a sum of Rs.50,00,000/- from M/s.Nectar Dealtrade Private Limited and Rs.75,00,000/- from M/s.Moonview Private Limited.

12. In this connection, the learned Senior Counsel for the petitioner has placed reliance on the following decisions of the Division Bench of the Allahabad High Court, Madhya Pradesh High Court and the Delhi High Court:

i. **Daujee Abhushan Bhandar Private Limited** Vs. **Union of India and two others** in Writ Tax No.78 of 2022 dated 10.03.2022.

ii. **Yuvraj** Vs. **Income Tax Officer and others** in Writ Petition No.28293 of 2021 dated 03.03.2022.

iii. **Sharad Garg** Vs. **Income-tax Officer**, [2022] 136 taxmann.com 360 (Delhi).

13. Learned Senior Counsel has also drawn attention to the following decisions of the Division Bench of the Delhi High Court and Bombay High

Court:

i. **Gudwala and Sons** Vs. **Assistant Commissioner of Income-tax**, [2023] 155 taxmann.com 400 (Delhi).

ii. **Banas Finance Limited** Vs. **Assistant Commissioner of Income-tax, Central Circle-8(3)**, [2024] 160 taxmann.com 559 (Bombay).

iii. **Dr.Ajit Gupta** Vs. **Assistant Commissioner of Income-tax**, [2017] 79 taxmann.com 316 (Delhi).

iv. **Principal Commissioner of Income-tax-6** Vs. **Meenakshi Overseas (P.) Ltd.,** [2017] 82 taxmann.com 300 (Delhi).

v. **Principal Commissioner of Income-tax-4** Vs. **G & G Pharma India Ltd.,** [2017] 81 taxmann.com 109 (Delhi).

vi. **Arvind Sahdeo Gupta** Vs. **Income-tax Officer**, [2023] 153 taxmann.com 244 (Bombay).

14. In **Daujee Abhushan Bhandar Private Limited case** (referred to supra), the learned Senior Counsel has referred to the following passages found in Paragraphs 17, 20 and 29, which reads as follows:-

> *"17. Rule 127A(1) of the Rules, 1962 provides that every notice or other document communicated in electronic form by an authority under the Act shall be deemed to be authenticated in case of electronic mail or electronic mail message (e-mail) if the name and office of such income tax authority is printed on the e-mail body, if the notice or other document is in the e-mail*

body itself, or is printed on the attachment to the e-mail, if the notice or other document is in the attachment and the e-mail, is issued from the designated e-mail address of such income tax authority. Thus, the issuance of notice and other document would take place when the e-mail is issued from the designated e-mail address of the concerned income tax authority.

18. .....

19. .....

20. Thus, after digitally signing the notice the income tax authority has to issue it to the assessee either in paper form or through electronic mail. Sub-Section (1) of Section 13 of the Act, 2000 provides that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. The aforesaid Sub-Section (1) of Section 13 indicates the point of time of issuance of notice. Therefore, after a notice is digitally signed and when it is entered by the income tax authority in computer resource outside his control i.e., the control of the originator then that point of time would be the time of issuance of notice.

21. .....

29. Thus, considering the provisions of Section 282 and 282A of the Act, 1961 and the provisions of Section 13 of the Act, 2000 and meaning of the word "issue" we find that firstly notice shall be signed by the assessing authority and then it has to be issued either in paper form or be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by modes provided in section 282 which includes transmitting in the form of electronic record. Section 13(1) of the Act, 2000 provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e., the assessing authority that shall the date and time of issuance of notice under

Section 148 read with Section 149 of the Act, 1961."

15. In **Yuvraj case** (referred to supra), the learned Senior Counsel has referred to the following passages found in Paragraphs 5 to 8, which reads as follows:-

"5. The counsel for the parties were heard and during the course of hearing, the counsel for respondent/revenue Shri Sanjay Lal produced a letter dated 24/02/2022 bearing no.1002 issued by Income Tax Officer-3(1) of Bhopal which was addressed to the counsel for the revenue and in the said letter it was stated that though in the notice which was issued to the petitioner herein, the date was mentioned as 31/03/2021 but, the system of the office of the respondents revealed that the Email to the petitioner was infact sent on 16/04/2021. Thus, the counsel for respondent does not dispute that the notice which is impugned in the petition contained in Annexure P/1 infact was issued on 16/04/2021 though the date on the same was mentioned as 31/03/2021 but was issued later on 6/04/2021.

6. In view of the aforesaid letter so produced before us dated 24/02/2022 and in view of the admission by the counsel for respondents, we have no hesitation to hold that the impugned notice is bad in the eye of law, contained in Annexure P/1 dated 31/03/2021 (received by the petitioner on 16/04/2021 through Email) inasmuch as after 1/04/2021, it is mandatory requirement that prior to re-assessment proceedings notice under Section 148-A of the Income Tax Act, 1961 should be issued to assessee. Since now in view of the admission by the respondents the other reliefs as sought for by the petitioner in the relief clause have become redundant inasmuch as now there is no dispute about the date of issuance of the impugned notice.

7. Accordingly, the impugned notice dated 31/03/2021 (served through Email to the petitioner on 16/04/2021) stands quashed. However, it is left open for the respondents to take *recourse to the procedure laid down in newly enacted Section 148-A of the Income Tax Act, 1961 if it is required under the law.*

8. Thus, the writ petition stands allowed to the extent indicated above."

16. In **Sharad Garg case** (referred to supra), the learned Senior Counsel has referred to the following passages found in Paragraphs 2, 3 and 4, which reads as follows:-

"2. It is pertinent to mention that the Allahabad High Court in Daujee Abhushan Bhandar (P.) Ltd. Vs. Union of India, [2022] 136 taxmann.com 246 has held as under:-

"29. .... Section 13(1) of the Act, 2000 provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator i.e., the assessing authority that shall the date and time of issuance of notice under Section 148 read with Section 149 of the Act, 1961.

30. In view of the discussion made above, we hold that mere digitally signing the notice is not the issuance of notice. Since the impugned notice under Section 148 of the Act, 1961, was issued to the petitioner on 6-4-2021 though e-mail, therefore, we hold that the impugned notice under Section 148 of the Act, 1961 is time barred. Consequently, the impugned notice is quashed.

.........".

3. Keeping in view the aforesaid Judgment, this Court is of the view that the present batch of matters requires detailed examination.

4. As the deadline for passing the assessment order in most of the cases is 31st March, 2022, this Court is of the view that it would not be possible to pass a judgment prior thereto. Accordingly, proceedings pursuant to the impugned reassessment notices are stayed till further orders."

17. Specifically, the learned Senior Counsel for the petitioner would submit that as per Section 149 of the Income Tax Act, 1961, no notice under Section 148 of the Income Tax Act, 1961 shall be issued for the relevant Assessment Year. Section 149 of the Income Tax Act, 1961 reads as under:-

"149. Time limit for notice:

[(1) No notice under section 148 shall be issued for the relevant assessment year,—

[(*a*) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*);

(*b*) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of -

i. an asset;
ii. expenditure in respect of a transaction or in relation to an

event or occasion; or

iii. an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more."

18. That apart, the learned Senior Counsel for the petitioner would also submit that even in the impugned order, the Officer has not given any tangible information that was available for invoking jurisdiction under Section 148 of the Income Tax Act, 1961.

19. As far as limitation is concerned, the learned Senior Counsel also drew attention to the Counter Affidavit in Paragraph 12 where, there is an admission that notice was signed on 31.03.2021 and therefore, it cannot be said that the notice was issued within the period of limitation which expired on 31.03.2020.

20. Learned Senior Counsel for the petitioner also submits that the burden of proof was on the Income Tax Department to show that the petitioner has received amounts from the above two mentioned entities.

21. Learned counsel for the petitioner fairly submitted that the decision of the Allahabad High Court in **Daujee Abhushan Bhandar Pvt.Ltd.,** vs. **Union**

of India and 2 Others, Writ Tax.No.78 of 2022 has been differed by the First Court of this Court in ***Malavika Enterprises vs. Central Board of Direct Taxes*** 2022 468 ITR 651 wherein in para 23 reads as under :-

> **23.**The paragraphs referred to above show the manner of issuance of notice by electronic mode and when it would be taken to have been issued, but then the judgment was rendered in reference to the date of receipt of the notice, without showing that after the notice was digitally signed on March 31, 2021, it was not sent being entered by the Income-tax authority in computer resource outside his control. Thus, with due respect to the Division Bench of the Allahabad High Court, the conclusions finally drawn on the facts of that case cannot be applied, rather we cannot change the language of the provision by changing the word "issuance" to that of "receipt".

22. However, it could not preclude the application of Section 13(1) and 13(2) of the Information Technology Act, 2000.

23. It is fairly submitted that there is no definition for the expression the issue has used in Section 149 of the Income Tax Act, 1961. It is therefore submitted that under Section 13(1) of the Income Tax Act, 2000 which has been made applicable for service of notice in terms of Section 282 of the Income Tax Act, 1961, the time in place of dispatch of an electronic record occurs when it enters a computer resource outside his control i.e the control of the originator as

per Section 13(1) of the Income Tax Act, 2000.

24. It is submitted that the definition of expression 'originator' has been defined Section 2 (za) of the Information Technology, Act, 2000 to mean that a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary.

25. It is submitted that mere affixing of Digital signature cannot be said to satisfy the requirement of Section 149 of the Income Tax Act, 1961 as it stood during the period in dispute.

26. That apart, learned Senior Counsel for the Petitioner drew attention to the decision of the Hon'ble Supreme Court in ***Chhugamal Rajpal v. S.P. Chaliha*****, (1971) 1 SCC 453.**

27. It is submitted that the case dealt with almost identical situation where the Income Tax Officer in his report, the Income Tax Officer does not set out any reason for coming to the conclusion that this is a fit case to issue notice

under Section 148. The material that he had before him for issuing notice under Section 148 is not mentioned in the report. In his report he vaguely refers to certain communications received by him from the CIT, Bihar and Orissa.

28. It is submitted that it is almost similar reasons given for reopening of the assessment in this case and therefore submitted that it cannot be said that the officer has sufficient reasons for reopening the assessment.

29. Learned Senior Standing counsel for the respondents also clarified and stated that drew attention to para 9 of the affidavit filed in support of the writ petition. It is also submitted that there are no tangible evidence available to show that the petitioner had made any entry to indicate that there were transactions with the above named companies namely Nector Dealtrade Private Limited and Moonview Vintrade Pvt.Ltd are shell companies, itself is not fully correct.

30. Learned Senior Standing counsel for the respondent/revenue would submit that the sufficiency of the satisfactory is not a matter which has to be gone into. The insight portal of the Income Tax Officer has flagged information under the category ' High Risk CRIU/VRU information' in the case of

Shri.Rajagopalan (MKR Enterprises (AAEPR4969B) with a total information value of Rs.1.25 Crore in respect of accommodation entries from shell entities namely Nector Dealtrade Private Limited and Moonview Vintrade Pvt.Ltd. The information received from the Office of the ADIT(Inv), Unit-1(1), Kolkata in respect of above companies reveal that the status of both the companies as per MCA is strike off. Financial analysis of the said concern establish that these are paper/jamakharchi concerns and do not have credit worthiness to do that quantum of transactions they have done. They were being solely used to provide accommodation entry. In the above said impugned order and therefore it can be said sufficient information that was available for the reopening the assessment.

31. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

32. Learned Senior Standing Counsel for the respondent has drawn attention to the following decisions :-

i) Sri Krishna (P.) Ltd, vs. Income-Tax Officer, (1996) 87 Taxman 315 (SC), it reads as under :-

Now, what needs to be emphasised is that the obligation on the assessee to disclose the material facts _ or what are called, primary facts_is not a mere disclosure but a disclosure which is full and true. A false disclosure is not a true disclosure. The disclosure must not only be true but must be full _ “fully and truly”. A false assertion, or statement, of material fact, therefore, attracts the jurisdiction of the Income-tax Officer under section 34/147. Take this very case : the Income-tax Officer says that on the basis of investigation and enquiries made during the assessment proceedings relating to the subsequent assessment year, he has come into possession of material, on the basis of which, he has reasons to believe that the assessee had put forward certain bogus and false unsecured hundi loans said to have been taken by him from non-existent persons or his dummies, as the case may be, and that on that account income chargeable to tax has escaped assessment. According to him, this was a false assertion to the knowledge of the assessee. The Income-tax Officer says that during the assessment relating to the subsequent assessment year, similar loans [from some of these very persons] were found to be bogus. On that basis, he seeks to reopen the assessment. It is necessary to remember that we are at the stage of reopening only. The question is whether, in the above circumstances, the assessee can say, with any justification, that he had fully and truly disclosed the material facts necessary for his assessment for that year. Having created and recorded bogus entries of loans, with what face can the assessee say that he had truly and fully disclosed all material facts necessary for his assessment for that year. True it is that the Income-tax Officer could have investigated the truth of the said assertion _ which he actually did in the subsequent assessment year _ but that does not relieve the assessee of his obligation, placed upon him by the statute, to disclose fully and truly all material facts. Indubitably, whether a loan, alleged to have been taken by the assessee, is true or false, is a material fact_and not an inference, factual or legal, to be drawn from given facts. In this case, it is shown to us that ten persons [who are alleged to have advanced loans to the assessee in a total sum of Rs. 3,80,000 out of the total hundi loans of Rs. 8,53,298] were established to be bogus persons or mere name-lenders in the assessment proceedings relating to the subsequent assessment year. Does it not furnish a reasonable ground for the Income-tax Officer to believe that on account of the failure _ indeed not a mere failure but a positive design to mislead _ of the assessee to disclose all material facts, fully and truly, necessary for his assessment for that year, income had escaped assessment ? We are of the firm opinion that it does. It is necessary to reiterate that we are now at the stage of the validity of the notice under section 148/147. The enquiry at this stage is only to see whether there are reasonable grounds for the Income-tax Officer to believe and not whether the omission/failure and the escapement of income is established. It is necessary to keep this distinction in mind.

A recent decision of this court in Phool Chand Bajrang Lal v. ITO [1993] 203 ITR 456, we are gratified to note, adopts an identical view of law and we are in respectful agreement with it. The decision rightly emphasises the obligation of the assessee to disclose all material facts necessary for making his assessment fully and truly. A false disclosure, it is held, does not satisfy the said requirement. We are also in respectful agreement with the following holding in the said decision (page 477) :

“Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. “

ii) ***ITO v. Purushottam Das Bangur*, (1997) 3 SCC 253**, it reads as under:-

> **10.** The High Court has proceeded on the basis that the said letter of Shri Bagai did not contain any information and that there was neither evidence of manipulation nor evidence or collusive transactions referred to in the letter and that no inquiries were made by the Income Tax Officer after the receipt of the letter so as to constitute information. We are unable to agree with the said view of the High Court. The contents of paragraph 2 of the letter of Shri Bagai refer to the statement containing financial information regarding Maharaja Shree Umaid Mills Ltd. which was annexed to the letter of Shri Bagai. The said statement contained information derived from the Bombay Stock Exchange Directory about the financial condition of Maharaja Shree Umaid Mills Ltd. during the period 1965-70 which indicated that during this period the company has prospered and that the book value per equity share had risen from Rs 318.55 for the year ending 31-12-1965 to Rs 401 for the year ending 31-12-1970, the earning per share rose from Rs 8.37 per share to Rs 44 per share and that dividend percentage had also risen from 2% to 10% for the same period .
>
> **11.**On the basis of the information contained in the letter of Shri Bagai and the documents annexed to it, the Income Tax Officer could have had reason to believe that the fair market value of the shares was far more than the sale price and the market quotations from Calcutta Stock Association shown by the assessee at the time of original assessment were manipulated ones and as a result income chargeable to tax had escaped assessment. It could not be said that the information that was contained in paragraph 2 of the letter of Shri Bagai was not definite information and it could not be acted upon by the Income Tax Officer for taking action under Section 147(*b*) of the Act.

iii)***R.K. Upadhyaya v. Shanabhai P. Patel***, (1987) 3 SCC 96, it reads as under :-

2........Section 34 conferred jurisdiction on the Income Tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundations of jurisdiction. The same view has been taken by this Court in J.P. *Janni, ITO* v. *Induprasad D. Bhatt* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 72 ITR 595] as also in *CIT* v. *Robert J. Sas* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 48 ITR 177] . The High Court in our opinion went wrong in relying upon the ratio of *Banarsi Debi* v. *ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in Section 34 of the 1922 Act has been spread out into three sections, being Sections 147, 148 and 149 in the 1961 Act. A clear distinction has been made out between "issue of notice" and "service of notice" under the 1961 Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under Section 148 shall be *issued* after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income Tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment. The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in *Banarsi Debi* v. *ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] . As the Income

Tax Officer had issued notice within limitations, the appeal is allowed and the order of the High Court is vacated. The Income Tax Officer shall now proceed to complete the assessment after complying with the requirements of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs.

iv) Commissioner of Income Tax vs. Major Tikka Khushwant Singh, (1995)212ITR 650 (SC)

v) ***Raymond Woollen Mills Ltd., vs. Income Tax Officer,*** (1999) 236 ITR 34(SC)

vi) ***CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd.*****, (2008) 14 SCC 208.**

9.Section 147 authorises and permits the assessing officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. The function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.

20. As observed by the Delhi High Court (*sic* the Supreme Court) in *Central Provinces Manganese Ore Co. Ltd.* v. *ITO* [(1991) 4 SCC 166 : (1991) 191 ITR 662] for initiation of action under Section 147(*a*) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the assessing officer is within the realm of subjective satisfaction [see *ITO* v. *Selected Dalurband Coal Co. (P) Ltd.* [(1997) 10 SCC 68 : (1997) 217 ITR 597] ; *Raymond Woollen Mills Ltd.* v. *ITO* [(2008) 14 SCC 218 : (1999) 236 ITR 34]]. **21.** The scope and effect of Section 147 as substituted with effect from 1-4-1989, as also Sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of Section 147, separate clauses (*a*) and (*b*) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under Section 147(*a*) two conditions were required to be satisfied, firstly, the assessing officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly, he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the assessing officer could have jurisdiction to issue notice under Section 148 read with Section 147(*a*) but under the substituted Section 147 existence of only the first condition suffices. In other words if the assessing officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to Section 147. The case at hand is covered by the main provision and not the proviso.

vi)***Phool Chand Bajrang Lal v. ITO*, (1993) 4 SCC 77 , it reads as under :-**

> **24.** Again, in *A.L.A. Firm* v. *CIT* [(1991) 2 SCC 558 : (1991) 189 ITR 285] a three-Judge Bench of this Court, to which one of us (S.C. Agrawal, J.) was a party, after an elaborate discussion of the subject opined that the jurisdiction of the Income Tax Officer to reassess income arises if he has in consequence of specific and relevant information coming into his possession subsequent to the previous concluded assessment, reason to believe, that income chargeable to tax had escaped assessment. It was held that even if the information be such that it could have been obtained by the ITO during the previous assessment proceedings by conducting an investigation or an enquiry but was not in fact so obtained, it would not affect the jurisdiction of the Income Tax Officer to initiate reassessment proceedings, if the twin conditions prescribed under Section 147 of the Act are satisfied.
>
> **25.** From a combined review of the judgments of this Court, it follows that an Income Tax Officer acquires jurisdiction to reopen assessment under Section 147(*a*) read with Section 148 of the Income Tax Act, 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such

> situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(*a*) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment. The High Courts which have interpreted *Burlop Dealer case* [(1971) 1 SCC 462 : (1971) 79 ITR 609] as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly.

33. The points for consideration is whether the impugned notice issued on 31.03.2021 but received on the following day on 01.04.2021 at about 7.16 a.m. by the petitioner can be said to have been issued in accordance with Section 148

of the Income Tax Act, 1961 read with Section 149 of the Income Tax Act, 1961 as it stood prior to 01.02.2021 during the period in dispute.

34. The expression used in Section 148 and 149 of the Income Tax Act, 1961 as it stood during the period in dispute is "issue" and "serve". Thus, Section 148 of the Income Tax Act, 1961 as it stood during the period in dispute read with Section 149 of the Income Tax Act, 1961 contemplates the issuance of such notice within the time limits stipulated therein. Section 148 of the Income Tax Act, 1961 reads as under:-

> *"148. Issue of notice where income has escaped assessment.—1*
>
> *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, 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 to be furnished under Section 139.*

35. A reading of the impugned notice dated 31.03.2021 indicates that it has been digitally signed on 31.03.2021. It has to been thus issued in time for

the purpose of Section 148 and 149 of the Income Tax Act, 1961 as it stood prior to their substitution with effect from 01.04.2021. As far as the service of notice, summons etc., is concerned, Section 282 of the Income Tax Act, 1961 deals with the same. As per Section 282 of the Income Tax Act, 1961, the service of a notice or summons or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof, to the person therein named:-

(a)by post or by such courier services as may be approved by the Board; or

(b)in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(c)in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(d)by any other means of transmission of documents as provided by rules made by the Board in this behalf.

The board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

36. Thus, what is relevant in the issuance of notice in time. Service can be effected on a subsequent date. This is also the view of the Hon'ble Supreme Court in ***CIT*** Vs. ***Major Tikka Khushwant Singh*** ITR 212 ITR 650. Therefore, the objections of the impugned notice on the ground of limitation is overrule. As far as the contention is that the sufficient reasons have not been given to the petitioner before issuance of the impugned notice issued under Section 148 of the Income Tax Act, 1961 on 31.03.2021 is concerned, it is noticed that reasons have been given on 15.11.2021 in the notice issued under Section 142(1) of the Income Tax Act, 1961. At the stage of re-opening of the Assessment sufficiency of the reasons for re-opening the Assessment is not relevant. All that is required, the Assessing Officer should have reasons for re-opening the Assessment that was earlier completed.

37. In this case, it appears that the petitioner had dealing with M/s.Nectar Deal Trade Private Limited and which is a shell entity and had facilitated accommodation entries for evasion of tax in the form of jamakharchi transactions. Therefore, it is not open for the petitioner to state that no reasons were available for re-opening the Assessment for the purpose of Section 147 of the Act as it stood prior to 01.04.2021 for issuance of Notice under Section 148 of the Income Tax Act, 1961.

38. The other objection of the petitioner is that the sanction of the Principal Commissioner of Income tax was not obtained before the issuance of impugned Notice dated 31.03.2021 also cannot be countenanced. Merely because it is the view of the petitioner that the sanction was obtained mechanically and that there were no proper application of mind. The reasons communicated to the petitioner on 15.11.2021 under Section 142(1) of the Act, notice itself indicates that there were sufficient grounds for sanctioning/approval of issuance of Notice under Section 148 of the Income Tax Act, 1961. Therefore, I find no merits in this Writ Petition. Therefore, this Writ Petition is liable to be dismissed and it is accordingly dismissed.

39. This Writ Petition stands dismissed. No costs. Consequently, connected writ miscellaneous petitions are closed.

20.2.2025

Index: Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
arb/kkd/jas

To

1.The Deputy Commissioner of Income-tax,
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C.SARAVANAN, J.

arb/kkd/jas

Pre-delivery Order in
W.P.No.6068 of 2022
and
W.M.P.Nos.6152 and 6153 of 2022

.2025