**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 17.11.2025

CORAM :

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.No.24236 of 2022
and
W.M.P.Nos.23216 and 23217 of 2022

M/s.Primex Scans and Labs Private Limited
Represented by Authorized Signatory
Mahadevan Venkatachalam ... Petitioner

Vs.

1.The Central Board of Direct Taxes,
Represented by its Chairperson,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.

2.The Assistant Commissioner of Income Tax,
Circle – 1, LTU Chennai,
No.121 Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records in PAN:AAGCP2852G and quash the impugned order under Section 148A(d) of the Income Tax Act, 1961 in ITBA/COM/F/17/2022-23/1044356303(1) dated 30.07.2022 passed by the 2nd Respondent and the consequential notice under Section 148 of the Income Tax Act, 1961 in ITBA/AST/S/91/2022-23/1044358029(1) dated

30.07.2022 issued by the 2nd Respondent for the AY 2013-14 as illegal and without jurisdiction.

| | | |
|---|---|---|
| For Petitioner | : | Mr.T.Banusekar<br>for Mr.R.Sivaraman |
| For Respondents | : | Mrs.S.Premalatha<br>Senior Standing Counsel |

**ORDER**

In this Writ Petition, the Petitioner has challenged the impugned order dated 30.07.2022 passed under Section 148A(d) and Notice dated 30.07.2022 issued under Section 148 of the Act by the 2nd Respondent under the new regime as in force with effect from 01.04.2021 for the Assessment Year 2013-2014.

2. By the impugned order, Notice issued under Section 148A(b) dated 01.06.2022 has been sustained with a view to complete the re-assessment under Section 148 of the Act as in force with effect from 01.04.2021 for the Assessment Year 2013 – 2014.

3. The facts on record reveal that the Petitioner is engaged in medical diagnostic service and had filed its return of Income on 29.03.2013 for the AY 2013 - 2014. In the Return of Income that was filed, the Petitioner declared a loss of Rs.2,94,56,384/-.

4. This Return of Income was the subject matter of scrutiny assessment under Section 143(3) of the Act. The said assessment order was preceeded by a scrutiny notice dated 02.09.2014 under Section 143(2) of the Act, followed by Notice under Section 142(1) of the Act, wherein the Petitioner was called upon to give an explanation to various items including the breakup of revenue from operations and details of fresh issue of shares, share certificate and copy of the relevant bank statement for receipt of the share capital and share premium for the aforesaid Assessment Year.

5. The Petitioner has responded to the aforesaid Notice on 01.02.2016 along with annexures. The Petitioner has given the details called for in the reply dated 01.02.2016. Pursuant to the aforesaid reply by the Petitioner, the aforesaid assessment order came to be passed on 29.02.2016 under Section 143(3) of the Act.

6. After the aforesaid assessment order came to be passed on 29.02.2016 for the Assessment Year 2013 – 2014, the Department issued a fresh reassessment notice to re-open the assessment under Section 148 of the Act on 07.04.2021 under the old regime as in force till 31.03.2021.

7. Meanwhile, the Hon'ble Supreme Court in the case of ***Union of India Vs. Ashish Agarwal.,*** *(2023) 1 SCC 617* passed an order on 04.05.2022 pursuant to which a fresh notice under Section 148A(b) of the Act was issued on 01.06.2022 as in force with effect from 01.04.2021.

8. The Petitioner filed a reply to the said Notice on 15.06.2022 within the time stipulated by the Hon'ble Supreme Court in Ashish Agarwal case, referred to *supra* which has now culminated in the impugned order dated 30.07.2022 under Section 148A(d) and consequential Section 148 Notice issued under the new regime with effect from 01.04.2021.

9. The learned counsel for the Petitioner would submit that the Petitioner had issued 17,891 shares at premium to various persons on 24.04.2012 and 10.12.2012 based on the valuation adopted for issuance of such share at premium, based the market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow Method.

10. The learned counsel for the Petitioner would submit that the reasoning in the impugned order passed under Section 148A(d) of the Act for re-opening the assessment and to proceed further under Section 148 of the Act on 30.07.2022 is unsustainable.

11. It is submitted by the learned counsel for the Petitioner that considering the fact that the issue was already considered by the Assessing Officer before the assessment order was passed on 29.02.2016 for the Assessment Year 2013 – 2014, it is therefore submitted that both the issuance of Section 148 Notice under the old regime and the subsequent proceedings under the new regime with the issuance of Notice under Section 148A(b) on 01.06.2022 was without jurisdiction.

12. Specifically, the learned counsel for the Petitioner placed reliance on the decision of this Court in ***Mahogany Logistics Services (P) Ltd*** V. ***ITO*** [2024] 166 taxmann.com 595 (Mad), whereby this Court had concluded in Paragraph No.113 reads as follows:-

> *113.Since there are no fresh and tangible material were available for the Assessing Officer to form an opinion that income escaped assessment, it has to be held attempt is to review the assessment completed under Section 143(3) of the Income Tax Act, 1961. Therefore, the impugned proceedings*

*are held without jurisdiction and are liable to be quashed as prayed.*

13. It is therefore submitted by the learned counsel for the Petitioner that the impugned proceedings are without jurisdiction and therefore liable to be interfered with. It is submitted that valuation adopted by the Petitioner was strictly in accordance with Section 56(2)(viib)of the Act read with Rule 110A(2)(b) of the Act.

14. On the other hand, the learned Senior Standing Counsel for the Respondent would submit that the assessment order that came to be passed under Section 143(3) on 29.02.2016 has not discussed the issue regarding variance in the value adopted by the Petitioner for issuance of the shares on 24.04.2012 and 10.12.2012 based on the valuation and reports dated 30.04.2012 and 02.12.2012.

15. It is therefore submitted by the learned Senior Standing Counsel for the Respondent that the invocation of machinery under Section 148A on 01.06.2022 pursuant to the direction of the Hon'ble Supreme Court in ***Ashish Agarwal*** case**,** cited ***supra*** was perfectly within the four corners of law and therefore this Writ Petition is liable to be dismissed.

16. That apart, it is submitted that Writ Petition is pre-mature as the Respondent has only come to a *prima facie* conclusion that income has alleged by escaped assessment and therefore the Petitioner should be asked to participate in the reassessment proceedings.

17. I have considered the submission made by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent.

18. It is evident that the reassessment proceedings initiated earlier on 07.04.2021 under the old regime as in force till 31.03.2021 as also under the new regime as in force with effect from 01.04.2021 by issuance of Section 148A(b) Notice dated 01.06.2022, the new regime after the Hon'ble Supreme Court gave its decision in ***Ashish Agarwal*** case, cited ***supra*** which has culminated in the impugned order dated 30.07.2022 under Section 148A(d) and the impugned Section 148 Notice dated 30.07.2022 under the new regime as in force with effect from 01.04.2021 are clearly without jurisdiction, as the attempt of the Respondent is nothing but to review the assessment order that was passed earlier under Section 143(3) on 29.02.2016. The power to re-open the assessment is not akin to power to review. The assessment order dated

29.02.2016 was passed pursuant to Notice particularly calling for informations and the Assessing officer had also attempted to examine the same while passing the aforesaid assessment order passed under Section 143(3) of the Act.

19. The Hon'ble Supreme Court in **Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd.,** (2010) 187 Taxman 312 (SC) held that a schematic interpretation has to be given to the words "reason to believe". The Court held that an Assessing Officer cannot per se re-open assessments on the basis of "mere change of opinion". It was further held that the conceptual difference between power to review and power to re-assess has to be borne in mind.

20. The Hon'ble Supreme Court in **Kelvinator of India Ltd,** referred to *supra* held that the Assessing Officer has no power to review but only has power to re-assess and that the re-assessment has to be based on fulfillment of certain pre-condition. The Court observed that if the concept of "change of opinion" is removed, then, in the garb of re-opening the assessment, review would take place.

21. The Hon'ble Supreme Court in **Income Tax Officer Ward No. 16(2) v. M/s TechSpan India Private Ltd. & Anr.,** (2018) 6 SCC 685 has held as

under:-

> *"8. ... The language of Section 147 makes it clear that the assessing officer certainly has the power to re-assess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153. However, the use of this power is conditional upon the fact that the assessing officer has some reason to believe that the income has escaped assessment. The use of the words 'reason to believe' in Section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the assessing officer who may even initiate such re-assessment proceedings merely on his change of opinion on the basis of same facts and circumstances which has already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the Assessing Authorities to re-assess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order.*
>
> *9. Section 147 of the IT Act does not allow the re-assessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to re-assess and not the power to review."*

22. In case the assessment order dated 29.02.2016 resulted in an erroneous order prejudicial to the interest of the revenue, the only remedy that was available to the Respondent Department was under Section 263 of the Act

viz., under theor revisional jurisdiction. The reassessment proceedings under 148 of the Act under the new regime are not meant to review the decision already taken by the Assessing Officer on account of change of opinion.

23. Therefore, the impugned reassessment proceedings initiated under Section 148 on 07.04.2021 under the old regime as in force till 31.03.2021 are liable to be interfered with. Accordingly, the impugned orders and Section 148 Notice dated 30.07.2022 issued under the new regime as in force with effect from 01.04.2021 for the Assessment Year 2013 – 2014 are quashed.

24. This Writ Petition stands allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

**17.11.2025**

Neutral Citation : Yes / No
jas

To:

To
1.The Central Board of Direct Taxes,
Represented by its Chairperson,
Department of Revenue – Ministry of Finance,
Government of India,
New Delhi.

2.The Assistant Commissioner of Income Tax,
Circle – 1, LTU Chennai,
No.121 Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

**C.SARAVANAN, J.**

jas

W.P.No.24236 of 2022
and
W.M.P.Nos.23216 and 23217 of 2022

17.11.2025