WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.02.2026
Pronounced on	03.06.2026

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29752 of 2023
and
W.M.P.Nos.29361 & 29362 of 2023

Shanmugha Arts and Science Technology &
Research Academy
Rep. by its Chairman and Managing Trustee Mr.R.Sethuraman
SASTRA No.5, Dr. Subbaraya Nagar Main Road,
Kodambakkam, Chennai-600 024.
PAN No. AAAAB0187C ... Petitioner

Vs.

1. ACIT (Exemptions),
   Aayakar Bhawan-Annexe Building,
   No.121 Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600024.

2. Assessment Unit
   Income-tax Department
   National Faceless Assessment Centre,
   Ministry of Finance, Government of India, Delhi.

3. The Commissioner of Income Tax (Audit)
   206, IInd Floor, Annexe Building, Aayakar Bhavan
   121 M.G.Road, Nungambakkam
   Chennai - 600 034.

https://www.mhc.tn.gov.in/judis

WEB COPY

4. The Principal Chief Commissioner of Income Tax,
Main Building, Aayakar Bhavan
121 M.G.Road, Nungambakkam
Chennai - 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent contained in its order bearing DIN & Notice No: ITBA/AST/F/148A/2022-23/1042929205(1), dated 02.05.2022, passed by the 1st Respondent under Section 148A(d) of the Income Tax Act, 1961, for PAN: AAAAB0187C, for Assessment Year 2015-16 and all proceedings in the furtherance thereof including but not limited to the notice issued by the 1st Respondent under Section 148 of the Act, dated 02.05.2022 under cover of intimation letter bearing DIN & Letter No: ITBA/AST/S/148_1/2022-23/1042929244(1) dated 02.05.2022 for PAN: AAAAB0187C for Assessment Year 2015-16, and to quash the same as arbitrary, unjust, illegal, barred by limitation and consequently forbear the Respondents or its superiors, subordinates, agents etc. from re-assessing the petitioner's income for the Assessment Year 2015-16 under Section 147 of the Income Tax Act, 1961.

For Petitioner : Mr.R.V.Easwar
Senior Counsel
For Mrs.G.Vardini Karthik

For Respondents : Mr.V.J.Arulraj
Senior Standing Counsel

https://www.mhc.tn.gov.in/judis

WEB COPY

ORDER

In this writ petition, the petitioner has challenged the impugned Order dated **02.05.2022** passed under Section **148A(d)** and the impugned Notice dated **02.05.2022** issued Section **148** of the Income Tax Act, 1961.

2. The respondent has reopened the assessment for the Assessment Year **2015-16**, pursuant to Section 148A(b) Notice dated 31.03.2022.

3. The Operative portion of the impugned Order dated 02.05.2022 reads as follows:

"4. The assessee's contention was considered carefully and disposed of as under;

4.1 LIMITATION

4.1.1 This case has been selected / flagged in the Insight Portal of the Department in accordance with the Risk Management Strategy formulated by the CBDT under clause (i) to explanation (1) to section 148 of the Income-tax Act 1961.

4.1.2 This case falls under section 149(1)(b) of the IT Act, 1961 as information which suggests that the income chargeable to tax, represented in the form as asset has escaped assessment amounts to or likely to amount to fifty lakhs or more for that yearis available with the Assessing officer. In the instant case the fees of Rs.2,85,26,271/- taken in advance is in the form of asset.

https://www.mhc.tn.gov.in/judis

WEB COPY

4.2 CONCEPT OF ASSET

4.2.1 As per Section 149(1)(b) along with Explanation (1) of the IT Act, 1961:

'No notice under section 148 shall be issued for the relevant assessment year,-

(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 accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Explanation- For the purposes of clause (b) of this sub-section, asset shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.'

4.2.2 Thus, the amount that escaped assessment is receipt of fees in advance, which has not been included as income for the relevant Asst Year of 2015-16. Hence the objection raised by the assessee that it is not the case of the revenue to reopen the case as income chargeable to tax represented in the form of asset is not available cannot be accepted.

4.3 CHANGES IN THE FINANCE BILL

4.3.1 It may be noted here that the notice u/s 148A(b) was issued on 31.03.2022 in conformity with the provisions of the Finance Bill 2021 as on 01.04.2021 and not the bill introduced on 01.04.2022.

The provisions introduced in the Finance Act 2022 would be applicable only to the cases that are to be reopened after 01.04.2022 and not the ones reopened before that date.

4.4 NOTICE ISSUED ON AN ADJUDICATED ISSUE

https://www.mhc.tn.gov.in/judis

WEB COPY

4.4.1 It is stated that the new provisions of section 148 has been introduced w.e.f 01.04.2021 which has done away with the concept of change of opinion. The Assessing officer cannot act on his own regarding reopening of assessments as what constitutes information available with the Assessing officer is clearly defined in the section 148 itself i.e. 1) Information flagged in the case of the assessee for the relevant A.Y in accordance with the risk management strategy formulated by the Board from time to time and 2) any final objection raised by the CAG of India to the effect that the assessment in the case of the assessee for the relevant A.Y has not been made in accordance with the provision of the act.

It is informed that several categories of information obtained as per the Risk Management Strategy formulated by the CBDT are shared with the field formation for reopening of assessments. Information arising out of an audit objection is one such category of information which is flagged by the systems. Hence, in the assessee's case, the case has been selected as per clause (i) of explanation 1 to section 148 and the reopening is in order.

4.5 LIMITATION ALREADY BARRED UNDER PRE-AMENDED LAW, PECUNIARY JURISDICTION

4.5.1 The assessee has relied on the 1st proviso to section 149 of the IT Act, 1961 and has alleged that a notice u/s 148 could be issued only on or before 6 years from the end of the relevant Assessment year which, for 2015-16 a/y was 31.3.2022 and the notice u/s 148 is time barred under this provision on 31.3.2022 itself.

4.5.2 It is stated that the 1st proviso was inserted with a view to prevent the AO from reopening of assessments going back to 10 A. Y's before A. Y 2021-22 in accordance with section 149(1)(b). It means that only reopening is valid for A.Y's before A.Y 2021-22 up to six years as per the old provisions and reopening of assessments back by 10 years is possible starting from A.Y 2021-22 onwards. This is no way prevents the AO from reopening an assessment for A.Y 2015-16 which is clearly with in the 6-year period in this case.

https://www.mhc.tn.gov.in/judis

WEB COPY

5. The contentions of the assessee, on the merits of the case was carefully considered and found not acceptable. The assessee has merely stated the facts and has not substantiated it with any evidence.

*6. Hence, on the basis of the above facts, the case of M/s **M/s SHANMUGHA ARTS SCIENCE TECHNOLOGY & RESEARCH ACADEMY (SASTRA)** is a fit case for issuance of notice u/s 148 of the Act for the Asst Year 2015-16..*

7. This order is passed with the prior approval of the Competent Authority, that is, the Principal Cheif Commissioner of Income tax (Exemptions), Delhi.

8. Notice u/s 148 of the Income Tax Act, will be issued subsequently."

4. The petitioner had originally filed its Return of Income for the Assessment Year 2015-16 and the assessment was completed under Section **143(3)** on **20.03.2017**, by accepting the income returned in the Return of Income filed for the Assessment Year 2015-16. Subsequently, audit queries were raised by the Income Tax Department, to which the petitioner submitted a detailed reply on **11.02.2019**, explaining all the issues raised.

5. Thereafter, a notice under Section **148** dated **12.04.2021** was issued to the petitioner, which was challenged by the petitioner before this Court in **W.P. No.16517 of 2021**. The said writ petition formed part of a batch of cases and by order dated **04.02.2022**, this Court passed orders in line with the

https://www.mhc.tn.gov.in/judis

WEB COPY

orders passed in the batch of cases, challenging the notice issued under the old regime under Section 148 of the Income Tax Act, 1961, as it stood till 31.03.2021.

6. Pursuant thereto, a fresh notice under Section **148A(b)** dated **31.03.2022** was issued, relying upon the audit objections raised earlier. The petitioner submitted a detailed reply on **25.04.2022**, setting out the factual background and objecting to the reopening of the Assessment that was completed earlier. However, the respondent proceeded to pass the impugned order dated **02.05.2022** under Section **148A(d)** of the Income Tax Act, 1961.

7. The Learned Senior Counsel for the petitioner submits that the impugned proceedings are without jurisdiction and liable to be interfered. It is submitted that the reopening is based entirely on audit objections, which had already been responded to by the petitioner on **11.02.2019** and that there are no new tangible materials available with the respondent to justify the reopening of the assessment.

8. The Learned Senior Counsel further contended that the issue had

https://www.mhc.tn.gov.in/judis

WEB COPY

already been examined during the Original Assessment under Section **143(3)** and therefore, the present proceedings were inspired by a mere change of opinion. It is further submitted that the proceedings are clearly barred by limitation under Section **149** of the Income Tax Act, 1961 and that the audit objection, which forms the basis for reopening, has subsequently been dropped by the department.

9. Per contra, the learned Senior Standing Counsel for the respondents submitted that the Assessing Officer is empowered to reopen the assessment if there is reason to believe that income has escaped assessment. It is submitted that audit objections can constitute material for initiating proceedings under Section **148A** of the Income Tax Act, 1961 and therefore, the Assessing Officer was entitled to proceed independently in accordance with law.

10. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

11. In my view, the impugned order and notice do not suffer from any

https://www.mhc.tn.gov.in/judis

WEB COPY

infirmity, warranting interference under Article 226 of the Constitution of India.

12. The dispute in the present case pertains to the Assessment Year 2015-2016. Proceedings under the new regime can be initiated within a period of 3 years or 10 years, as per the limitation prescribed under Section 149 of the Income Tax Act, 1961, as amended with effect from 01.04.2021.

13. A notice under Section 148A cannot be issued if the limitation under the old regime has already expired. Under the old regime, proceedings under Section 148 could be initiated either within 4 years or 6 years. Since the amount involved exceeded the pecuniary limit of Rs.1 lakh, notices under Section 148 could have been issued within 6 years from the end of the relevant assessment year.

14. The amount that has escaped assessment as per the notice is Rs.2,85,26,271, which, according to the department, was not included in the income in the return filed by the petitioner on 19.09.2015. Thus, this amount was not the subject matter of the assessment that was earlier completed under Section 143(3) of the Income Tax Act, 1961, on 20.03.2017. Therefore, the

https://www.mhc.tn.gov.in/judis

WEB COPY

respondents were justified in invoking the machinery under Section 148 of the Act.

15. In this case, Section 148 notice was earlier issued on 12.04.2021 under the old regime as it stood until 31.03.2021, although a new regime had come into force on 01.04.2021. The petitioner had also successfully challenged the earlier proceedings in W.P.No.16517 of 2021, which were ordered on 04.02.2022.

16. The Hon'ble Supreme Court in ***Union of India Vs. Ashish Agarwal, [(2024) SCC Online SC 2693]***, delivered its verdict and guidelines under similar circumstances, which were later clarified by the Hon'ble Supreme Court in ***Union of India Vs. Rajeev Bansal, [2024 SCC Online SC 2993]***. Thus, the law has attained finality. Therefore, a fresh notice was issued to the petitioner under Section 148A(b) on 31.03.2022, which culminated in the impugned Order dated 02.05.2022.

17. Applying the ratio of the Hon'ble Supreme Court in ***Union of India Vs. Ashish Agarwal and Union of India Vs. Rajeev Bansal,*** referred to *supra,* it is clear that the impugned order was passed in time, as Section

https://www.mhc.tn.gov.in/judis

WEB COPY

148A itself contemplates the exclusion of time for the computation of limitation for issuing a Section 148 notice, specifically, the period between the date of the Section 148A(b) notice and the assessee's reply. Therefore, the argument of the learned Senior Counsel that the limitation under Section 148 had expired under Section 149 of the amended Act, cannot be countenanced.

18. On merits, there are *prima facie* indications that the petitioner failed to include certain amounts received as income in the return filed on 19.09.2015.

19. The aforesaid assessment order dated 20.03.2017 reads as under:

> *"The assessee is registered under Section 12AA of the I.T. Act vide DIT, Chennai proceedings in C.No.1146-III(106)/84 dated 03/07/1985 and also approval u/s 10(23C)/08-09 vide DIT, Chennai proceedings in CCIT-III/45/10(23C)/08-09 dated 15/12/2008.*
>
> *2. The assessee trust filed its return of income for the asst. year 2015-16 on 19/09/2015 admitting NIL income and gross receipts of Rs.154,96,03,897/-. The case was taken up for scrutiny as per Board's guidelines and notice u/s 143(2) of the Income Tax Act, 1961 dated 22/08/2016 was duly served.*
>
> *3. In response to the above, assessee's representative Sri. R.Sethuraman Vice Chancellor appeared and the case was discussed with him. He appeared from time to time and filed the details called for. The details filed were test checked and the case was discussed with him.*

https://www.mhc.tn.gov.in/judis

WEB COPY

4. Based on the above, the assessment for the A.Y 2015-16 is completed as under:

Taxable Income	*-Nil*
Tax thereon	*-Nil*

20. The impugned Order dated 02.05.2022, on the other hand, records that the petitioner not only failed to include Rs.2,85,26,271/- received as advance fees, but had also not utilized the grants of Rs.6,22,78,578/-, while incurring huge donation expenses of Rs.10,04,84,000/-. Paragraph 1.2 of the impugned Order dated 02.05.2022 clearly records as follows:

> *"1.2 The donation expenses claimed is very high and there are no details as to why and what purpose these donations were made. The assessee has purchased Cow and Calf for Rs.34,000/- and made dairy Expenses of Rs.29,02,780/-. These expenses do not relate to the main function of the Trust and the Trust Deed also does not authorise the expenditure."*

21. Thus, it is evident that the invocation of machinery under Section 148A, which culminated in the impugned order and notice dated 02.05.2022, is without merits.

22. Considering the same, the respondents are directed to initiate the proceedings and pass appropriate orders in accordance with law.

https://www.mhc.tn.gov.in/judis

WEB COPY

23. It is needless to state that, all issues are left open to the petitioner to raise before the respondents, other than the one relating to limitation.

24. In view thereof, this writ petition stands dismissed with the above liberty. No costs. Connected miscellaneous petitions are closed.

03.06.2026

raja

Neutral Citation : Yes / No

To

1. ACIT (Exemptions),
   Aayakar Bhawan-Annexe Building,
   No.121 Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600024.

2. Assessment Unit
   Income-tax Department
   National Faceless Assessment Centre,
   Ministry of Finance, Government of India, Delhi.

3. The Commissioner of Income Tax (Audit)
   206, IInd Floor, Annexe Building, Aayakar Bhavan
   121 M.G.Road, Nungambakkam
   Chennai - 600 034.

4. The Principal Chief Commissioner of Income Tax,
   Main Building, Aayakar Bhavan
   121 M.G.Road, Nungambakkam
   Chennai - 600 034.

https://www.mhc.tn.gov.in/judis

WEB COPY

C.SARAVANAN, J.

raja

Pre-delivery Order in
W.P.No.29752 of 2023

03.06.2026

https://www.mhc.tn.gov.in/judis