IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 6725 OF 2022

Standard Industries Limited,
59, The Arcade, World Trade Centre,
Cuffe Parade, Colaba,
Mumbai – 400 005. ... Petitioner

Versus

1. Deputy Commissioner of Income Tax,
Circle 3(3)(1), Mumbai,
Room No.609, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020.

2. Pr. Commissioner of Income-tax,
Mumbai-3, Mumbai,
Room No.612, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020.

3. Additional /Joint /Deputy/ Assistant Commissioner of Income-tax/Income Tax Officer, National Faceless Assessment Centre, Delhi.

4. Union of India,
Through the Joint Secretary & Legal Adviser,
Branch Secretariat,
Department of Legal Affairs,
Ministry of Law and Justice, 2nd Floor,
Aayakar Bhavan, M.K. Marg,
New Marine Lines, Mumbai-400 020. ..Respondents

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Mr.Niraj Sheth with Mr.Gunjan Kakkad i/b Mr.Atul K. Jasani, Advocate for petitioner.

Mr.Akhileshwar Sharma, Advocates for respondents.

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CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, JJ.

PRONOUNCED ON : 15th FEBRUARY, 2023

J U D G M E N T

PER DHIRAJ SINGH THAKUR, J.

1. The petitioner among others is engaged in the business of trading in the textile goods as also in real estate development. The petitioner owned a free-hold land at Sewree on which it was entitled to transferable development rights (hereinafter referred to as 'TDR') as per the Development Control Regulations for Greater Mumbai, 1991.

2. The petitioner claims that it entered into a Memorandum of Understating ('MOU') with Stan Plaza Limited, a wholly owned subsidiary of the petitioner, whereby the petitioner agreed to transfer its TDR to its subsidiaries. As per the terms of the MOU, the petitioner was required to obtain a Development Right Certificate (DRC) in the name of the subsidiary failing which the MOU was to stand cancelled. The petitioner claimed that it was

unable to obtain the said DRC within the stipulated period and that finally the MOU was terminated vide Deed of Cancellation dated 18th March 2014. Consequently, the sale of TDR aggregating to Rs.403.80 Lakh which was shown as business income in the accounts for the year ended 31st March 2012 was reversed by the petitioner in its books of account and the reversal shown and disclosed on the face of the statement of profit and loss as well as in the Cash Flow Statement for the year ended 31st March 2014. A detailed note explaining the circumstances leading to the said reversal was also given in note No.25 forming a part of the financial statement for the year ended 31st March 2014.

3. The case of the petitioner is that the revenue from the sale of the TDR was treated as business income and were accordingly offered to tax in the return of income for the assessment year 2012-13, which was selected for scrutiny under order of assessment under section 143(3) of the Act. It is further stated that in the return of income from the assessment year 2014-15, the loss resulting from the reversal of the sale of TDR was treated as the business loss and the deduction thereof was claimed under section 28 of the Act. The claim of such loss as a deduction from business income was specifically disclosed in the

return of income and profit and loss account for the assessment year 2014-15. It is stated that during the course of assessment proceedings for the assessment year 2014-15, the petitioner had, along with return of income, also furnished the audited financial statements. The return was selected for scrutiny for the assessment year 2014-15, during the course of which the respondent No.1 made enquiries into cancellation of TDR sale. A reference in this regard was made to a communication, dated 11th March 2015 issued by the petitioner to the AO which communication is on record. According to this communication, the petitioner appears to have explained the basis for valuation/consideration reserving the transferable development rights and the reasons for cancellation of the MOU to the AO. For purposes of reference, the communication dated 11th March 2015 is partially reproduced hereunder :

> We refer to the ongoing assessment proceedings under section 143(3) of the Income Tax Act, 1961 ('the Act') and in continuation of the submission filed on 1 November 2013, 2 March 2015 and 9 March 2015 (copies enclosed at Annexure I), we enclose details as under :
>
> A **Basis for valuation/consideration vis-à-vis Transferable Development Rights (TDR)**
>
> 1. We refer to our submission dated 9 March 2015, in this regard we would like to mention that a signed Memorandum of Understanding (MOU) 26 March 2012 with Stan Plaza Limited (SPL) is cancelled in the financial

year 2013-14 and the company has reversed the amount offered for tax during the financial year 2013-14.

2. The reason for cancellation of the MOU are as under : As per the terms of the MOU, the Company, within three months of the date of the MOU, was required to obtain the Development Rights Certificate (DRC) ……."

4. At this stage, it would also be necessary to mention that learned counsel Mr.Niraj Seth took pains to take us through the income tax return in ITR Form 6 with a view to reflect the entry with regard to reversal of sale of transferable development rights, as also communication dated 16th September 2015, by virtue of which the petitioner had submitted copies of the audited financial statements to the AO along with tax audit report issued under section 44AB of the Act in response to the notice dated 28th August 2015 issued under section 143 of the Act. The petitioner also referred to the auditor's report with a view to emphasize that the entry with regard to reversal of sale of TDR was very much referred to and explained in detailed in the notes attached to the Auditor's report. In that background, it appears that the order of assessment under section 143(3) came to be passed on 2nd December 2016 .

5. Subsequently, the AO on 26th March 2021 issued a notice under section 148 of the Act seeking to reopen the assessment of the assessment year 2014-15 on the ground that income had escaped income within the meaning of section 147 of the Act. The reasons for reopening as furnished to the petitioner read as under :

> In this case, assessment for AY 2-14-15 was completed on 02.12.2016 accepting the returned loss of Rs.11,83,03,084/-.
>
> As per provisions of section 37(1) of the IT Act, any expenditure incurred by a person, not being in the nature of capital expenditure laid out wholly and exclusively for the purposes of business, shall be allowed as deduction.
>
> It is observed from the note 25(m) attached to annual accounts that assessee company has reversed sale of TDR aggregating Rs.403.80 lakhs in the profit and loss accounts. Further, on perusal of the notes to annual accounts shown assessee company was holding free hold land at Sewree, Mumbai, was part of the land on which the company operated cotton textile mill in earlier years. The assessee company entered into MOU in March, 2012 with a subsidiary company for transfer of TDR on above referred plot. The company followed up its application for FSI with Municipal Authorities, however, could not get the same. Accordingly, it got cancelled MOU deed in March, 2014 and the assessee reversed the sale of TDRof Rs.403.80 lakhs. Since, the plot of land was part of factory which was used for the business purpose by the assessee, any transaction related to same, i.e., sale will be capital item and not revenue item. Similarly, any reversal of sale of TDR on this plot will be capital in nature and will not be allowable as deduction in profit and loss account.

> Considering the above, the claim of the assessee is not in order and therefore the claim of incorrect expenditure being capital in nature resulted in underassessment of income to that extent and the same has escaped assessment.
>
> 3Considering the above, it is clear that the assessee company has not disclosed the full and true material in the return of income filed and therefore, the condition specified in the proviso to section 147 are fulfilled. It is pertinent to mentioned here that even though the assessee has e-filed the audited P & L Account and Balance Sheet or other details/schedules, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered with due diligence. For the above reasons, it is not a case of change of opinion. Therefore, I am satisfied that the assessee had failed to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration.
>
> 4In view of the above, it is a fit case for initiation of proceedings u/s.147 of Income Tax Act, 1961, in order to frame proper assessment to bring to tax appropriate income attributable to the above, which has escaped assessment.

6. Objections to reopening were filed by the petitioner in which it was highlighted that the basis of reopening recorded in the reasons had already been gone into during the regular assessment proceedings under section 143(3) of the Act and therefore, it was stated that the reopening was nothing but a change of opinion. The AO then appears to have sought confirmation from the assessee vide communication dated 9th

January 2022 asking the petitioner to furnish documentary evidence that the issue had been specifically raised and dealt with during the original assessment proceedings.

7. The petitioner, in response, addressed a communication dated 24th January 2022 whereby reference was made to the communication dated 11th March 2015 which had been addressed to the AO during the regular assessment proceedings. A copy of the said communication was also furnished to the AO. However, the AO was not satisfied with the explanation so tendered and vide communication dated 9th April 2022, rejected the plea of the petitioner on the ground that there was no documentary evidence whatsoever that 'the issue of TDR was discussed during the original assessment proceedings under section 143(3) of the Act and that a mere statement that it was discussed would not establish the said fact. By rejecting the argument of the petitioner in the aforementioned manner, the AO held that the reassessment proceedings could not be said to be a 'change of opinion'.

8. In the present case, since the assessment is sought to be reopened beyond the period of four years in a case where an order of assessment was passed under section 143(3) of the Act, the AO

was required to satisfy the jurisdictional conditions, I.e., firstly on the basis of his reasons to believe that income chargeable to tax had escaped assessment and secondly, that there was failure on the part of the petitioner to disclose fully and truly all material facts necessary for reassessment during the original assessment proceedings.

9. Counsel for the petitioner stated that both the jurisdictional conditions have not been met with by the AO, whereas counsel for the revenue supported the view expressed by the AO, based upon the reasons recorded, and the reply affidavit filed in support of the reopening of the assessment.

10. In ***Hindustan Lever Ltd. V/s. R. B. Wadkar, Assistant Commissioner of Income-Tax and Ors.*** [1], it was held that in the reasons recorded, the AO must disclose as to what was that fact or material which was not disclosed by the assessee fully and truly which was necessary for assessment so as to establish the the vital link between the reasons and evidence. It was held :

> "……The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the

1 2004 ITR 332 Vol.268.

> manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.

11. In the present case, it can be seen that while the AO has made a plain statement that there was failure to disclose fully and truly the material facts, yet the AO has neither disclosed nor identified as to what were those material facts which were not disclosed in the earlier assessment proceedings. The AO, on the other hand, did record in the reasons that the assessee had filed audited profit and loss account, balance-sheet and other details/schedules, however, short of admitting that the details with regard to reversed sale of TDR had been reflected in the aforementioned documents and the return, proceeded to take shelter behind a non-existent excuse that the material facts were embedded in such a manner that the same could not be

discovered with due diligence. It is difficult to accept this plea inasmuch as all these details were contained in the return of income in the audited accounts and profit and loss statement, also explained in the notes attached to the auditor's report, besides the communication dated 11th March 2015 issued by the AO pursuant to which the order of assessment under section 143(3) came to be passed.

12. In our opinion, therefore, there was no failure on the part of the petitioner to disclose fully and truly any material fact to the AO relevant to the assessment year 2015-16. An order of assessment under section 143(3) having been passed must be deemed to have been passed after considering all material facts in regard to the queries raised which stood duly answered in terms of the judgment of the Full Bench decision of Delhi High Court in ***Commissioner of Income-tax Vs. Kelvinator of India Ltd.***[2]. In the said judgment, the Full Bench of Delhi High Court held :

> " We also cannot accept submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded on analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding under section 147 of the Act. The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of Section 143 or Sub-section (3) of

2 [2002] 123 Taxman 433 (Delhi)

> Section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act the judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without anything further, the same would amount to giving premium to an authority exercising quasi- judicial function to take benefit of its own wrong."

13. The second argument of learned counsel for the petitioner was that there was no basis for the reason to believe and that in fact this was a case of 'change of opinion' as there was no tangible material with the AO for his reason to believe that income had escaped assessment for the said assessment year. It was stated that there was no new information received by the AO and reference was made to the notes attached to the annual accounts submitted by the assessee-company for the purposes of reopening. It is, thus, clear that no new information was received by the AO between the date of the order of assessment under section 143(3) till the issuance of the notice impugned under section 148 of the Act. Therefore, the ratio of the judgment in ***Jindal Photo Films Ltd. Vs. Deputy Commissioner of Income Tax*** [3] would squarely apply. In this case, it was held :

3 [1998] 234 ITR 170 (Delhi)

> ".....all that the Income-tax Officer has said is that he was not right in allowing deduction under Section 80I because he had allowed the deductions wrongly and, therefore, he was of the opinion that the income had escaped assessment. Though he has used the phrase "reason to believe" in his order, admittedly, between the date of the orders of assessment sought to be reopened and the date of forming of opinion by the Income-tax Officer nothing new has happened. There is no change of law. No new material has come on record. No information has been received. It is merely a fresh application of mind by the same Assessing Officer to the same set of facts. While passing the original orders of assessment the order dated February 28, 1994, passed by the Commissioner of Income-tax (Appeals) was before the Assessing Officer. That order stands till today. What the Assessing Office has said about the order of the Commissioner of Income-tax (Appeals) while recording reasons under Section 147 he could have said even in the original orders of assessment. Thus, it is a case of mere change of opinion which does not provide jurisdiction to the Assessing Officer to initiate proceedings under Section 147 of the Act.
>
> It is also equally well settled that if a notice under Section 148 has been issued without the jurisdictional foundation under Section 147 being available to the Assessing Officer, the notice and the subsequent proceedings will be without jurisdiction, liable to be struck down in exercise of writ jurisdiction of this court. If "reason to believe" be available, the writ court will not exercise its power of judicial review to go into the sufficiency or adequacy of the material available. However, the present one is not a case of testing the sufficiency of material available. It is a case of absence of material and hence the absence of jurisdiction in the Assessing Officer to initiate the proceedings under Section 147/148 of the Act."

14. The Apex Court in ***Commissioner of Income Tax V/s.***

Kelvinator of India Ltd.[4] held that there was a difference between 'power to review' and 'power to reassess' under section 147 and that the AO had no power to review and that, if the concept of 'change of opinion' was removed, then, in the garb of reopening of the assessment, a review would take place. It was held :

> " ....The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."

15. Be that as it may, we have no hesitation in holding that both the jurisdictional conditions had not been satisfied by the AO in the reasons recorded on the touchstone of section 147 of the Act and the ratio of the judgments mentioned hereinabove.

16. Be that as it may, the petition is allowed. The order impugned in the present petition, dated 9th February 2022

4 [320) ITR 561 SC

rejecting the objections of the petitioner, as also the impugned notice dated 26th March 2021 under section 148 of the Act are held to be unsustainable and are accordingly set aside.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10740/2022

SEEMA GUPTA ..... Petitioner

Through: Mr.Ruchesh Sinha, advocate.

versus

ITO, WARD 70(1) NEW DELHI & ORS. ..... Respondents

Through: Mr.Ruchir Bhatia, standing counsel for the Revenue.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 19.07.2022

C.M.No.31175/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.10740/2022 & C.M.No.31174/2022

Present writ petition has been filed challenging the order dated 30th June, 2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and the consequential notice dated 30th June, 2022 issued under Section 148 of the Act for the Assessment Year 2013-14.

Learned counsel for the petitioner submits that the reassessment proceeding in the case of the petitioner is clearly a case of 'change of opinion'. In support of his submission, he draws this Court's attention to the

original assessment proceedings, which culminated in an order under Sections 143(3) and 154 of the Act.

A perusal of the paper book reveals that the issue which is sought to be reopened in the proceeding under Section 148 of the Act had been discussed, deliberated and verified by the Assessing Officer at the time of original assessment proceedings. It seems that the Assessing Officer had applied its mind and then passed the assessment order in favour of the petitioner.

However, while passing the impugned order under Section 148A(d) of the Act, the Assessing Officer has wrongly concluded that the assessee had not disclosed the sale of the property and long term capital gain in the ITR filed or was accepted by the Assessing Officer.

Keeping in view the aforesaid, the impugned order and notice dated 30th June, 2022 issued under Section 148A(d)/148 of the Act are set aside and the matter is remanded back to the Assessing Officer for fresh consideration in accordance with law within four weeks.

Accordingly, the present writ petition along with pending application stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 19, 2022
KA

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 10866/2023

Chaturbhuj Gattani S/o Shriniwas Gattani, Aged About 55 Years, Ramanuj Sadan, Rajsamand (Rajasthan).

----Petitioner

Versus

1. Income -Tax Officer, Ward-1 Near B.r. Mirdha College, Manasar Road, Nagaur Rajasthan
2. Principal Commissioner Of Income Tax, Jodhpur-1 Aaykar Bhawan, Paota C Road, Jodhpur (Rajasthan)

----Respondents

Connected With

D.B. Civil Writ Petition No. 10640/2023

Saroj Gattani W/o Shri Chatturbhuj Gattani, Aged About 51 Years, Resident Of Ramanuj Sadan, Rasamand (Rajasthan).

----Petitioner

Versus

1. Income Tax Officer, Ward-1 Near B.r. Mirdha College, Manasar Road, Nagaur Rajasthan
2. Principal Commissioner Of Income Tax, Jodhpur-1, Aayakar Bhawan, Paota-C Road, Jodhpur (Rajasthan)

----Respondents

For Petitioner(s) : Mr. Prateek Gattani

For Respondent(s) : Mr. K.K. Bissa, Mr. Hargovind Chanda

HON'BLE MR. JUSTICE VIJAY BISHNOI
HON'BLE DR. JUSTICE NUPUR BHATI

Judgment / Order

02/01/2024

(Per Hon'ble Vijay Bishnoi, J.)

Since common question is involved in both these writ petitions, they are being decided together by this common order.

For the sake of convenience, the facts of DBCWP No.10866/2023 are taken into consideration.

By way of these writ petitions, the petitioners have challenged the orders dated 28.3.2023 and 29.3.2023 passed by the respondent No.1 – the Income Tax Officer, Nagaur (for short 'the Jurisdictional Authority') under Section 148A(d) of the Income Tax Act, 1961 (for short 'the IT Act') and the consequential notices dated 28.3.2023 and 29.3.2023 issued by the Jurisdictional Authority under Section 148 of the IT Act.

Brief facts of the case are that the petitioner is the proprietor of M/s Tirumala Enterprises and engaged in trading of marbles, stones and granite etc. The petitioner is regularly filing his income tax return and also filed income tax return for the assessment year 2019-20 on 29.10.2019 declaring total income of INR 3,13,390/-.

The Jurisdictional Authority issued a notice to the petitioners dated 13.3.2023 under Section 148A(b) of the IT Act to show cause why notice under Section 148 of the IT Act should not be issued in view of the information available with it. Along with the notice, an annexure has also been supplied to the petitioner,

wherein information available with the respondent-department is disclosed. Along with the annexure, a photo copy of the Insight Portal is also attached.

In response to the above notice, the petitioner filed a detailed reply dated 17.3.2023, wherein apart from submitting his defence, he has prayed that before proceeding further in the matter, he may be provided copy of the report of the DDIT/ADIT (Inv.) and complete details and particulars of fake entities on the basis of which it has been alleged by the respondent-department that the petitioner has received bogus invoice from fake and bogus entities.

The Jurisdictional Authority, after considering the reply filed on behalf of the petitioner, has passed the order dated 28.3.2023 under Section 148A(d) of the IT Act and subsequently issued notice dated 28.3.2023 under Section 148 of the IT Act, which are under challenge in these writ petitions.

Learned counsel for the petitioner has argued that the impugned order dated 28.3.2023 under Section 148A(d) of the IT Act as well as the consequential notice dated 28.3.2023 under Section 148 of the IT Act are in contravention of the principles of natural justice and, therefore, it is prayed that the same may be declared perse illegal and void. It is further argued that the impugned order dated 28.3.2023 has been passed by the Jurisdictional Authority without supplying complete material and documents on which the respondent-department has relied upon to the petitioner.

Learned counsel for the petitioners has submitted that the Hon’ble Supreme Court in ***Union of India (UOI) and Ors. Vs.***

Ashish Agarwal, reported in 2022 (7) ADJ 319, has issued a categorical direction in Para 8(i) that the Assessing Officer of the respondent-department is required to submit all the information and material to the assessee, which have been relied upon by the Revenue so that the assessee can reply to the notice under Section 148A(b) of the IT Act.

It is contended that with the notice dated 13.3.2023, issued by the Jurisdictional Authority under Section 148A(b) of the IT Act, an annexure is enclosed, wherein information available with the Jurisdictional Authority is disclosed. It states that as per the information available with the department, it is seen that during the financial year 2018-19, the assessee made transaction of bogus purchase from fake entities to the tune of Rs.79,31,854/- in the name of M/s Tirumala Enterprises. Apart from the above information, three other information about TDS, Statements and Time Deposits have been also disclosed.

So far as the other three information are concerned, the petitioner easily obtained details as it relates to the accounts of petitioner, however, so far as transaction of bogus purchase from fake entities is concerned, the respondent-department has not provided any specific particulars of alleged fake entities like their name, invoice number, address, GST registration etc. It is submitted that the petitioner, in his reply dated 17.3.2023, has requested for providing complete details and particulars of alleged fake entities so that he can file a detailed response to it, however, no such information was provided and the Jurisdictional Authority has passed the order dated 28.3.2023.

Learned counsel for the petitioner has emphasized that the Jurisdictional Authority has placed heavy reliance on the report of the DDIT/ADIT (Inv.) 1, Udaipur to the alleged bogus purchase from fake entities filed by the petitioner, but copy of the same has not been supplied to him and as such, sufficient material, on which, the Jurisdictional Authority has relied upon, has not been supplied to the petitioner.

Learned counsel for the petitioner has argued that the Division Bench of this Court in the case of ***Micro Marbles Private Limited Vs. Office of the Income Tax Officer (DBCWP No.13719/2021) decided on 4.1.2023,*** has categorically held that the material, on which, the assessing authority has placed reliance to initiate proceedings under Section 148 of the IT Act, is required to supply to the assessee. Learned counsel has also placed reliance on the decision of Division Bench of Delhi High Court in ***Charu Chains and Jewels Pvt. Ltd. Vs. Assistant Commissioner of Income Tax,*** reported in ***(2023) 456 ITR 352*** and submitted that the underlined information/material, which has been made basis of assessment/re-assessment proceedings, is required to be furnished to the assessee.

Learned counsel for the petitioner, therefore, submitted that in the present case, admittedly, the material on which, the Jurisdictional Authority has placed reliance has not been supplied to the petitioner, therefore, the order dated 28.3.2023 passed by the Jurisdictional Authority under Section 148A(d) and consequential notice dated 28.3.2023 under Section 148 of the IT Act are liable to be quashed and set aside.

Per contra, learned counsel for the respondents has vehemently opposed these writ petitions and argued that the information, on which, the Jurisdictional Authority has placed reliance, while issuing notice to the petitioner under Section 148 of the IT Act, has been supplied to the petitioner and after considering the reply filed on behalf of the petitioner in response to the said notice, the impugned order dated 28.3.2023 under Section 148A(D) and the consequential notice dated 28.3.2023 under Section 148 of the IT Act have been passed, which are perfectly in accordance with law.

It is also submitted by learned counsel for the respondents that at the stage of issuing notice under Section 148A(b) of the IT Act, limited enquiry is required to be made to ascertain existence of information, which suggests that the income chargeable to tax has escaped assessment and the petitioner will have the opportunity to raise all his defence during the assessment proceedings.

In support of the above contention, learned counsel for the respondents has placed reliance on the decisions of the Division Benches of this Court in ***Jugal Kishore Lohiya Vs. Principal Chief Commissioner of Income Tax & Ors. (DBCWP No.8429/2023) decided on 4.8.2023 and M/s Chetak Enterprises Ltd. Vs. The Assistant Commissioner of Income Tax (DBCWP No.7062/2022) decided on 20.3.2023.***

Heard learned counsel for the parties and perused the material available on record.

For the adjudication of the controversy involved in the present writ petitions, it would be apposite to quote the existing provisions of Sections 147, 148 and 148A of the IT Act.

Sections 147, 148 and 148A of the IT Act read as under :

"147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment yeart. unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failuret on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material factst necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.

Provided also that the Assessing Officer "may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.-Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.
Explanation 2-For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E(c) where an assessment has been made, but-

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.-For the purpose of assessment or reassessmenttt under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4.-For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

Explanation.-For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.]

148. 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 a period of three months from the end of the month in which such notice is issued or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee), 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 required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income charge- able to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section:]

Provided also that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.]

Explanation 1. For the purposes of this section and section 148A, the informa tion with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,-

(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; Jor

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court.

Explanation 2-For the purposes of this section, where,

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee, or

(ii) a survey is conducted under section 133A, other than under sub- section (2A) [*] of that section, on or after the 1st day of April, 2021, in the case of the assessee; or,

(iii) 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 or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or docu- ments, seized or requisitioned under section 132 or 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, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.-For the purposes of this section, specified authority means the specified authority referred to in section 151.]"

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, 23[***] 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, 24[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.]"

As per unamended Section 147 of the IT Act, the Assessing Officer could initiate assessment/reassessment proceedings only if he has "reason to believe" that the income chargeable to tax of an assessee has escaped assessment, however, with the amendment in Sections 147, 148 and insertion of Section 148A vide Finance Act 2021 w.e.f. 1.4.2021, the assessment/reassessment proceedings can be initiated by the Assessing Officer on receiving information only. In other words, the requirement of Assessing Officer of having "reason to believe" is no more there for initiating assessment/reassessment proceedings in a case of escaped assessment in respect of income chargeable to tax.

Section 148A of the IT Act provides procedure required to be followed by the Assessing Officer before issuance of notice under Section 148 of the IT Act to any assessee. Section 148A(a) of the IT Act empowers the Assessing Officer to conduct any enquiry, if required, with the prior approval of specified authority in relation to any information regarding chargeable income to tax which escaped assessment. Section 148A(b) of the IT Act mandates that the Assessing Officer shall provide an opportunity of hearing to the

concerned assessee by issuing a show cause notice within thirty days, not less than seven days or within the extended time that why notice under Section 148 of the IT Act be not issued on the basis of information available in relation to the income chargeable to tax which escaped assessment. As per Section 148A(c) of the IT Act, if any reply is filed by the assessee, the Assessing Officer shall consider the same. Section 148A(d) mandates that the Assessing Officer shall decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue notice to the assessee under Section 148 of the IT Act by passing an order within specified time as prescribed with prior approval of the authority. Proviso to Section 148A of the IT Act speaks about exceptions where proceedings cannot be initiated under Section 148A, however in the facts of the present case, the same are not relevant, therefore, we are not offering any comments on it.

As per the above scheme, if an Assessing Officer is in receipt of any information, which suggests that any income chargeable to tax has escaped assessment, he may conduct any enquiry, if required, with prior approval of specified authority and after providing opportunity of hearing to the assessee, the concerned authority can pass order whether or not it is a fit case to issue notice under Section 148 of the IT Act.

The "information", on the basis of which, the Assessing Officer can proceed under Section 148A of the IT Act is explained in Explanation 1 and 2 of Section 148 of the IT Act.

We are of the view that Section 148A(b) mandates only to supply information to the assessee and not the material, on the

basis of which, the Assessing Officer has formed prima facie opinion that any chargeable income to tax has escaped assessment.

It is settled that the words used in the provisions of taxing statute are required to be given their plain meaning and nothing can be implied from or read in it.

In our opinion the plain reading of Section 148A clearly suggests that the Assessing Officer is required to supply information before issuing notice under Section 148A in the prescribed manner and not the other material on the basis of which it has formed prima facie opinion that income of the assessee chargeable to tax has escaped assessment.

We found support from the judgments of the High Court of Allahabad rendered in ***Deepak Kumar Yadav Vs. Principal Commissioner of Income Tax and Ors., reported in 2023/AHC/102834*** and High Court of Madhya Pradesh in ***Amrit Homes Private Limited Vs. Deputy Commissioner of Income Tax and Another, reported in 2023 SCC Online MP 2359***.

The High Court of Allahabad in ***Deepak Kumar's case*** (supra), while dealing with Section 148A of the IT Act, has held as under :

> "9. Reading of Section 148A reveals that the assessing authority shall, before issuing any notice under section 148 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. On receipt of such information the Assessing Officer is required to provide an opportunity of being heard to the assessee, in the manner specified, as to why a notice

under Section 148 of the Act 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 as per clause (a), if any. The assessing authority is then required to consider the reply of the assessee, if any, in response to the show cause notice referred to in Clause (b). It is thereafter that the assessing authority has to 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 in the manner specified. The proviso exempts the category of cases which are not covered by Section 148A. The proviso to section 148A has no applicability in the facts of the present case and, therefore, it does not require any examination.

10. The statutory scheme is, therefore, clear that the assessing authority on receipt of information which suggests that the income chargeable to tax has escaped assessment may conduct any enquiry in the matter, if required, and then provide an opportunity of being heard to the assessee by serving upon him a notice under clause (b). On receipt of reply of assessee to the notice referred to in clause (b) the Assessing Officer on the basis of material available on record including the reply of assessee decide whether or not it is a fit case to issue a notice under Section 148.

11. The scheme for reassessment of escaped income introduced vide Finance Act, 2021 provides for an opportunity to the assessee before issuance of notice under section 148 of the Act of 1961. After such notice to the assessee and consideration of reply of assessee in response to the notice the assessing authority has to decide on the basis of material available on record by passing an order under section 148A(d) whether a notice under section 148 is fit to be issued in the case. The consideration at the stage of passing order under section 148A(d) is thus limited to ascertainment of information with the Assessing Officer that income of assessee has escaped assessment to tax. Final

determination on the question whether income of assessee has actually escaped assessment is then to be made after notice under section 148, by passing an order of assessment or reassessment under section 147, subject to the provisions of section 148 to 153 of the Act of 1961.

12. The Act of 1961 does not contemplate any detailed adjudication on the merits of information available with the Assessing Officer at the stage of passing order under section 148A(d) of the Act of 1961. In our considered view there is a specific purpose for not introducing any further enquiry or adjudication in the statute, on the correctness or otherwise of the information, at this stage. The reason for it is obvious. Under the scheme of the Act a detailed procedure has been provided under Section 148 for issuance of notice whereafter the assessing authority has to determine, in the manner specified, whether income has escaped assessment and the defence of assessee, on all permissible grounds, remains open to be pressed at such stage. The ultimate determination made by the assessing authority under Section 147 for reassessment is otherwise subject to appeal under Section 246-A of the Act. Merits of the information referable to Section 148A thus remains subject to the reassessment proceedings initiated vide notice under Section 148 of the Act. It is for this reason that issues which require determination at the stage of reassessment proceedings and in respect of which departmental remedy is otherwise available are not required to be determined at the stage of decision by the assessing authority under Section 149A(d). The scope of decision under Section 148A(d) is limited to the existence or otherwise of information which suggests that income chargeable to tax has escaped assessment.

13. xxxxxx

14. It is only to the extent of availability or otherwise of information suggesting that income has escaped assessment that the scope of enquiry rests under Section

148A(d). The correctness or otherwise of information is an aspect to be gone into later by the assessing authority at the stage of proceedings under Section 148 of the Act for reassessment. Any other interpretation, in our view, is not countenanced in the scheme of the Act of 1961.

15. The information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment has been defined in Explanation 1 to the second proviso to section 148 of the Act which is already extracted above. There is no challenge to the information contained in the notice under section 148A(b) of the Act on the ground that the information available with the Assessing Officer is not referable to Explanation 1 to the second proviso to section 148 of the Act. The Finance Act, 2021 is otherwise not under challenge. We are, therefore, of the considered opinion that the challenge to the information, by the assessee, on the defence setup in reply to show cause notice merits no further consideration at the stage of decision under section 148A(d) of the Act."

The High Court of Madhya Pradesh in ***Amrit Homes Private Limited's case*** (supra), while considering Section 148A of the IT Act has held as under :

> "7. From the aforesaid, it is evident as day light that the present petition which is also against the order u/S 148A(d) and the consequential notice u/S 148 of IT Act needs to be considered on the anvil of the grounds raised in this petition and also on the anvil of foundational prerequisites u/S 148A justifying issuance of an order u/S 148A (d) followed by notice u/S 148.
> 8. Section 148A was inserted in the IT Act by Finance Act, 2021 dated 01.04.2021, primarily to give effect to the ratio laid down by Apex Court in GKN Driveshafts (India) Ltd. v. Income Tax Officer, (2003) 1 SCC 72 which inter alia held thus:

> "5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

9. Section 148A on becoming a part of the Statute Book provided an additional opportunity to the assessee of being heard to the assessee before reopening case of escaped assessment.

10. From bare perusal of newly inserted Section 148A, it is obvious that it statutorily provides for the following prerequisite before issuance of notice in cases of escaped assessment.

> A. Conduction of inquiry with prior approval of specified authority in regard to information which suggests that certain income chargeable to tax has escaped the assessment.
>
> B. For conducting the aforesaid inquiry, a notice to show-cause is required to be served on the assessee within the prescribed time, requiring assessee to explain as to why notice u/S 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment.
>
> C. The Assessing Officer is required to consider the reply of the assessee to the show-cause notice.
>
> D. The nature of inquiry contemplated by Section 148A is not a detailed one. The purpose of this inquiry is to communicate to assessee that Assessing Officer

is in possession of information suggesting that certain income of assessee which is chargeable to tax has escaped assessment. This communication is made by issuance of show-cause notice which should contain enough information and reasons to reveal the said intention of the Assessing Officer. Thereafter, the assessee on receiving the show-cause notice is required to file reply.

11. The show-cause notice thus should be reasoned enough to enable the assessee to know the mind of the Assessing Officer as regards factum of certain income having escaped assessment and his intention to re-open assessment of such income. This is possible only when the show-cause notice contains enough information to disclose the intention of the Assessing Officer so as to afford reasonable opportunity to assessee to respond. The contents of the show-cause notice thus should be precise and concise satisfying the concept of reasonable opportunity.

12. This Court hastens to add at this juncture that this inquiry as explained above cannot be a detailed one where assessee is given opportunity of adducing evidence in support of his defence/response. However, this inquiry includes within its ambit, the obligation of the Assessing Officer to supply reasons which are suggestive of a prima facie case revealing income chargeable to tax having escaped assessment.

13. Pertinently, the statute [See 148A(b)] does not oblige the Assessing Officer to supply the relevant material/evidence which are the foundation for the Assessing Officer to come to the prima facie view that income chargeable to tax has escaped assessment. This is because neither in the judgment of the Apex Court in the case of GKN Driveshafts (India) Ltd. (supra) nor in Section 148A any such indication can be gathered.

14. The only duty cast upon the Assessing Officer is to supply information by mentioning the same in the show-cause notice issued u/S 148A(b) of IT Act.

15. This Court has culled out the foundational prerequisite of Section 148A, as aforesaid, to emphasize that if the

inquiry contemplated in Section 148A is interpreted to mean a detailed inquiry where both sides can seek and adduce evidence/material (documentary/ocular), then the entire object behind Section 148A would stand defeated.

16. The object behind Section 148A as is evident from the findings in the fountainhead decision of GKN Driveshafts (India) Ltd. (supra), is to enable the assessee to be informed of the reasons and information suggesting that income chargeable to tax has escaped assessment and, therefore, in turn to empower the assessee to prepare and file an effective reply and thereafter the Assessing Officer to pass an order u/S 148A(d), followed by issuance of notice u/S 148 of IT Act.

17. The object behind insertion of Section 148A by the Legislature w.e.f. 01.04.2021 inter alia appears as follows:—

(a) to prevent rampant and casual issuance of notice u/S. 148 by the Revenue;

(b) to save unnecessary harassment to the assessee of being subjected to re-opening a case under Section 148;

(c) to save the Revenue of the time and energy which may be vested pursuing frivolous and fruitless proceedings u/S 148.

18. It is settled in tax jurisprudence that taxing statute is to be interpreted literally. There is no intendment to taxing statute. Nothing can be implied from or read into a taxing statute. The words used in taxing statutory provision are required to be given their plain meaning. [See : Cape Brandy v. IRC, L, [1921] 1 K.B. 64, State of Bombay v. Automobile and Agricultural Industries Corporation, (1961) 12 STC 122 Para 5, Federation of A.P. Chambers v. State of Andhra Pradesh, (2000) 6 SCC 550 Para 7, State of West Bangal v. Kesoram Industries Ltd., (2004) 10 SCC 201 Para 106, State of Jharkhand v. Ambay Cements, (2005) 1 SCC 368 Para 24, 25 and 26, Ajmera Housing Corporation v. Commissioner Income Tax, (2010) 8 SCC 739 Para 36, Deputy Commissioner of Income Tax v. Ace Multi Axes System Limited, (2018) 2 SCC 158, Commissioner of Customs (Import) Mumbai v. Dilip Kumar Company, (2018)

9 SCC 1 Para 24 and 25, Checkmate Services Pvt. Ltd. v. Commissioner Income Tax, (2023) 6 SCC 451 Para 55 and 56].

19. Applying this principle of interpretation of taxing statute, it is obvious from reading of Section 148A that it does not expressly provide for supply of any material/evidence in support of the show-cause notice u/S 148A(b). Thus this Court has no hesitation to hold that statutory provision u/S 148A does not obligate the Assessing Officer to supply any material/evidence, provided the show-cause notice contains reasons disclosing the mind of the Assessing Officer of nursing the prima facie view suggestive of a case where income chargeable to tax has escaped assessment.

20. This Court would be failing in its duty by not dealing with the aspect that the concept of reasonable opportunity which can reasonably be implied from textual interpretation of Section 148A(b) of IT Act (of supply of adverse material) is available to the assessee/petitioner or not. It needs to be tested on the anvil of the trite law that taxing statute is to be strictly construed solely on the plain language employed.

21. No doubt, the concept of reasonable opportunity ostensibly appears to be inherent in the inquiry contemplated u/S 148A. However, it has to be seen whether this concept can be stretched to the extent of supplying of material/evidence in support of the opinion of Assessing Officer that certain income has escaped assessment.

22. No doubt, the concept of reasonable opportunity in non-taxing statutes is applied to it's fullest (including supply of adverse material) irrespective of presence of any express provision or not in cases where the authority concerned passes order entailing civil consequences of adverse nature.

23. Pertinently, the law of interpretation of taxing statute is at variance to the law of interpretation of non-taxing statute. The difference is that the taxing statute is to be understood by the plain words used in it without taking aid of other tools of interpretation of statutes e.g. intendment, implication or reading into.

24. On the anvil of aforesaid time tested principle as regards interpretation of taxing statute, it is obvious that the provisions of Section 148A of IT Act so far as it relates to the nature of inquiry contemplated therein is to be understood from the plain language used by the Legislature.

25. The language of Section 148A(b) stipulates opportunity of being heard to the assessee by way of issuance of notice to show-cause to explain as to why notice u/S 148 be not issued on the basis of information to the Assessing Officer suggesting that certain income chargeable to tax has escaped assessment.

26. The words employed by Section 148A(b) provide for affording of opportunity of being heard by way of show-cause notice. Thus, the requirement of law is satisfied if the show-cause notice contains information which has persuaded the Assessing Officer to form an opinion that certain income has escaped assessment of a particular assessment year.

27. The statute does not compel the Assessing Officer to supply material/evidence (documentary/oral) on the basis of which the aforesaid opinion has been formed by the Assessing Officer.

28. From the aforesaid analysis and in the backdrop of textual interpretation of Section 148A(b), it is evident that if the show-cause notice contains sufficient information revealing the opinion formed by Assessing Officer that certain income of assessee has escaped assessment with a precise but concise elaboration in the show-cause notice of the foundantional material behind the opinion, then the show-cause notice can sustain judicial scrutiny even if the fundantional evidence/material (oral/documentary) is not supplied to the assessee.

29. The reason for taking the aforesaid view is not far to see.

30. The insertion of Section 148A w.e.f. 01.04.2021 in the Income Tax Act is to ensure that the power u/S 148 is not exercised as a matter of course or without application of mind. Thus, the inquiry contemplated by Section 148A(b) is not a detailed or full-scale one, but is merely meant to offer

reasonable opportunity of being heard to the assessee to avoid casual reopening assessment u/S 148.

31. It may not be out of place to mention that the show-cause notice u/S 148A(b) ought to be pregnant with concise and precise information revealing the information about foundational material which persuaded the Assessing Officer to come to a tentative finding that certain income has escaped assessment.

32. In the conspectus of aforesaid discussions, it is obvious that petitioner/assessee is not entitled to the material/evidence (oral/documentary) which are the foundation of the opinion formed by the Assessing Officer so long as a show-cause notice mentions about such foundational evidence/material and the supportive reasons to form the said opinion.

33. From the fact of the case, it is obvious from the show-cause notice u/S 148A(b) vide Annexure-P/3 that it is accompanied by annexure which informs the petitioner/assessee of the reasons and information which persuaded the Assessing Officer to form the tentative opinion that income pertaining to assessment year 2016-2017 has escaped assessment. Moreso, the petitioner/assessee has also filed a detailed reply (Annexure-P/4) to the said notice.

34. From the above, it is evident that the impugned order u/S 148A (b) vide Annexure-P/5 and the consequential notice u/S 148 were issued/passed after following due process of law."

In the present case, the Jurisdictional Authority along with notice dated 13.3.2023 under Section 148A(b) of the IT Act has supplied information available with it with the documents such as insight portal, wherein information/description has been given. In the notice dated 13.3.2023 under Section 148A(b) and the order dated 28.3.2023 under Section 148A(d) of the IT Act issued by the Assessing Officer, it is clearly mentioned that in the insight

portal, the case of the petitioner is flagged on "High Risk CRIU/RU PAN Case for the relevant assessment year.

Explanation 1 and 1(i) of Section 148 of the IT Act read as under :

> "Explanation 1.- For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,-
> (i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time"

We are of the view that the case of the petitioner is covered by information specified in Explanation 1(i) of Section 148 of the IT Act. It is not the case of the petitioner that information disclosed vide notice under Section 148A(b) of the IT Act is not covered by the information specified in Explanation 1(i) of Section 148 of the IT Act.

So far as the judgment of this Court rendered in ***Micro Marbles Private Limited*** (supra), on which, the petitioner has placed reliance is not applicable to the present case as the same was passed while taking into consideration the unamended provisions of Sections 147 148 of the IT Act and there is no discussion about the provisions of Section 148A of the IT Act inserted vide Finance Act w.e.f. 1.4.2021.

We respectfully disagree with the judgment of High Court of Delhi rendered in ***Charu Chains and Jewels Pvt. Ltd.*** (supra) in

view of the above discussion regarding provisions of Section 148A of the IT Act.

Resultantly, we do not find any merit in these writ petitions and the same are hereby dismissed.

Needless to say, the petitioners are free to raise all their defence before the Jurisdictional Authority in the proceedings initiated against them under Section 148 of the IT Act.

(DR. NUPUR BHATI),J **(VIJAY BISHNOI),J**

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