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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI  
&  
HON'BLE SHRI JUSTICE PRANAY VERMA  
ON THE 29<sup>th</sup> OF NOVEMBER, 2023  
WRIT PETITION No. 13065 of 2022**

**BETWEEN:-**

**LAXMINARAYAN PATIDAR S/O SHRI GULABCHAND  
PATIDAR, AGED 53 YEARS, OCCUPATION: FARMER,  
BANGAR DEWAS, DISTRICT DEWAS (MADHYA  
PRADESH)**

**....PETITIONER**

***(SHRI ASHISH GOYAL, COUNSEL FOR THE PETITIONER).***

**AND**

- 1. INCOME TAX OFFICER - 1(1), AAYAKAR BHAWAN,  
OPPOSITE WHITE CHURCH, RESIDENCY AREA  
(MADHYA PRADESH)**
- 2. PR. COMMISSIONER OF INCOME TAX-1,  
AAYAKAR BHAWAN, OPPOSITE WHITE CHURCH,  
RESIDENCY AREA (MADHYA PRADESH)**

**....RESPONDENTS**

***(MS. VEENA MANDLIK, COUNSEL FOR THE RESPONDENTS)***

.....  
*This petition coming on for admission this day, Justice Sushrut Arvind  
Dharmadhikari passed the following:*

**ORDER**

The present writ petition under Article 226 of the Constitution of India has been filed challenging the order dated 25.03.2022 passed under Section 148(A)(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for brevity) and notice dated 27.03.2022 (Annexure P/4) issued under Section 148 of the Act.

2. The brief facts of the case are that the petitioner seeks to challenge the legality, validity and propriety of the notice dated 27.03.2022 issued under Section 148 of the Act seeking to reopen the assessment for the Assessment Year 2018-19 which is based on the order dated 25.03.2022 under Section 148(A)(d) of the Act issued by the respondent No.1. Both, the order and the notice are illegal, without jurisdiction, arbitrary, in violation of the principles of natural justice.

3. Learned counsel for the petitioner contended that despite absence of any information suggesting that income chargeable to tax has escaped assessment, the impugned order under Section 148A(d) has been passed resulting in issuance of notice under Section 148 of the Act. He further argued that without taking into account the reply submitted by the petitioner/assessee, the impugned order / notice have been passed. Thirdly, learned counsel for the petitioner submitted that no proper opportunity of hearing was afforded to the petitioner before passing such an order.

4. Learned counsel for the petitioner has placed reliance on the judgment of the Apex court in the matter of **Union of India & Ors. vs. Ashish Agarwal, 2023 (1) SCC 617; Red Chilli International Sales vs. Income Tax Officer and Anr., 2023 SC OnLine SC 237** ; judgment passed by the High of Madhya Pradesh at Indore in case of **Principal Commissioner of Tax-I vs. Shri Pukhraj Soni** passed in **Income Tax Appeal No. 53/2017 dated 06.02.2019** and the order passed by the High Court of Madhya Pradesh at Jabalpur in case of **Sita Ram Gautam vs. Deputy Commissioner of Income Tax in Writ Petition No. 8416 of 2023** dated 20.04.2023.

5. Per contra, learned counsel appearing for the respondents raised a

preliminary objection with respect to maintainability of the petition against the show-cause notice. She further submitted that the reopening of assessment is at the very initial stage and premature and thereafter, as per the provisions of law, there would be various opportunities to the petitioner/assessee to raise their grievance and submit reply. In view of the aforesaid, this petition deserves to be dismissed on this ground alone.

6. Learned counsel for the respondent further argued that earlier assessment notice issued under Section 148 of the Act was subjected to challenge before the Apex Court on the ground that the same is bad in law in view of the amendment made in the Finance Act, 2021 which has amended the Income Tax Act by introducing new provisions i.e. Sections 147 to 151 of the Act with effect from 1st of April, 2021. It is also argued that the Apex Court has allowed the appeals in part modifying the impugned orders to the extent that the notice issued under Section 148 of the Act may be deemed to have been issued under Section 148A of the Act as substituted by the Finance Act, 2021 and construed or treated to be a show-cause notice in terms of Section 148A(b) of the Act and granted 30 days' time to the Assessing Officer to provide the respective assessee's information and material relied upon by the revenue so that the assessee can reply to the show cause notices within two weeks of the notice. It is contended that in view of the modified directions issued by the Apex Court in the aforesaid case, the authorities have issued the impugned notice of assessment asking a response within 30 days from the petitioner. As far as the contention of the petitioner that impugned orders/notices are without jurisdiction as the same is hit by limitation, a remedy of challenging the same, even the question of limitation is available to the petitioner in terms of Section 246 of the Act, wherein a provision of appeal is provided. The appellate

authority can look into the legality and validity of the impugned notices as well as the orders issued by the authorities in terms of the modified directions issued by the Apex Court and therefore, the present petition against the show-cause notice is not maintainable in view of the judgment in the case of **Union of India vs. Kunishetty Satyanarayan, (2006) 12 SCC 28** for want of alternative efficacious remedy to the petitioner.

7. Heard learned counsel for the parties.

8. The procedure to be followed by the Assessing Officer (AO) before issuance of notice of Income escaping assessment under Section 148A is as follows :

(a) Conduct enquiry with respect to the income which has escaped assessment (prior approval of specified authorities might be required in some cases [Section 148A(a)].

(b) Issue a show cause notice to the taxpayer and provide reasonable opportunity of being heard within in the time specified in notice (7 to 30 days) and may be extended from time to time. [Section 148A(b)].

(c) Consider the reply of the taxpayer furnished in response to Point (b). [Section 148A(c)].

(d) Decide whether it is a fit case for issue of notice under Section 148 by passing an order with the prior approval of specified authority based on the evidence available and reply furnished by the taxpayer). [Section 148A(d)].

9. The aforesaid steps/procedure have been followed by the Assessing Officer prior to issuance of notice under Section 148A(d) of the Act and thereafter, only notice has been issued under Section 148 of the Act.

10. Section 148A has been introduced in the Income Tax Act with effect from 01.04.2021. This Section provides that before issuing notice, the Assessing Officer shall conduct an inquiry and provide an opportunity of being heard to the assessee. After taking into consideration the reply filed by the assessee, the Assessing Officer shall decide by passing an order, whether the case is fit for issuance of notice under Section 148 of the Act and a certified

copy of such order passed under Section 148 (A) (d) of the Act along with such notice have to be served upon the assessee. The limitation for issuance of notice under Section 148 is provided in Section 149 of the Act. In normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be issued where the Assessing Officer would not be in possession of books of accounts or other documents or evidence which would 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 lacs rupees or more for that year. In such cases, notice can be issued beyond the period of three years but not beyond the period of 10 years from the end of the relevant assessment year. Notice under Section 148 of the Act can be issued when there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of an assessee for the relevant assessment year. The specified authority for approving inquiries, providing an opportunity for passing orders under Section 148 of the Act and for issuance of notice under Section 148 of the Act is the Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year or Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year.

11. Now it would be advantageous to deal with the judgments cited by the learned counsel for the petitioner. In the matter of **Ashish Agrawal (supra)**, the Apex Court has laid down the procedure to be adopted under the newly added Section 148A of the Act. The relevant paras are as under:-

"25.1 The respective impugned section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be showcause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter;

25.2 The requirement of conducting any enquiry with the prior approval of the specified authority under Section 148A(a) be dispensed with as a onetime measure vis à vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;

25.3 The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assesseees;

25.4 All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;

25.5 The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.

28. In view of the above and for the reasons stated above, the present Appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

28.1 The impugned section 148 notices issued to the respective assesseees which were issued under unamended Section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be showcause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assesseees information and material relied upon by the Revenue, so that the assesseees can reply to the showcause notices within two weeks thereafter;

28.2 The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a onetime measure vis à vis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.

28.3 Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

28.4 The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assesseees; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as

substituted);

28.5 All defences which may be available to the assesses including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assesseees and Revenue under the Finance Act, 2021 and in law shall continue to be available."

**12.** In the matter of **Red Chilli International Sales (supra)**, the Apex Court held that the provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021 and consequently the matter would require a deeper and in-depth consideration keeping in view the earlier case law. Consequently, the Apex Court set aside the order passed by the High Court and held that the petition would be maintainable and the issue would be examined in depth by the High Court if and when it arises for consideration.

**13.** In the matters of **Gian Castings Private Limited Vs. Central Board of Direct Taxes and others, CWP No.9142 of 2022 dated 02.06.2022, and Anshul Jain Vs. Principal Commissioner of Income Tax and another, CWP 10219 of 2022**, the Punjab and Haryana High Court at Chandigarh while dealing with a similar issue held that where the proceedings have not even been concluded by the statutory authority, the writ Court should not interfere at such premature stage. It is further held that it is not a case where from a bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of order under Section 148A (d) of the Act is being challenged on the factual premise contending that jurisdiction though vested has been wrongly exercised. There is a vexed distinction between jurisdictional error and error of law/fact within the jurisdiction and for rectification or errors statutory remedy has been provided. The order passed by the High Court of Punjab and Haryana has been affirmed

by the Apex Court in SLP(C) No.10762 of 2022 order dated 17.06.2022 and SLP No.14823/2022 order dated 02.09.2022 respectively.

**14.** This Court has culled out the foundational prerequisite of Section 148A of the Act, 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.

**15** The object behind Section 148A as is evident from the findings in the fountainhead decision of **GKN Driveshafts (India) Ltd. vs. Income Tax Officer and others, 2003(1) SCC 72** 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 under Section 148A(d), followed by issuance of notice under Section 148 of IT Act.

**16.** 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

**17.** Considering the aforesaid, normally, the writ Court should not interfere at such premature stage when the proceedings initiated against the assessee are yet to be concluded by the statutory authorities.

**18.** In view of the aforesaid, this Court refrains to interfere with the order(s)/notice impugned. Pertinently, the question of going into the veracity



and genuineness of the material/evidence forming the opinion of the Assessing Officer suggesting that income of petitioner/assessee has escaped assessment ought not to be gone into while exercising writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution of India.

19. Consequently, the present petition deserves to be and is hereby dismissed at the admission stage itself with liberty to the petitioner to avail the statutory alternative remedy under the Income Tax Act in accordance with law, if so advised.

**(S. A. DHARMADHIKARI)**  
**JUDGE**

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**(PRANAY VERMA)**  
**JUDGE**

