BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.06.2025

PRONOUNCED ON : 09.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.234 of 2025
and
C.M.P.(MD)No.1684 of 2025

The Income Tax Officer,
Corporate Ward 2,
No.2, V.P.Rathinasamy Nadar Road,
CR Building, Bibikulam,
Madurai – 625 002. ... Appellant / Respondent

Vs.

M/s.Mahogany Logistics Services Private Ltd.,
Rep. by its Director, P.Venkatesh,
10, Jawahar Road,
Chokkikulam,
Madurai – 625 002. ... Respondent / Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to allow the writ appeal and set aside the impugned order passed by the learned single Judge in W.P.(MD)No.10198 of 2024 dated 23.08.2024.

For Appellant : Mr.N.Dilipkumar, Senior Standing Counsel

For Respondents : Dr.S.Muralidhar, Senior Counsel
for Mr.Bhagavath Krishnan

JUDGMENT

(By G.R.SWAMINATHAN, J.)

The assessing officer of the Income Tax department has filed this appeal questioning the order dated 23.08.2024 allowing WP(MD)No. 10198 of 2024 filed by the respondent herein.

2.The writ petitioner company was incorporated on 17.10.2016. The case on hand pertains to the assessment year 2017-18. On 13.10.2017, the writ petitioner / assessee filed their return of income. On 14.09.2018, notice was issued under Section 143(2) of the Income Tax Act, 1961 for limited scrutiny in respect of "Expenses incurred for earning exempt income" and "Investments / advances / loans." The assessee offered their reply on 01.02.2019. Thereafter, on 26.07.2019 notice was issued under Section 142(1) of the Act. On 27.12.2019 an order of assessment was passed under Section 143(3) of the Act accepting the return of income filed by the assessee. While so, on 23.02.2024, show cause notice under Section 148A(b) of the Act was issued informing the assessee that income to the tune of Rs.329,68,73,645/- had escaped assessment. On 08.03.2024, the assessee offered their reply. On 26.03.2024, an order was passed under Section

148A(d) of the Act deciding that it was a fit case to issue notice under Section 148 of the Act. On 26.03.2024, notice was issued under Section 148 of the Act informing the assessee that the assessment for the assessment year 2017-18 stood reopened. Challenging the said notice and the preceding order, the assessee filed W.P.(MD)No.10198 of 2024. The writ petition was allowed by the learned single Judge on 23.08.2024. Challenging the same, this writ appeal has been filed.

3.The learned Standing counsel appearing for the Department submitted as follows:-

The assessee company raised money to the tune of Rs.294,00,00,000/- by issuing Non-Convertible Debentures (NCD) from domestic lenders. It also availed short-term loans to the tune of Rs.28,35,00,000/-. The assessee used the said borrowed amounts for making investments in their group entities. The assessee had claimed that they incurred processing charges and professional charges to the tune of Rs.6,98,00,000/- and Rs.35,73,645/- respectively. Notice under Section 148A(b) of the Act was issued since there was no evidence to prove that these charges were having nexus with the assessee's business and were expended wholly for the business purpose. It was also noted that the

genuineness of the transactions for long term and short term borrowing was not established. There was no admission of any income from the investments made in listed equities. The information available with the assessing officer suggested that income to the extent of Rs.329,68,73,645/- had escaped assessment.

On 27.12.2019, an assessment order was passed under Section 143(3) of the Act accepting return of income filed by the assessee. It is true that after a lapse of four years, notice under Section 148A(b) of the Act was issued for reopening the assessment. But it cannot be said to be barred by limitation. The first proviso to the amended Section 149(1)(b) of the Act is applicable but the unamended Section 147 can no longer be invoked [vide ***(2024) 469 ITR 46 SC (Union of India V. Rajeev Bansal)]***. Since the earlier provisions have been amended with effect from 01.04.2021, the subsequently substituted provisions alone are applicable retrospectively even for the past assessment years.

The validity of the proposal to reopen the assessment cannot be decided with reference to the parameters and norms laid down under the pre-amendment provisions. Post amendment, the only test that has to be met is whether the assessing officer is possessed of information

warranting reopening of the assessment. The expression "information" has been statutorily defined. All that has to be seen at this stage in exercise of judicial review is whether this information was available with the assessing officer when he issued notice under Section 148A(b) of the Act. Under the earlier regime, the assessing officer must have reason to believe that the income chargeable to tax has escaped assessment. Section 147 of the Act cannot be invoked on a mere change of opinion. Under the new regime, the question of discovering new materials or whether the assessee had made true and full disclosure of material facts is not relevant. If the assessing officer has information that suggests that the income chargeable to tax has escaped assessment, notice under Section 148 of the Act can be issued. This notice has to be decided only on the anvil of Section 148(3) of the amended Act and one should not fall back on the precedents that were rendered under the old regime. The learned single Judge had erroneously followed the principles laid down by the Hon'ble High Courts and the Hon'ble Supreme Court in the context of the unamended provisions. The writ petition is not maintainable in the light of the decision of the Hon'ble Supreme Court reported in ***(2022) 449 ITR 256 (Anshul Jain V. Principal Commissioner of Income-Tax)***.

The learned Standing counsel called upon this Court to set aside the order of the learned Single Judge and allow this writ appeal.

4.Per contra, the learned Senior counsel for the assessee contended that the learned Single Judge rightly held that the reopening of the assessment is sought to be made on a mere change of opinion. He submitted that the reassessment proceedings have been initiated with no fresh tangible materials on record. He pointed out that the return filed by the assessee was already subjected to detailed scrutiny. It is not the case of the department that there was any withholding of the information or suppression of material facts on the part of the assessee. The learned Senior counsel submitted that the order of the learned Single Judge is eminently sustainable. According to him, the impugned notices are clearly barred as they have been issued beyond the period of limitation. Reopening is possible only if certain jurisdictional facts are present. When they are absent, the assessee can mount a challenge even at the notice stage. He relied on the following decisions:-

> "(i) Azim Premji Trustee Co. (P) Ltd Vs. Deputy Commissioner of Income Tax (2023 146 taxmann.com 58 (Karnataka)

(ii) Siemens Financial Services (P.) Ltd. Vs. Deputy Commissioner of Income Tax (2023) 154 Taxmann.com 159 (Bombay)

(iii) Hexaware Technologies Ltd. Vs. Assistant Commissioner of Income Tax (2024) 162 taxmann.com 225 (Bombay)

(iv) Avinashilingam Institute for Home Science and Higher Education for Women Vs. ACIT (Exemptions) (2023) 149 Taxmann.com 458 (Madras)

(v) Shree Nagalinga Vilas Oil Mills Vs. Income Tax Officer (2023) 149 taxmann.com 249 (Madras)

(vi) Red Chilli International Sales Vs. Income Tax Officer (2023) 146 taxmann.com 224 (SC)

(vii) Springer Healthcare Limited Vs. Assistant Commissioner of Income Tax (W.P.(C)No.336 of 2025 dated 21.05.2025)

(viii) Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited (2010) 2 SCC 723."

He called upon this Court to dismiss the writ appeal.

5.Both sides filed detailed written submissions and took us through the same. We carefully considered the rival contentions and went through the materials on record.

6.The preliminary issue that arises for consideration is as follows :

> "Whether the order issued under Section 148A of the IT Act, 1961 determining that it is a fit case to issue notice under Section 148 of the Act and the notice issued under Section 148 of the Act are amenable to challenge in writ jurisdiction?"

The learned standing counsel for the revenue relying on ***Anshul Jain Vs Principal Commissioner of Income-tax ((2022) 143 taxmann.com 38(SC))*** contended that where the reopening order has been issued under Section 148A(d) of the Act (Corresponding to Section 148A(3)), after considering the objections raised by the assessee, if the assessee has any grievance on the merits thereafter, the same has to be agitated before the assessing officer in the re-assessment proceedings. No doubt, in the said case also, the assessee, as in the present case, challenged the determination order under Section 148A(d) and the consequential notice under Section 148 of the Act. The Division Bench of the Punjab and Haryana High Court was of the opinion that it was not a case where from a bare reading of notice, it can be axiomatically held that the authority had clutched upon the jurisdiction not vested in it. In that view of the matter, the writ petition filed by the assessee stood dismissed ***[(2022) 143 taxmann.com 37)***. The Hon'ble Supreme Court declined to

interfere with the said order. In our view, this decision far from supporting the contention of the revenue, is positively against it. The High Court itself made a distinction between jurisdictional error and error of law / fact within jurisdiction. The High Court clarified that for rectification of errors, statutory remedy has been provided. The clear implication is that where there are jurisdictional errors, writ petition will lie. In ***Red Chilli International Sales Vs Income tax Officer ((2023) 146 taxmann.com 224(SC))***, it was observed that in writ proceedings, it can very well be examined if the jurisdictional preconditions for issuance of notice under Section 148 of the Act are satisfied. In ***Avinashilingam Institute for Home Science and Higher Education for Women Vs ACIT (Exemptions) (2023) 149 taxmann.com 458 (Madras)***, a learned Judge of this Court following ***Red Chilli*** held that the writ Court has the power to consider a challenge made to an order passed under Section 148A of the Act.

7.Having concluded that the writ petition filed by the assessee is maintainable, we may now proceed to examine if the notice issued under Section 148 of the Act is barred by limitation. The time limit for notices under Section 148 and 148A is set out in Section 149 of the Act. This

provision was substituted on 01.04.2021. Even though the assessment year pertains to 2017-18, in view of the decision of the Supreme Court in ***Union of India Vs Rajeev Bansal ((2024) 167 taxmann.com 70 (SC))***, and ***UOI Vs. Ashish Agarwal (2023) 1 SCC 617,*** the amended provisions will apply. These two decisions read together hold that if notice is issued under Section 148 of the Act after 01.04.2021, then the amended provisions alone will apply even in respect of past assessment years. It was held in ***Rajeev Bansal*** that notices have to be judged according to the law existing on the date the notice is issued. After 01.04.2021, the Income Tax Act has to be read along with the substituted provisions. The substituted provisions apply retrospectively for past assessment years as well.

8.The notices in question were issued on 23.02.2024 and 11.03.2024. During the relevant time, Section 149(1) read as follows:

> "**149. Time limit for notice.**
> (1)No notice under section 148 shall be issued for the relevant assessment year,—
> (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
> (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the

Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i)an asset;

(ii)expenditure in respect of a transaction or in relation to an event or occasion; or

(iii)an entry or entries in the books of account,

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

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:"

9.The proviso to Section 149(1)(b) contains the key. It bars issuance of notice under Section 148 for the assessment year beginning on or before 01.04.2021 if on the date of issuance of the notice, it was time-barred. Whether it was time-barred or not has to be decided with reference only to Section 149(1)(b) or Section 153A or Section 153C as they stood before 01.04.2021. In this case, we are not concerned with

Sections 153A or 153C. As on 31.03.2021, Section 149(1)(b) stood as follows:-

> *"149.Time-limit for notice – (1) No notice under Section 148 shall be issued for the relevant assessment year-*
>
> *(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;"*

In the case on hand, the limitation has to be reckoned from 01.04.2018. No doubt, four years had expired therefrom. According to the department, the income chargeable to tax that escaped assessment is more than the ceiling set out in the unamended Section 149(1)(b). Therefore, it will fall within the extended limitation period of six years. We, therefore, hold that the impugned proceedings are not time-barred. If the proceedings had become time-barred as on 01.04.2021, certainly the substitution of the provisions or amendment of the Act will not give a fresh lease of life. We do agree with the learned Senior Counsel appearing for the assessee that the assessee had made true and full disclosure of all material facts. But the old regime only mandated that no action under Section 147 of the Act can be taken after the expiry of four

years from the end relevant assessment year if the assessee had disclosed fully and truly all material facts necessary for assessment. In this case, this four year period would expire only on 31.03.2022. If the assessee had made a full and true disclosure of all material facts and the four year period had expired from the end of the relevant assessment year before 01.04.2021, the amendment will not operate to the prejudice of the assessee. In such circumstances, one can invoke the unamended Section 147 of the Act. But if proceedings for reopening are taken after 01.04.2021 and the four year limitation period had not expired by then, the case of the assessee has to be tested only in the light of the amended provisions. Since the impugned action cannot be said to be time-barred under the old regime as on 01.04.2021, Section 149(1)(b) as it stood on 31.03.2021 will come into play and hence, we hold that the action taken by the revenue is within time.

10.The learned Senior Counsel appearing for the assessee relied on the decision of the Division Bench of the Bombay High Court in ***Hexaware Technologies Limited Vs Assistant Commissioner of Income-tax ([2024] 162 taxmann.com 225 (Bombay)).*** In the said case, the relevant assessment year was 2015- 2016. The sixth year expired on

31.03.2022. But the notice under Section 148 was issued on 27.08.2022. It was clearly beyond the period of limitation prescribed in Section 149 r/w. the first proviso to the said section. ***Hexaware*** certainly does not come to the rescue of the assessee on the issue of limitation.

11.The third issue concerns the relevance of the precedents rendered under the old regime. The learned Senior Counsel appearing for the assessee asserted that the principles laid down in ***CIT vs Kelvinator ((2010) 2 SCC 723)*** will apply even post-amendment. He pointed out that such a view has been taken in ***Hexaware Technologies Limited Vs Assistant Commissioner of Income-tax ([2024] 162 taxmann.com 225 (Bombay))*** and ***Siemens Financial Services Private Limited Vs DCIT [2023] 154 taxmann.com 159.***

12.In **K*elvinator***, it was held that one must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. The assessing officer has no power to review. Reassessment cannot be done based on mere change of opinion. In ***Siemens,*** it was held that if change of opinion concept is given a go by, that would result in giving arbitrary powers to the assessing officer to

reopen the assessments. It would in effect be giving power to review which he does not possess. The assessing officer has only power to reassess, not to review. If the concept of change of opinion is removed as contended on behalf of the revenue, then in the garb of re-opening the assessment, review would take place. ***Hexaware*** is also on the same lines. Interestingly, in ***Siemens*** there is a reference to ***Dr.Mathew Cherian Vs Assistant Commissioner of Income Tax ((2023) 151 taxmann.com 154)*** which is by a learned single Judge of the Madras High Court.

13.We are not able to agree with ***Hexaware*** and ***Siemens***. Section 147 and Section 148 as they stood prior to 01.04.2021 were as follows:

> *"147. Income escaping assessment.—If the 2 [Assessing Officer] 3 [has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (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 year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued undersub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

...

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 3.—For the purpose of assessment or reassessment 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. ”

148. Issue of notice where income has escaped assessment.—*1 [(1)] Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, 2 *** as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139:"*

14.Post amendment, Section 147, 148, 148A read as follows:

*"**148A. Procedure before issuance of notice under section 148.** (1) Where the Assessing Officer has information which suggests that income chargeable to tax has escaped assessment in the case of an assessee for the relevant assessment year, he shall, before issuing any notice under section 148 provide an opportunity of being heard to such assessee by serving upon him a notice to show cause as to why a notice under section 148 should not be issued in his case and such notice to show cause shall be*

accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.

(2) On receipt of the notice under sub-section (1), the assessee may furnish his reply within such period, as may be specified in the notice.

(3) The Assessing Officer shall, on the basis of material available on record and taking into account the reply of the assessee furnished under sub-section (2), if any, pass an order with the prior approval of the specified authority determining whether or not it is a fit case to issue notice under section 148.

(4) The provisions of this section shall not apply to income chargeable to tax escaping assessment for any assessment year in the case of an assessee where the Assessing Officer has received information under the scheme notified under section 135A. Explanation.—For the purposes of this section and section 148, "specified authority" means the specified authority referred to in section 151.'"

15.Sections 148 and 148A have been amended twice recently. Under the latest regime, steps for reopening can be initiated when the assessing officer has information which suggests that income chargeable to tax has escaped assessment for the relevant assessment year. The expression "reason to believe" has been consciously omitted. Instead,

the amendment provides that the assessing officer can act on the basis of information. The expression "information" has been defined in Section 148(3) of the Act. The "information" should fall under any of the six categories set out in Section 148(3) of the Act. The "information" must suggest that there has been an escapement of income. The legislature has cautiously employed the expression "suggest". The word "suggest" can only mean "indicate". Suggest is not a strong word by itself. It is rather recommendatory in tone. The word "suggest" cannot connote anything more. In ***Dr.Mathew Cherian***, it was observed that the "information", however tenuous, would not suffice: it is necessary that the "information" has a live and robust link with alleged escapement of income. We would not go that far. If the information is relevant and implies a possible escapement of income, the reopening process can be initiated. At the stage of issuance of initial notice under Section 148A(1), the Court would not go into the sufficiency or adequacy of the information. If the assessing officer can show that he has "information" and it suggests escapement of income, the writ Court should not interfere at that stage.

16.Section 148A contains sufficient safeguards. Suppose there is an audit objection, it is certainly an information but then on that sole

ground, an order cannot be passed that the case is fit for issuing notice under Section 148. The assessee's reply must be considered. In ***Springer Health Care Limited Vs Assistant Commissioner of Income Tax & another*** (W.P(C)336/2025 vide order dated 21.05.2025), the Hon'ble Division Bench of Delhi High Court held that if the assessing officer is satisfied with the reply furnished by the assessee and the material on record, the assessing officer is bound to hold that it is not a fit case for issuance of notice under Section 148. We have to add a caveat here. The statute talks about taking the prior approval of the specified authority. The assessing officer cannot decide on his own. For issuing the initial notice under Section 148A(1), the assessing officer does not require any approval from the specified authority. But for passing an order under 148A(3) of the Act, prior approval of the specified authority is must.

17.Paragraph Nos.15 to 22 of ***Ashish Agarwal*** read as follows:-

> *"**15.** It cannot be disputed that by substitution of Sections 147 to 151 of the Income Tax Act ("the IT Act") by the Finance Act, 2021, radical and reformative changes are made governing the procedure for reassessment proceedings. Amended Sections 147 to 149 and Section 151 of the IT Act prescribe the procedure governing initiation of reassessment proceedings. However, for several reasons, the*

same gave rise to numerous litigations and the reopening were challenged inter alia, on the grounds such as:(1) no valid "reason to believe",

(2) no tangible/reliable material/information in possession of the assessing officer leading to formation of belief that income has escaped assessment,

(3) no enquiry being conducted by the assessing officer prior to the issuance of notice; and reopening is based on change of opinion of the assessing officer and

(4) lastly the mandatory procedure laid down by this Court in GKN Driveshafts (India) Ltd. v. ITO [GKN Driveshafts (India) Ltd. v. ITO, (2003) 1 SCC 72] , has not been followed.

16. *Further pre-Finance Act, 2021, the reopening was permissible for a maximum period up to six years and in some cases beyond even six years leading to uncertainty for a considerable time. Therefore, Parliament thought it fit to amend the Income Tax Act to simplify the tax administration, ease compliances and reduce litigation. Therefore, with a view to achieve the said object, by the Finance Act, 2021, Sections 147 to 149 and Section 151 have been substituted.*

17. *Under the substituted provisions of the IT Act vide the Finance Act, 2021, no notice under Section 148 of the IT Act can be issued without following the procedure prescribed under Section 148-A of the IT Act. Along with the notice under Section 148 of the IT Act, the assessing officer*

("AO") is required to serve the order passed under Section 148-A of the IT Act. Section 148-A of the IT Act is a new provision which is in the nature of a condition precedent. Introduction of Section 148-A of the IT Act can thus be said to be a game changer with an aim to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.

18. *But prior to pre-Finance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in GKN Driveshafts (India) [GKN Driveshafts (India) Ltd. v. ITO, (2003) 1 SCC 72] .*

19. *However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:(i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*
(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;

(iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and

(iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under Section 148 of the IT Act; and

(v) the AO is required to pass a specific order within the time stipulated.

20. *Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per Section 148-A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under Section 148-A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.*

21. *Substituted Section 149 is the provision governing the time-limit for issuance of notice under Section 148 of the IT Act. The substituted Section 149 of the IT Act has reduced*

the permissible time-limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.

22. *Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021."*

18.In view of the material changes in the relevant statutory provisions and in view of the law laid down in ***Ashish Agarwal***, it may not be safe to apply the tests evolved under the old regime. First principles are one thing. Precedents rendered in particular statutory contexts are another. When the statutory position has changed, it would not be safe to mechanically apply the precedents evolved in a different context. The Judges must be alert to see if the ground beneath the judicial feet has shifted. ***Ashish Agarwal*** was rendered on 04.05.2022.

Dr.Mathew Cherian came later on 01.09.2022. However, in ***Dr.Mathew Cherian, Ashish Agarwal*** has not been referred to.

19.One other aspect may have to be clarified. It has been held by the Delhi High Court in ***Springer Healthcare Limited*** that audit objection should not be taken as a command to make re-assessment. We have already expressed our agreement with the said ratio. We want to add something more. Clause (ii) of Section 148(3) of the Act states that the information with the assessing officer which suggests that the income chargeable to tax has escaped assessment means, inter alia, 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 the Income Tax Act. Since this provision provides for reopening a concluded assessment, it cannot be construed liberally. The audit objection must definitely opine that the assessment was not made as per the statutory provisions. Only if the audit objection contains such a clear opinion, it can be taken as information for the purpose of the Section. We have already dealt with the scope of the expression "suggests" occurring in Section 148A(1) of the Act. While the sufficiency or the strength of the objections cannot be gone into at the

initial stage of issuing notice under Section 148A(b) corresponding to Section 148A(1), the conclusion of the audit objection should be unambiguous. Unless it states that the assessment in question was not made in accordance with the provisions of the Act, we have to hold that the jurisdictional fact to initiate proceedings for reassessment is absent. If the audit objection is not definite in its opinion, it would not amount to information within the meaning of the provision.

20.Now that the legal issues have been answered, let us come back to the facts. The relevant assessment year is 2017-18. It is true that the assessee had fully and truly disclosed all material facts necessary for the assessment. But in view of the amount involved, the limitation for reopening would be not four years but six years from 31.03.2018. In this case, notice under Section 148 of the Act was issued on 26.03.2024. The six years period expired on 31.03.2024. Though the notice is tantalizingly close, the fact remains it is within limitation.

21.The learned Single Judge did not go into the issue of limitation. The writ petition was allowed on the ground that no fresh and tangible materials were available for the assessing officer to form an opinion that

income escaped assessment. The learned Single Judge had held that the test laid down in ***Kelvinator*** would hold good even in the context of the amended provisions with effect from 01.04.2021. This in our view cannot be correct for the reasons mentioned above and in the light of ***Ashish Agarwal***.

22.However, the notice issued under clause (b) of Section 148A of the Act merely contained an Annexure. It reads as follows :

"ANNEXURE

The following information are available in the records of this office

1. *Processing charges incurred Rs 6,98,00,000/-*
2. *Legal and Professional charges incurred Rs 35,73,645/-*
3. *Borrowed funds amounting to Rs 294,00,00,000/- by way of issuing Non Convertible Debentures(NCDs)*
4. *Short term borrowing of Rs 28,00,00,000/- and Rs 35,00,000/-*
5. *Made investments in listed equities amounting to Rs 288.50.94,000/-*

1.The absence of any evidence to prove that these expenses (processing charges legal & professional charges) are having nexus with the assessees business and expended wholly for the business purpose

2. The genuineness (Identity & credit worthiness of persons to whom NCDs issued and genuineness of transactions) of the long

term borrowing (NCDs) & short term borrowing are not established

3. The absence of admission of any income from the investments made in listed equities

The above three information suggests that income to the extent of Rs 329,68,73,645/-has escaped assessment.

You are required to submit the detailed reply with evidence to the show cause notice u/s 148 A(b) of the Act on or before 08/03/2024"

There is no reference to any audit objection in the above notice. In our view, the notice under Section 148A(1) of the Act must be accompanied by a copy of the audit objection or at least the relevant portions. In this case, before eliciting the assessee's response, the audit objection was not furnished. A truncated extract is found as part of the order passed under clause (d) of Section 148A of the Act. The relevant para reads as follows :

"*Order under clause (d) of section 14BA of the Income-tax Act.1961*

1.INFORMATION AVAILABLE AS PER IAP AUDIT MEMO

In the instant case, Internal Audit Party (IAP) has raised audit objection and the gist of audit objection is given as under

a) The assessee-company was incorporated on

17.10.2016. During the per lod of less than 6 months of its operation the company has borrowed funds amounting to Rs. 294,00,00,000/- by way of NCDs and also short-term borrowings of Rs. 28,00,00,000/- from M/s KKR India Finance and Rs.35,00,000/- from DRSR Advisory Services LLP. The funds were utilized not for its own business, but for investment in related LLPs. The company incurred processing charges amounting to Rs. 6,98,00,000/- and 'Legal and Professional Charges of Rs. 35,73,645/- in connection with the above NCDs and loans. This has been the one and only activity performed and that as the investments have no nexus with the business of the assessee, there was no business expediency for such investments vis-à-vis the assessee's business, these expenses are disallowable u/s 36 or 37 of the I.T. Act, 1961.

b) The assessee's claim of long-term borrowings on debentures and the short-term borrowings and the investments may be examined in detail, including the genuineness of the holders of unlisted debentures, their sources to lend, creditworthiness, etc.

c) Even the genuineness of the transaction of raising Rs. 294 crores through debentures by a newly incorporated company by way of pledging the equity shares held by its related LLP in a related company also needs to be examined from the perspective of tax avoidance, if any, worked out by the group which may

attract GAAR provisions."

A reading of the above would show that paragraphs (b) and (c) merely propose further examination of the issue. There is no definite objection that the assessment was not made in accordance with the provisions of the Act. Therefore, reassessment has to be confined to the question if processing charges amounting to Rs.6,98,00,000/- and legal and professional charges of Rs.35,73,645/- have escaped assessment of income. Only in the notice under Section 148 of the Act, there is a note which reads as follows :

> *"I have the following information in your case or in the case of the person in respect of which you are assessable under the Income Tax Act, 1961 (hereinafter referred as "the Act" for Assessment Year 2017-18.*
>
> - *audit objection has been raised in your case to the effect that the assessment has not been made in accordance with the provisions of the Act"*

We have already held that the audit objection must opine that the assessment was not done as per the statutory provisions. Only then it will qualify to be considered as "information". The audit objection must also indicate the reasons for its conclusion. The writ court at the notice stage may not go into the sufficiency of reasons. The aforesaid test is met only

in respect of the assessment pertaining to professional charges and processing charges. Therefore, there can be reopening of the assessment only to this limited extent. We remit the matter to the file of the assessing officer to issue fresh notice under Section 148A(1) of the Act in respect of the above head alone. If the assessing officer issues such a fresh notice within four weeks from the date of receipt of copy of this order, it will be deemed to be within time.

23.For the foregoing reasons, the order and the notice impugned in the writ petition stand quashed and the matter is remitted to the file of the assessing officer to the limited extent mentioned above. The order of the learned Single Judge is modified and this writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S, J.) & (K.R.S, J.)
9th July 2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/MGA

G.R.SWAMINATHAN, J.

AND

K.RAJASEKAR, J.

PMU/MGA

W.A.(MD)No.234 of 2025

09.07.2025