

AFR

Court No. - 47

Case :- WRIT TAX No. - 561 of 2023

Petitioner :- Deepak Kumar Yadav

Respondent :- Principal Commissioner Of Income Tax And Another

Counsel for Petitioner :- Ashish Bansal

Counsel for Respondent :- Gaurav Mahajan

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Shiv Shanker Prasad,J.

1. Petitioner is an individual who is engaged in the business of trading of Arecanut (Supari), Chopped Betal Nut and Sweet Betal Nut in the name of his proprietary concern namely "S.K.L. Enterprises". He alleges that his Books of Account and other records are subject to audit under Section 44AB of the Income Tax Act, 1961 (hereinafter referred to as the 'Act of 1961'). He further claims to be filing his return year after year and has been assessed to tax accordingly. For the Assessment Year 2019-20, the petitioner filed his return under Section 139(1) of the Act on 26.08.2019 disclosing total income of Rs. 6,81,630/-. The turnover during the year from his proprietary concern aggregated to Rs. 5,87,26,116/- and aggregate purchases are of Rs. 5,81,61,860/-. He further asserts that he has been assessed under Section 143(1) of the Act on the basis of return submitted by him on 26.08.2019 and no notice has been issued to him under Section 143(2) of the Act.

2. It transpires that the jurisdictional authority i.e. respondent no. 2 issued a notice to petitioner dated 16.03.2023, under Section 148A(b) of the Act, 1961 accompanying the information with the assessing officer to suggest that income chargeable to tax has escaped assessment. The substance of the information accompanying the notice is extracted hereinafter:-

"1(A) Information was received by DDIT (Inv.), Unit-III, Nagpur from DGGI and GST authorities in the case of M/s Kuhoje K Achumi of availing and utilization of fraudulent ITC on the basis of fake tax invoices without receipt of goods. The said entity did not exist at the declared principal place of business. On the basis of the

above information, the Investigation Unit-III, Nagpur took up investigation and inferred that M/s Kuhoje K Achumi has facilitated and is involved in both availing of fake invoices without actual supply of goods and in turn in issuing fake invoices to others without actual supply of goods. Aforesaid facts imply that the parties which have claimed to have availed purchases from M/s Kuhoje K Achumi have only indulged in availing of purchase invoices without any actual movement of goods and by doing so, they have artificially inflated their purchase expenses and reduced their taxable income. You are reported as one of such suspicious purchasers and the purchase value in your case for F.Y. 2018-19 relevant to A.Y. 2019-20 is Rs. 96,43,750/- from M/s Kuhoje K Achumi.

(B) Similarly, Information was received by DDIT (Inv.), Unit-III, Nagpur from CBDT, in the case of M/s Om Traders (Prop. Jasbir Singh Chatwal) of availing fraudulent ITC. On the basis of the above information, the Investigation Unit-III, Nagpur took up investigation and it is found that M/s Om Traders (Prop. Jasbir Singh Chatwal) has indulged in availing fake tax invoices which implies that there is no actual movement of goods to M/s Om Traders. Further, M/s Om Traders has made sales to number of entities. Since M/s Om Traders is indulged in fictitious purchases, therefore, the sales are also fictitious as he has no goods to make sale to other entities. Therefore, the entities who have claimed to have availed purchases from M/s Om Traders (Prop. Jasbir Singh Chatwal) has merely inflated their purchase expenses by availing invoices from M/s Om Traders (Prop. Jasbir Singh Chatwal) without actual movement of goods. You are reported as one of such suspicious purchasers and the purchase value in your case from F.Y. 2018-19 relevant to A.Y. 2019-20 is Rs. 83,25,000/- from M/s Om Traders (Prop. Jasbir Singh Chatwal).

(C) In addition there is third party information which is as under:-

Information Code	Information Description	Source	Count	Amount Description	Amount (Rs.)
SFT-003(w)	Cash withdrawals (including though bearers cheque) in current account	PUNJAB NATIONAL BANK	1	Aggregate gross amount received from person in cash	23,85,000
TCS-206CL	TCS statement-sale of motor vehicle acceding Rs. 10 Lakhs (section 206C)	GREENLANDS (AM) CORPORATION	1	Total value of transaction	16,00,000
SFT-003(D)	Cash deposits (including though SFT-003(D) bearers cueque) in current account	PUNJAB NATIONAL BANK	1	Aggregate gross amount received from person in cash	4,70,40,000
Total:					5,10,25,000

3. Petitioner was accordingly given an opportunity under Section 148A(b) of the Act to show cause as to why a notice under Section 148 of the Act be not issued to him on the basis of information which suggests that income chargeable to tax of Rs. 96,43,750/- + Rs. 83,25,000/- + Rs. 5,10,25,000/- aggregate Rs. 6,89,93,750/- has escaped assessment for the Assessment Year 2019-20.

4. In response to the above notice the petitioner has filed a detailed objection before the respondent no. 2 on 24.04.2023 denying the allegations made in the notice. A request has also been made for providing the information relied upon for invoking such proceedings as well as to provide opportunity of cross-examination of the said suppliers.

5. The jurisdictional authority has proceeded to pass an order on 29.3.2023 under Section 148(d) of the Act rejecting the petitioner's objection to the notice on the ground that information exists to suggest that transactions referred to in the notice are fictitious and without actual supply of goods. Consequently, petitioner's purchases are treated as fictitious for the Financial Year 2018-19 amounting to Rs. 1,79,68,750/-. This amount has been treated as having escaped assessment for the year 2019-20 for the purposes of initiating proceeding under Section 148 of the Act. Petitioner's request for cross-examination of suppliers and furnishing of material has been declined considering the time-barring nature of the matter. A consequential notice has also been issued to petitioner on 29.03.2023, under Section 148 of the Act. Aggrieved by the order under Section 148A(d) of the Act, dated 29.03.2023 as well as notice of the same date i.e. 29.3.2023 issued under Section 148 of the Act, the petitioner has approached this Court.

6. Sri Ashish Bansal for the petitioner submits that the authority concerned has not examined the petitioner's reply to the notice, on merits, and the order impugned has been passed in a routine and

mechanical manner. Learned counsel further submits that object of issuing notice under Section 148A of the Act would stand frustrated, if the authority does not examine the reply of the assessee in response to the show cause notice referred to in Clause (b) and passes an order without conducting any enquiry. It is urged that the manner in which the order has been passed renders the object of issuing notice under Section 148A of the Act nugatory. In support of such contention, counsel for the petitioner has placed reliance upon an order passed by the Supreme Court of India in *Red Chilli International Sales Vs. Income-tax Officer* reported in [2023] 146 taxmann.com 224 (SC). He further places reliance upon an order passed by the Bombay High Court in Writ Petition No. 2836 of 2022, decided on 13.03.2023.

7. Per-contra, Sri Gaurav Mahajan appearing for the revenue submits that the object of issuing notice under Section 148A of the Act is limited to ascertainment of information which suggests that income has escaped assessment and issues such as sufficiency or otherwise of material justifying reopening of assessment or adjudication on the correctness of information are ordinarily not warranted at this stage, in exercise of extraordinary writ jurisdiction. The limited enquiry contemplated at this stage is to ascertain existence of information which suggests that income has escaped assessment. It is submitted that in the facts of this case such information does exist on record. It is also argued that petitioner would be at liberty to raise all factual issues/objections at the appropriate stage of the proceedings, and as no prejudice otherwise is caused to him, this Court would not be justified in embarking upon the correctness or otherwise of the information available with the Assessing Officer while taking decision under Section 148A(d) of the Act.

8. The scheme for re-assessment of tax under the Act of 1961 has undergone a change with effect from April 1, 2021 vide Finance Act, 2021. The requirement of 'reasons to believe' for initiating re-

assessment proceedings hitherto occurring in the Act stands substituted with the availability of information with the Assessing Officer that income of assessee has escaped assessment. Amended sections 147 and 148 of the Income Tax Act, 1961 as well as section 148A introduced in the Act of 1961 vide Finance Act 2021 are reproduced hereinafter:-

“147. Income escaping assessment. - 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).

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. Issue of notice where income has escaped assessment. - 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 such period, as may be specified in such 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:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable 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.

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;
- (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 under 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 documents, 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 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. Conducting inquiry, providing opportunity before issue of notice under section 148.- The Assessing Officer shall, before issuing any notice under section 148,-

(a) conduct any enquiry, if require, 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, by service 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, [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 purpose of this section, specified authority means the specified authority referred to in section 151."

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. In the facts of the present case, it transpires that petitioner in his return has shown various purchases of arecanut (supari) from M/s Kuhoje K Achumi and M/s Om Traders. The order under clause (d) of Section 148A records that investigating wing of DGGI and GST have informed the Income Tax Authorities that M/s Kuhoje K Achumi and M/s Om Traders are found availing and utilizing fraudulent ITC on the basis of fake tax invoices without receipt of goods. It has also been found that the said entity (the seller) does not exist at all at the declared principal place of business. It is from such doubtful units that the petitioner claims to have made purchases amounting to Rs. 1,79,68,750/-. Though the petitioner has alleged that his Books of Account truly reflects these transactions and that goods have been received by way of e-challan, etc., but such defence on merits of the information is not expected to be authoritatively determined by the assessing authority at the stage of decision under section 148A(d). The forum for determining correctness or otherwise of the information on the basis of defence setup by the assessee would be the assessment proceedings under Section 148 of the Act. On the basis of materials which are referred to in the order of the assessing authority under clause (d) of Section 148A, it cannot be doubted that information did exist with the authorities suggesting that the income chargeable to tax has escaped assessment. The formation of opinion by the authority concerned under section 148A(d), therefore, cannot be questioned on the basis of detailed defence setup by the assessee on the merits of the information, including opportunity of cross-examining the seller or by demanding the documents relating to such information.

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.

16. The term 'information' for the purposes of reopening of assessment has been examined in *Larsen & Turbo Ltd. vs. State of Jharkhand*, (2017) 13 SCC 780. Paragraph nos.26, 27 and 32 of the report are apposite for the present purposes and are reproduced hereinafter:-

"26. It is also pertinent to understand the meaning of the word "information" in its true sense. According to Oxford Dictionary, "information" means facts told, heard or discovered about somebody/something. The Law Lexicon describes the term "information" as the act or process of informing, communication or reception of knowledge. The expression "information" means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment. We agree that a mere change of opinion or having second thought about it by the competent authority on the same set of facts and materials on the record does not constitute "information" for the purposes of the State Act. But the word "information" used in the aforesaid section is of the widest amplitude and should not be construed narrowly. It comprehends not only variety of factors including

information from external sources of any kind but also the discovery of new facts or information available in the record of assessment not previously noticed or investigated. Suppose a mistake in the original order of assessment is not discovered by the assessing officer, on further scrutiny, if it came to the notice of another assessor or even by a subordinate or a superior officer, it would be considered as information disclosed to the incumbent officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the officer in such circumstances is in one sense extraneous to the record. It will be information in his possession within the meaning of Section 19 of the State Act. In such cases of obvious mistakes apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment or wrong assessment.

27. There are a catena of judgments of this Court holding that assessment proceedings can be reopened if the audit objection points out the factual information already available in the records and that it was overlooked or not taken into consideration. Similarly, if audit points out some information or facts available outside the record or any arithmetical mistake, assessment can be reopened.

32. The expression "information" means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or after bearing on the assessment. We are of the clear view that on the basis of information received and if the assessing officer is satisfied that reasonable ground exists to believe, then in that case the power of the assessing authority extends to reopening of assessment, if for any reason, the whole or any part of the turnover of the business of the dealer has escaped assessment or has been under-assessed and the assessment in such a case would be valid even if the materials, on the basis of which the earlier assessing authority passed the order and the successor assessing authority proceeded, were same. The question still is as to whether in the present case, the assessing authority was satisfied or not."

17. In the facts of the present case the assessing authority has received information from DDIT (investigation), Unit III, Nagpur from DGGI and GST authorities as well as from CBDT that the sellers of the assessee were availing fraudulent ITC on the basis of investigation made by the concerned agencies. Such information would be information referable to clause (i) of Explanation 1 to second proviso to section 148 of the Act. We have already observed

that there is no challenge to the notice by the assessee on the ground that information disclosed vide notice under section 148A(b) is not covered by the information specified in Explanation 1 to the second proviso to section 148 of the Act of 1961.

18. Learned counsel for the petitioner has placed reliance upon the judgment of Supreme Court in *Red Chilli International Sales vs. Income Tax Officer*, [2023] 146 taxmann.com 224 (SC), wherein the Court held as under:-

“Delay condoned.

We with the petitioner that the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court, on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under Section 148 of the Income Tax Act, 1961 is satisfied. 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. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the notice under Section 148A (b) including the annexure thereto, the reply filed by the petitioner and the order under Section 148A (d) of the Income Tax Act, 1961.

Recording the aforesaid, the special leave petition is disposed of. We clarify that the dismissal of the special leave petition would not be construed as a findings or observations on the merits on case.”

19. On behalf of the department, Sri Gaurav Mahajan has placed reliance upon a Division Bench judgment of Punjab and Haryana High Court in *Anshul Jain vs. Pr. CIT*, [2022] 143 taxmann.com 37, wherein the Court observed that no interference by the writ court was warranted in the order passed under section 148A(d) of the Act as all the grounds of challenge to such order would be available to an assessee while challenging the order passed in reassessment proceedings consequent to the notice issued under section 148 of the

Act, 1961.

20. The above order of Division Bench of High Court of Punjab and Haryana was challenged before the Supreme Court of India in Anshul Jain vs. Pr. CIT, [2022] 143 taxmann.com 38, wherein the Court has observed as under:-

"What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

Under the circumstances, the High Court has rightly dismissed the writ petition.

No interference of this Court is called for.

The present Special Leave Petition stands dismissed."

21. So far as the judgment of Supreme Court of India in Red Chilli International Sales (supra) is concerned, the Court directed the High Court to consider the reply filed by the petitioner to the notice under section 148A(b) as well as the order passed under section 148A(d) of the Act of 1961 as the High Court had refused to examine the issue in view of the alternative remedy. This direction by the Supreme Court of India is on the facts of the case as the issues raised by the petitioner before the High Court were not examined. The Supreme Court did not endorse the view that a writ petition itself would not be maintainable against the order passed under section 148A(d) of the Act, 1961 and consequently directed the High Court to examine the merits of order.

22. Maintainability of the writ petition against the order passed under section 148A(d) is distinct from the scope of adjudication available qua the order passed under section 148A(d) of the Act. The limited scope available under Article 226 of the Constitution of India to adjudicate an order passed under section 148A(d) of the Act, 1961 would be confined to existence of the information only, in view

of the scheme of the Act of 1961. A contrary construction cannot be culled out from the judgment of the Supreme Court of India in Red Chilli International Sales (supra).

23. In Anshul Jain (supra) the Supreme Court did examine the scope of proceedings under section 148A vis-a-vis reassessment proceedings under section 148 of the Act to observe that by the very nature of proceedings the examination would remain more exhaustive at the stage of reassessment proceedings with elaborate remedies available under the statute to the assessee.

24. The order passed by the Assessing Officer under section 148A(d) of the Act regarding existence of information suggesting that income chargeable to tax has escaped assessment would otherwise remain subject to reassessment order passed under section 148 of the Act. Thus, any observations of the assessing authority while passing order under section 148A(d) with regard to merits of assessment of income would remain subject to the order to be ultimately passed in reassessment proceedings under section 148 and would not be to the prejudice of rights and contentions of the assessee under section 148 as well as departmental remedies in respect thereof.

25. In view of our deliberations and discussions held above, we do not find any merit in the challenge laid to the order of assessing authority under section 148A(d) of the Act, 1961, dated 29.03.2023, as well as the notice issued under section 148 of the Act, 1961. Subject to the observations contained in this judgment the writ petition accordingly fails and is dismissed.

Order Date:- 5.5.2023

Ranjeet Sahu/Ashok Kr.

(Shiv Shanker Prasad, J.)

(Ashwani Kumar Mishra, J.)