

(2025) 03 RAJ CK 0002

Rajasthan HC

Case No: Civil Writ Petition No.9007 Of 2022

M/S Samay Irrigation Private Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: March 19, 2025

Acts Referred:

- Income Tax Act, 1961 — Section 147, 148A(d), 148A(b), 148, 151

Hon'ble Judges: Avneesh Jhingan, J; Maneesh Sharma, J

Bench: Division Bench

Advocate: Sanjay Jhanwar, Rajat Sharma, Akshay Sharma, Shantanu Sharma, Parth Vashishtha, Aditya Doda

Final Decision: Allowed

Judgement

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Avneesh Jhingan, J

1. This petition is filed seeking quashing of order dated 28.03.2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').
2. The relevant facts are that the petitioner is engaged in manufacturing of Seamless Extruded Copper, Nickle, Aluminum, Brass and related products. The petitioner filed income tax return for assessment year 2018-19 declaring income of Rs.10,97,83,780/-. Notice dated 14.03.2022 under Section 148A(b) of the Act was issued stating that the income tax department had information of petitioner having made bogus purchases from M/s.Flash Forge Pvt Ltd. (hereinafter 'company'). The notice was responded to on 17.03.2022 wherein the petitioner denied to have made any purchases from company. Rather the stand taken was that the petitioner had made sales to the company. In continuation of the notice, communication dated 20.03.2022 was issued wherein the petitioner was asked to explain the transactions with company. The petitioner filed reply on 21.03.2022 explaining the sales to the tune of Rs.1,22,46,936/- made to company. Along-with reply the purchase orders, copy of letter of credits, invoices wherein the GST was separately charged, dimension report, mill test certificates, deliver challan/ packing list, transport bilties and copy of sales register were annexed.
3. The AO decided that it is a fit case to proceed under Section 148 of the Act holding that the evidence of sending the material to the premises of the company was not produced and it was a case of an accommodation entry by getting bogus invoices.
4. Learned senior counsel for the petitioner submits that the reopening of assessment was on surmises and conjectures in absence of any material. Contention is that the material relied upon by the department was not supplied despite a specific request. Further that the stand taken by the department was changed during the course of the proceedings, yet the

transactions of sale were duly explained.

5. As per contra, notice issued under Section 148A(b) of the Act was defective to the extent that instead of sales transaction purchase was mentioned and this was corrected by the later communication. The argument is that company was involved in getting bogus invoices and a deeper investigation is required.

6. The relevant portion of Section 148A of the Act and the guidelines dated 01.08.2022 for issuance of notice under Section 148 of the Act are reproduced:-

"Provisions & Guidelines

Section 148A

[Conducting inquiry, providing opportunity before issue of notice under section 148.

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,[***], 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:

XX XX XX XX

Relevant clauses of guidelines dated 01/08/2022 for issuance of notice u/s 148 of the Act.

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v. Explanation 2 to section 148 of the Act provides that if a survey u/s 133A of the Act (other than under section 133A (2A)) was conducted in the case of the assessee on or after 1 April, 2021, the Assessing officer shall be deemed to have information which suggests that income chargeable to tax has escaped assessment. However, it is to clarify that the due procedure as prescribed u/s 148A needs to be followed in such cases also before issuing a notice u/s 148 of the Act. (refer proviso to section 148A).

vi. The AO shall, if required, undertake enquiries on any "information" received/available with him which suggests that the income chargeable to tax has escaped assessment in a previous year only with the prior approval of "specified authority".

vii. If the result of enquiry/information available suggests that the income chargeable to tax has escaped assessment, the AO shall provide an opportunity of being heard to the assessee by issuing a show cause notice u/s 148A(b) of the Act. The said notice shall provide between 7 to 30 days' time to the assessee for submitting the reply. A template of show cause notice is enclosed at Annexure-A1

viii. If an assessee requests for a personal hearing, the same may be dealt with following the principle of natural Justice by giving a reasonable period for compliance of notice specifying the date of hearing.

ix. As per 3rd proviso to section 149, for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded.

x. Further as per 4th proviso to Section 149, where immediately after exclusion of the period referred to in the immediately preceding proviso (i.e. 3rd proviso), the period of limitation available to the Assessing Officer for passing an order under clause

(d) of Section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

xi. The AO has to consider the reply of assessee furnished, if any, in response to the show cause notice referred to in clause(b) of Section 148A before passing the order u/s 148A(d).

xii. The AO shall mandatorily pass a speaking order u/s 148A(d) in all cases with the 'prior approval of the specified authority' (Annexure-A2) for such order u/s. 148A(d), except in the cases covered in Para 2.1 (iii) above of these guidelines, irrespective of whether issuance of notice u/s 148 is being recommended or not. A template of such order u/s. 148A(d) is enclosed at Annexure-A3.

xiii. Once an order under clause(d) of Section 148A has been passed, no further approval is required for issuance of notice u/s 148 by the AO, with effect from 1.4.2022.* (* except for cases in which procedure under Section 148A is being applied for implementation of the Hon’ble Supreme Court’s judgment in the case of UOI Vs. Ashish Agarwal (2022 SCC Online SC 543) dated 4.5.2022 for which specific instruction dated 11.5.2022 has been issued”)

Annexure-A1 is reproduced hereinbelow:-

“GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE -----
(Designation of AO along with Office address)
To,

PAN:	AY:	DATED:	DIN* & NOTICE NO.
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Notice under clause (b) of Section 148A of the Income-tax Act, 1961

Sir/Madam/M/s.

1. Whereas I have information which suggests that income chargeable to tax for the Assessment Year

_____ has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. The details of the information/enquiry conducted on which reliance is being placed,

along with supporting documents, are enclosed with this notice.

2. You are required to show-cause as to why, in view of the details contained in enclosures mentioned in point number 1 above, a notice under Section 148 of the Income Tax Act, 1961 should not be issued.

3. You may submit your reply to this notice, along with supporting documents (if any) on the above mentioned issues on or before _____ electronically at www.incometax.gov.in.

Guidelines for Enclosures

- The AO should enclose copy of all the relevant 'information' available on which reliance is being placed, along with supporting documents (if any).
- In the cases where information is received from the investigation wing or any other law enforcement agency, details of letter, brief summary of information along with relevant portion of such report and details of relied upon documents may be enclosed. Such a portion as does not bear reference to the assessee concerned may be appropriately redacted.
- Details of enquiry conducted, if any, may be shared if reliance is being placed by the AO on it.
- Judicial order (i.e., case laws) on which reliance is being placed, if any.

Refer Explanation 1 and Explanation 2 of Section 148 for what constitutes "information".

The Supreme Court in the case of Union of India Vs.

Ashish Agarwal (2022 SCC OnLine SC 543) took note of the changes brought by Finance Act, 2021. The relevant part is quoted below:-

• **"6. It cannot be disputed that by substitution of sections 147 to 151 of the Income Tax Act (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 the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and ors; (2003) 1 SCC 72, has not been followed.

• **6.1 Further preFinance 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.**

• **6.2 Under the substituted provisions of the IT Act vide Finance Act, 2021, no notice under section 148 of the IT Act can be issued without following the procedure prescribed under section 148A 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 148A of the IT Act. section 148A of the IT Act is a new provision which is in the nature of a condition precedent. Introduction of section 148A 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.

- 6.3 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 the case of **GKN Driveshafts (India) Ltd. (supra)**.

- 6.4 However, by way of section 148A, 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 showcause 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.

- 6.5 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 148A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under section 148A(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.

- 6.6 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."

7. By Finance Act of 2021, section 148A of the Act was inserted stipulating the procedure to be followed before issuance of notice under Section 148 of the Act. Prior to this decision of the Supreme Court in **GKN Driveshafts India Ltd. Vs. Income Tax Officer and Ors reported in [(2003) 259 ITR 19]** gave the procedure to be followed for initiating the proceedings for re-opening assessment. Sections 147 to 151 were also substituted.

8. The Central Board of Direct Taxes (for short 'CBDT') in view of the changed scenario with the amendment in the Act and decision of **Union of India Vs. Ashish Agarwal reported in [(2022) 444 ITR 01 (SC)]** issued guidelines for issuance of notice under Section 148 of the Act. The combined reading of Section 148A of the Act and the guidelines emanates that the safeguards were provided before initiating the proceedings under Section 148 of the Act. In case need so arises to conduct an enquiry with regard to material available suggesting escaped assessment, the Assessing Officer ('AO') can proceed to enquire after prior approval of specified authority. The assessee is to be provided an opportunity of hearing. The information relied upon along-with outcome of the enquiry is to be supplied. In case of an information having been received from the investigation wing or the other agency, the summary of information along-with the relevant portion of report and details of the documents relied upon is to be supplied.

The decision to proceed under Section 148 on the basis of material available with the department and after considering the reply filed by the petitioner is to be taken after prior approval of the specified authority.

An exception has been provided by the proviso to Section 148A of the Act with regard to applicability of procedure under Section 148A of the Act.

9. In the present case, the notice under Section 148A(b) of the Act was issued on the basis of information received from the Goods and Services Tax authorities. On that basis the AO issued a notice to the petitioner for explaining the purchases made from the company. The stand was changed after filing of reply by the petitioner denying purchases made from the company and the petitioner was asked to explain transaction. As per Section 148A, AO before issuing notice should have information suggesting escaped assessment, the AO can conduct enquiry, if required but with prior approval of specified authority. To similar effect, guidelines are issued. This itself pre-supposes that notice under Section 148 is not be issued in routine but after AO being satisfied that information suggests escaped assessment and for that there has to be independent application of mind by AO qua the information. We may hurry to add that AO is not required to reach to a final conclusion of escaped assessment. The intent behind the procedure prescribed is obvious that re-opening of assessment should not be result of casual or arbitrary exercise of power.

10. The non-application of mind by the AO while issuing notice under Section 148A(b) is writ large. There was no distinction made between a transaction of sale and purchase. It is a classic case where on the basis of an information received from another department the proceedings were initiated without considering the relevance of the information qua the Act.

11. In spite of the precise language used in Section 148A of the Act and the issuance of guidelines by the CBDT, the AO failed to supply the material relied upon to the petitioner or to give relevant portion of the report received from the GST authorities or details of enquiry conducted, if any and this is in spite of a specific request made by the petitioner. Non supply of the information relied upon and outcome of enquiry if held, denies the petitioner reasonable opportunity to object that no case is made out for reopening the assessment.

12. The Supreme Court in the case of **Chhugamal Rajpal Vs. S.P. Chaliha and Ors. reported in (1971) 79 ITR 603 (SC)**

held that the AO must have a prima-facie ground for taking action under Section 148 of the Act and a need for further enquiry in itself shall not confer jurisdiction upon AO for reopening the assessment.

13. The only conclusion of use of phrase 'information which suggest that income chargeable to tax has escaped assessment' and power to conduct enquiry if required, is that at least prima facie AO has to be satisfied that information suggest escaped assessment. In other words, there has to be basis suggesting escaped assessment for proceeding under Section 148, fishing and roving enquiry to find income escaped from tax cannot be made. The changed instance of the AO during the pendency of notice under Section 148A(b) of the Act, in fact was issued for testing the relevance of the material received from GST authority vis-a-vis escapement of tax under the Act which is not permitted.

14. Be that as it may, the petitioner filed another reply explaining the sales figure which are equivalent to the figure mentioned by the AO in the notice. The stand of the petitioner was substantiated by annexing transportation documents, invoices showing GST having been charged separately, testing reports and evidence that the consideration passed through banking channels. Instead of dealing with the documents produced by the petitioner and verifying the transaction, the material produced was brushed under the carpet by the AO stating that the movement of the goods from premises of petitioner to the company was not proved.

15. The stand taken by the AO has two fold fallacy. The distinction of nature of investigation to be made by the GST authorities and the income tax authorities has been given a go-bye. Secondly, the bilties attached with the reply was an evidence of transportation of the goods

from the premises of the petitioner to premises of the company.

16. There is other angle to be considered that AO without doubting the payments made through banking transaction, charging & deposit of GST and other documents produced to substantiate the sale transactions decided that it is a fit case to proceed under Section 148.

17. Non-compliance of the procedure as given in section 148A of the Act vitiates the proceeding being an unreasonable exercise of power. There cannot be a dispute that the procedure stipulated u/s 148A is mandatory. The intent of laying down the steps to be followed before issuance of notice u/s 148 is loud & clear, inspite of this not only in this case but in number of cases before this Court it has been observed that rather than implementing the procedure in its spirit, it is mechanically gone through to complete the formality and this needs to be looked into by authorities at appropriate level.

18. Before concluding it would be appropriate to note the decision of the Bombay High Court dated 26th November, 2024 in **Writ Petition No.247/2023** titled as **C.C. Dangi and Associates Vs. Assistant Commissioner of Income Tax, Circle-16(2), Mumbai and Others** wherein the transactions with M/s.Flash Forge Pvt. Ltd. was dealt with and the proceedings under Section 148 of the Act were quashed holding that the proceedings were result of colossal non-application of mind amounting to abuse of authority and power vested by law.

19. The writ petition is allowed. The impugned order and the proceedings consequent thereto are quashed.