

**(2005) 09 AHC CK 0296**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 583 of 1999

Dinesh Chand Jain

APPELLANT

Vs

The Deputy Commissioner of  
Income Tax

RESPONDENT

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**Date of Decision:** Sept. 9, 2005

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 143(3), 147, 148

**Citation:** (2006) 203 CTR 92 : (2006) 280 ITR 567

**Hon'ble Judges:** Rajes Kumar, J; R.K. Agrawal, J

**Bench:** Division Bench

**Advocate:** S.D. Singh, for the Appellant; A.N. Mahajan and S.C., for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Rajes Kumar, J.

In the present writ petition, petitioner seeks the following relief:

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned notice dated 9.12.1998 u/s 148, of the Act for the assessment year 1995-96 issued by the respondent (Annexure-3 to the writ petition).

(ii) issue any other suitable writ, order or direction in favour of the petitioner as this Hon'ble Court may deem fit and proper in the circumstances of the case;

(iii) award costs of this petition to the petitioner."

2. Brief stated facts giving rise to the present writ petition are that the petitioner is engaged in the business of manufacture and sales of pan masala including Wah Gutkha in the name of Ashok Enterprises. The petitioner business and residential premises were searched by the Income Tax authorities. At the same time the

business premises of Rajeev Bansal, Proprietor of M/s S.B. Agencies, Nayaganj, Kanpur was also searched, who is alleged to be a bulk purchaser of Wah Gutkha of the petitioner. It appears that certain books of accounts and documents have been seized. Perusal of the assessment order dated 13.03.1997 passed u/s 143(3) of the Income Tax Act (hereinafter referred to as "Act") for the assessment year 1995-96 shows that on the basis of the seized sale bill book nos.SB-23, SB-49, SB-54, Sb-55, SB-56, Sb-57, SB-58, and SB-100 and statement of Rajeev Bansal undisclosed turn over was estimated at Rs. 49,14,445/- and extra net profit at Rs. 9,74,334/- was added in the assessment of the petitioner. Petitioner filed appeal against the assessment order, which was allowed and the said addition of Rs. 9,74,334/- was deleted vide order dated 06.03.1998. Admittedly, against the order of the first appellate authority, appeal filed by the revenue is pending before the Tribunal. In the meantime assessing authority issued the impugned notice u/s 148 of the Act on 09.12.1998 and on the demand by the petitioner reasons recorded for the reopening of the assessment and for the issue of the notice u/s 148 of the Act have been supplied to the petitioner, which is annexure No. 4 to the writ petition, which reproduced as follows:

"In this case assessment u/s 143(3) was completed on 13.3.1997. During the course of verification of books of accounts seized in the case of Shri Rajiv Bansal, Prop. S.R. Agencies, it was noticed that Shri Rajiv Bansal had made unaccounted sales to the tune of Rs. 93,99,100/-. In the assessment order dated 30.3.1998 in the case of Shri Rajiv Bansal an addition of Rs. 10,80,896/- has been made on the basis of seized material Annexure SB-"103, SB-104 and SB-105, holding that Shri Rajiv Bansal has made unaccounted sales of Rs. 93,99,100/- of WAH GUTKHA. It has further been held that Shri Rajiv Bansal was making purchase of WAH GUTKHA from Shri Dinesh Chand Jain only since he is dealing exclusively in Wah Gutkha. It is further noticed that as per letter dt. 20.3.1998 Shri Rajiv Bansal has stated the entire purchases whether relating to accounted for or unaccounted sales (including zero errors/irregularities) were made from M/s Ashoka Agencies who were the manufacturer of Wah brand plain and tobacco mixed pan masala.

In view of this, I have reason to believe that Shri Dinesh Chand Jain, pro. M/s Ashoka Agencies has failed to disclose in his return of income filed on 31.10.95, the sales worth Rs. 93,99,100/- made to Shri Rajiv Bansal as admitted by him and as consequence income chargeable to tax has escaped assessment for the assessment year 1995-96 in the case of Shri Dinesh Chand Jain.

Issue notice u/s 148 of the I.T. Act, 1961."

3. Heard Sri S.D. Singh, learned counsel for the petitioner and Sri A.N. Mahajan, learned Standing Counsel appearing for the Revenue.

4. Learned Counsel for the petitioner submitted that the material which was seized from the premises of Sri Rajeev Bansal was considered at the time of original

assessment order and therefore, on the basis of same seized material, proceedings u/s 147 of the Act can not be taken. He further submitted that the addition made on the basis of the seized sale bill has been deleted by the appellate authority on the ground that alleged seized sale bill does not show that the petitioner had made any unaccounted sale. He submitted that at the time of issue of the notice, there was no material on the basis of which believe of escaped income could be formed and therefore, notice u/s 148 of the Act is invalid and liable to be quashed. In support of his contention he relied upon the various decisions in the case of [Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , Commissioner of Income Tax, Gujarat Vs. Bhanji Lavji, Porbandar, , Gemini Leather Stores v. ITO, Agra and Ors., reported in 100 ITR, 248, Smt. Jamila Ansari Vs. Income Tax Department and Another, , Commissioner of Income Tax, New Delhi Vs. Rao Thakur Narayan Singh, , Manno Lal Kedar Nath v. Union of India and Ors., reported in 1978 1 PTC, 563, ITC Ltd. v. Superintendent of Commercial Taxes and Ors., reported in 119 STC, 530 SC, in the case of Foramer Vs. Commissioner of Income Tax and Another, , Commissioner of Income Tax, West Bengal II Vs. Dinesh Chandra H. Shah and Others, , G.R. Constructions Vs. Income Tax Officer, Surat-I, , Sirpur Paper Mills Ltd. Vs. Income Tax Officer, "A" Ward and Another, .](#) Learned Standing Counsel submitted that under Article 226 of the Constitution of India in writ jurisdiction, this Court can not examine the sufficiency of the material and the Court can only see whether there was any material and such material was relevant to form the believe of escaped income. He submitted that in the original assessment order the seized sale bill book nos.SB-23, SB-49, SB-54, SB-55, SB-56, SB-57, SB-58, SB-100 were considered and on that basis unaccounted sale for Rs. 49,14,455/- has been estimated while the assessing authority subsequently came in possession of further seized material in the form of sale bill book nos.SB-103, SB-104 and SB-105 which relates to the unaccounted sale of Rs. 93,99,100/- of Wah Gutkha vide letter dated 30.03.1998. Sri Rajeev Bansal stated that entire purchases whether relating to accounted for or accounted sales made from M/s Ashoka Agencies, who were the manufacturer of Wah brand plain and tobacco mixed pan masala. Therefore, fresh material relating to suppressed sales was in possession of the assessing authority which were not considered earlier, while issuing the notice u/s 148 of the Act on the basis of which a believe of escaped income was formed. He submitted that the material, which was made basis for the reopening of the case was relevant and sufficient to form the believe of escaped income and therefore, writ petition is liable to be dismissed.

5. We have given our anxious consideration to the submissions of the learned counsel for the parties and also have gone through the various cases. cited by both the parties. It is settled principle of law that in a writ jurisdiction under Article 226 of the Constitution of India, this Court can not look into the sufficiency of the material on the basis of which a believe has been formed and notice u/s 148 of the Act has been issued. This Court can only examine whether there was any material and

whether the material is relevant to form the believe of escaped income. (Vide [Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das,](#) , Indra Prastha Chemicals Pvt. Ltd. v. Commissioner of Income Tax, reported in 2005 UPTC, 53).

6. In the case of [Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others,](#) , the Apex Court held that in a writ jurisdiction, the court can only consider whether there was a prima facie case for reassessment and sufficiency of the material cannot be considered.

7. In the case of [Kundan Lal Ratan Lal Jain Vs. Assessing Officer,](#) in which notice u/s 148 of the Act was issued on the basis of information relating to the enquiries in which it was found that the land holders whose name was found entered had denied having leased out any land to the assessee and the court had not found the case fit for interference.

8. In the case of [Ess Ess Kay Engineering Co. P. Ltd. Vs. Commissioner of Income Tax,](#) , the case was reopened on the basis of the fresh material obtained in the course of assessment for the next year. The Apex Court found the material sufficient to reopen the assessment proceeding.

9. We have perused the assessment order dated 13.03.1997 and the reasons recorded by the assessing authority, which is annexure No. 4 to the writ petition referred hereinabove. Perusal of the assessment order shows that unaccounted sales at Rs. 49,14,455/- was estimated from the seized sale bill book SB-23, SB- 49, SB-54. SB-55, SB-56, SB-57, SB-58, SB-59 and SB-100 and the undisclosed profit at Rs. 9,74,334/- was estimated on the aforesaid undisclosed sales while the notice u/s 148 of the Act has been issued on the basis of seized sale bill book nos.SB-103, SB-104 and SB-105, which relates to unaccounted sales of Rs. 93,99,100/- of Wall Gutkha. These bills have not been considered and made basis for estimating the unaccounted income in the original assessment proceedings. Therefore, believe of escaped income formed on the basis of seized material , SB-103, SB-104 and Sb-105 can not be said to be without any basis Thus, we are of the view that initiation of the proceedings u/s 148 of the Act can not be said to be without any material or based on irrelevant material.

10. In the result, writ petition is dismissed. There shall be no order as to costs