

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6765 of 2025

CNR No. BRHC010362012025

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Ratnalaya Jewellers a partnership firm having its office at Shop No. 2, Hathwa Market, Bari Road, Bakerganj, Patna, P.O.-Bankipur, P.S.-Pirbhor, District-Patna (Bihar), Pin-800004 through its partner namely Nagendra Prasad Keshri, S/o Jamuna Prasad Keshri, male, aged about 64 years, resident of 104, Puspanjali Plaza, Basant Vihar Colony, Boring Road, Patna, P.O.-G.P.O., P.S.-S.K. Puri, District-Patna-800001, Bihar.

... .. Petitioner

Versus

The Assistant/Deputy Commissioner of Income Tax, Circle-4 Patna.

... .. Respondent

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate
For the Respondent	:	Mrs. Archana Sinha @ Archana Shahi, Sr. Standing Counsel, Income Tax Department Ms. Richa Rajiv Singh, Advocate Ms. Komal, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 29-09-2026

This writ application has been preferred seeking the following reliefs:-

“i) For issuance of writ of certiorari or any other appropriate writ quashing the notice under Section 148 of Income Tax Act, 1961 ("the Act") dated 29.03.2025 for Assessment Year ("A.Y.") 2021-22 issued by the Deputy Commissioner of Income Tax, Circle-4, Patna herein and also referred to as the "Assessing Officer" hereinafter) initiating proceedings for reassessment against the Petitioner



as being wholly without jurisdiction and consequently, is illegal and bad in law as the impugned notice has been issued on a non-existent entity on PAN No.ABBFR3082R allotted by the department which has been surrendered by the petitioner way back on 27.01.2021.

(ii) For issuance of a writ of certiorari or any other appropriate writ(s), order(s) or direction(s) quashing the recorded reasons by erroneously concluding that the financial transaction of Rs.4.59 crores has escaped assessment within the meaning of Section 147 and by overlooking the report of Income Tax Officer, Intelligence and Criminal Investigation, Patna wherein a finding has been recorded that the transaction of Rs.4.59 crores on account of cash deposit in Bank has duly been declared by the petitioner in its financial statements filed along with the return of income on entity in existence on PAN No. ABBFR2514C for A.Y. 2021-22 and that the cash deposit of Rs.4.59 crores is duly accounted for in the books of the petitioner and closing balance of all the Bank Account including the Bank account with HDFC Bank in which the said cash was deposited is duly reflected in the financial statements and is covered by the sales of the petitioner during the year under consideration amounting to Rs.27.78 crores.

iii) For issuance of a writ of mandamus or any other appropriate writ(s), order(s) or direction(s) to bring on record the approval of specified authority as mentioned in the notice under Section 148 dated 29.03.2025.



iv) For granting any other relief(s) to which the petitioner is otherwise found entitled for.”

Brief Facts of the Case

2. It is the case of the petitioner that the proprietorship firm of one of its partners, namely Nagendra Prasad Keshri, was converted into a partnership firm vide partnership deed executed on 01.03.2020. The partners of the firm are (1) Nagendra Prasad Keshri, (2) Saket Keshri, son of Nagendra Keshri and (3) Sadhana Keshri, daughter of Harishchandra Prasad Keshri, all residents of 104, Pushpanjali Plaza, Basant Bihar Colony, Patna.

3. The partnership firm came into effect on 1st April, 2020 in the name and style of M/s Ratnalaya Jewellers.

4. It is the case of the petitioner that the petitioner was allotted two Permanent Account Number (PAN) bearing number ABBFR2514C and ABBFR3082R which were allotted on 21.06.2020 and 03.07.2020 respectively. According to the petitioner, the first PAN allotted on 21.06.2020 is the correct PAN whereas the second PAN allotted on 03.07.2020 is incorrect PAN. The petitioner filed a petition dated 27.01.2021 (Annexure ‘P/4’ series) before the Assistant Commissioner of Income Tax, Circle 4(1), Patna for cancellation of PAN No. ABBFR3082R. The



petitioner claimed that the petitioner was regularly using PAN No. ABBFR2514C.

5. It is stated that the petitioner filed its first return in the status of partnership firm for the Assessment Year 2021-22 under PAN No. ABBFR2514C under the jurisdiction of Income Tax Officer, Ward Number 5(1), Patna declaring total income of Rs. 1,23,64,150/- on 28.01.2022 along with audited set of accounts and had paid tax of Rs. 43,20,528/-. It is his case that the audited set of accounts takes into account the entire financial transactions including deposit of cash in HDFC Bank amounting to Rs. 4.59 crores, source of which is covered out of declared sales of Rs. 27.78 crores of gold and silver ornaments.

6. It is further submitted that the return filed on 21.08.2022 for Assessment Year 2021-22 under PAN No. ABBFR2514C was accepted under Section 143(1) vide intimation under Section 143(1) dated 10.05.2022. In the subsequent Assessment Year 2022-23 and Assessment Year 2023-24 also, the petitioner firm filed its return on the same PAN, which were accepted by the Department.



**Institution of an inquiry under Section 133(6) of the
Income Tax Act, 1961**

7. It is stated that the Intelligence and Criminal Investigation Wing of the Department instituted an inquiry under Section 133(6) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act of 1961' or the 'IT Act'). The petitioner was served with a notice whereby it was asked to explain the cash deposit of Rs. 8.33 crores during Financial Year 2020-21 in HDFC Bank Account No. 50200028168974. The petitioner submitted a reply stating that the entire cash deposit is duly accounted for in the books of the petitioner. The petitioner claimed that the cash deposit is covered under the total sale of Rs. 27.78 crores, declared in the audited set of accounts filed with the return of income.

8. It is stated that the Income Tax Officer, Intelligence and Criminal Investigation had instituted another inquiry under Section 133(6) vide notice dated 01.05.2024 in respect of cash deposit in another bank account with HDFC bearing Account No. 50200052342649 whereby the petitioner was asked to explain the cash deposit. In compliance thereof, the petitioner submitted a reply stating that it has already filed an application on 27.01.2021 for surrender of duplicate PAN i.e. ABBFR3082R. The petitioner claimed that it was regularly using PAN No. ABBFR2514C. The



petitioner reiterated its stand that the entire cash deposit is duly accounted for in the books of the petitioner and the bank account with HDFC Bank, all these have been duly disclosed in the balance sheet and income tax return. It is the stand of the petitioner that in support of his averments made in the reply, the petitioner had submitted copy of ITR, copy of audited set of account, details of bank account (Annexure 'P/8' series).

9. It is stated that the Income Tax Officer, Intelligence and Criminal Investigation, after conducting inquiry and verification and after taking note of the replies filed by the petitioner pursuant to the aforementioned notices, recorded a finding as to cash deposit in bank of Rs. 4.59 crores to be out of explained sources i.e. sale of gold and silver ornaments of Rs. 27.78 crores. It is the stand of the petitioner that the Income Tax Officer observed that the verification issues stood explained as information value was taken into consideration against other PAN of the firm ABBFR2514C.

Issuance of notice under Section 148 read with Section 147 of the IT Act

10. The petitioner is aggrieved by the issuance of notice under Section 148 dated 29.03.2025 (Annexure 'P/1' series) under the I.T. Act by the respondent under PAN No. ABBFR3082R, after



obtaining prior approval of specified authority alleging therein that income chargeable to tax amounting to Rs. 4.59 crores on account of cash deposit in bank has escaped assessment for the Assessment Year 2021-22 within the meaning of Section 135A, 147 and 148 of the Act. The notice required the petitioner to file its return of income within 90 days in prescribed form in respect of PAN No. ABBFR3082R.

Submissions on behalf of the petitioner

11. Mr. Ajay Kumar Rastogi, learned Senior Counsel representing the petitioner, has taken a plea that the notice under Section 148 of the IT Act has been issued upon a non-existent entity vide PAN No. ABBFR3082R. The petitioner had already submitted an application surrendering the said PAN. The petitioner was using PAN No. ABBFR2514C allotted to it on 21.06.2020 and had filed its return of income for Assessment Year 2021-22 with the correct PAN.

12. Learned Senior Counsel for the petitioner further submits that it is in the exclusive domain of the revenue authorities to deactivate/cancel the PAN allotted to a non-existent entity. According to him, non-discharge of statutory obligation of deactivating/cancelling the PAN has led to issuance of notice under Section 148 of the IT Act on an entity which does not exist.



13. It is submitted that the allegation of escapement of income is contrary to materials on record and is bereft of any 'information' as required under Clause (iv) of Explanation 1 to Section 148 read with Section 135A of the IT Act, thus, the impugned notice is liable to be quashed by this Court as the jurisdictional condition for reopening of assessment being 'information' is absent in the present case. Since the preconditions under Section 135A, 147 and 148 of the IT Act are not satisfied as there is no entity in existence of PAN ABBFR3082R, the very assumption of jurisdiction for reassessment is wholly illegal and without jurisdiction.

14. Learned Senior Counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Chhugamal Rajpal vs. S.P. Chaliha and Ors.** reported in (1971) 79 ITR 603 : (1971) 1 SCC 453, **Commissioner of Income Tax vs. Kelvinator of India Ltd.** reported in (2010) 320 ITR 561 : (2010) 2 SCC 723, **Siemens Financial Services Private Ltd. vs. Deputy Commissioner of Income Tax and Ors.** reported in (2023) 457 ITR 647 : 2023 SCC OnLine BOM 2822 and a recent judgment of the Hon'ble Supreme Court in the case of **Sanand Properties Private Limited vs. Joint Commissioner of Income**



**Tax and Ors. reported in (2026) 488 ITR 337 : 2026 SCC
OnLine SC 851.**

Stand of the respondents - Department of Income Tax

15. By filing a counter affidavit, copy of which has been served on learned counsel for the petitioner, the respondents have submitted that in the inquiry instituted under Section 133(6) of the IT Act, the petitioner was asked to explain the cash deposit of Rs. 8.33 crore during the Financial Year 2020–21 in HDFC Bank Account No. xxxxx8974. In response, the assessee had submitted a reply saying that the entire cash deposit is covered out of the total sale of Rs. 27.78 crores declared in the return of income filed by the petitioner. However, on perusal of the Final Verification Report (PVR) uploaded on ITBA system, it has been found that the amount of Rs. 4,59,91,700/- was shown as total income escaping assessment (sum of all verification issues). This information has been flagged on Insight Portal for the Assessment Year 2021–22 under “High-Risk e-Verification Scheme” formulated by the Central Board of Direct Taxes as per the provision of Clause (i) of Explanation 1 of Section 148 of the IT Act. Based on the information, notice under Section 148 of the IT Act has been issued on 29.03.2025 after obtaining approval from the specified authority.



16. It is stated that in response to the said notice, the assessee had submitted that he was allotted two PAN and he had submitted application for cancellation of PAN No. ABBFR3082R but as per the data available on ITBA/Insight Portal, the assessee has used its PAN ABBFR3082R in its bank account in which large cash have been deposited. The surrendered PAN is still active/operative as the Department has not accepted the application of the assessee because the assessee had utilized PAN ABBFR3082R not only in its bank account maintained with HDFC Bank but also in bank account maintained with IDBI Bank in subsequent Assessment Years 2022–23 and 2023–24 wherein the assessee had made cash deposits (including through bearer’s cheque) to the tune of Rs. 77,48,832/- and Rs. 66,23,500/- respectively.

17. It is the clear stand of the Department that the assessee had used its PAN in its bank account in which large cash have been deposited. Regarding the verification report in this case, it is submitted that after verification report submitted by the ITO (I&CI) Patna, information was flagged on Insight Portal in respect of the Assessment Year 2021-22 for taking action under Section 148 of the IT Act under “High Risk e-Verification Scheme”. Accordingly, the notice has been issued.



18. In paragraph ‘8’ of its counter affidavit, the respondent-Department has drawn the attention of this Court towards sub-section (7) of Section 139A of the IT Act whereunder there is a clear bar in making application, obtaining or possessing another Permanent Account Number (PAN) by a person who has already been allotted a Permanent Account Number. It is stated that on the request of the petitioner, PAN-ABBFR2514C was allotted to him on 20.06.2020 wherein the petitioner had applied for allotment of PAN having source of income as “other sources” and status as “firm”. Again, on the request of the petitioner, another PAN-ABBFR3082R was allotted to the petitioner. For this PAN, the petitioner had applied for it’s second PAN having source of income as “business” and status as “firm”. Accordingly, second PAN ABBFR3082R was allotted to the petitioner firm on 03.07.2020.

19. It has been found that the petitioner had changed its source of income “other sources” to “business” while applying for it’s second PAN. It is reiterated that PAN number ABBFR3082R is still active/operative, thus it is not an incorrect PAN as per departmental database and the assessee is still using this PAN in his bank accounts maintained in HDFC as well as IDBI Bank not only in Assessment Year 2020-21 but also in Financial Year 2021-



22 and 2022-23. In such circumstances, as per provision of clause (i) of Explanation 1 of Section 148 of the IT Act, on the basis of the information and after recording reasons and getting approval of specified authority, notice was issued under Section 148 of the IT Act.

20. Mrs. Archana Shahi, learned Senior Counsel for the Department of Income Tax, has relied upon a Division Bench judgment of this Court (one of us, Rajeev Ranjan Prasad, J being party to the said judgment) in **CWJC No. 10859 of 2018 (Alkem Laboratories Limited vs. Principal Commissioner of Income Tax and Ors.)** wherein this Court refused to quash the notice under Section 148 of the IT Act for the Assessment Year 2011-12 and also refused to quash the preliminary order dated 25.04.2018 passed by the Assessing Officer whereby the petitioner's objection to the issuance of notice and assumption of jurisdiction by respondent no.3 was rejected. It is submitted that this Court has relied upon the Hon'ble Supreme Court judgment in case of **Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal** reported in **(2014) 1 SCC 603 : (2013) 357 ITR 357**.

21. It is placed on record that the statements made in the counter affidavit have not been controverted by way of a rejoinder to the same.



Consideration

22. We have heard learned counsel for the parties. In the present case, the notice under Section 148 of the IT Act is the bone of contention between the parties. So far as the facts are concerned, it is not in dispute that the petitioner made two separate applications for obtaining PAN. In one of the applications, the petitioner declared its source of income as “other sources” whereas in the another application, the petitioner declared its source of income as “business”. There is no denial of the fact that the petitioner used the second PAN ABBFR3082R in its bank account maintained with HDFC Bank as well as IDBI Bank not only in the Financial Year 2020-21 but also in Financial Year 2021-22 and 2022-23. There is also no denial of the fact that the petitioner had deposited cash of Rs. 8.33 crore during the Financial Year 2020-21 in its HDFC Bank account number xxxx8974. The petitioner filed its return of income under the first PAN, which was issued on 21.06.2020. No return of income has been furnished by the petitioner under the second PAN issued on 03.07.2020. Since the petitioner was using the second PAN in the HDFC and IDBI Bank accounts, it came to the notice of the Department of Income Tax and as stated in the counter affidavit, an inquiry was instituted under Section 133(6) of the IT Act, whereunder the petitioner was



asked to explain the cash deposit of Rs. 8.33 crore during the Financial Year 2020-21 in its one of the HDFC Bank accounts.

23. It appears from the preliminary verification report submitted by one Sunanda Kumar, ITO (I&CI) Patna that the same was submitted pursuant to the notice under Section 133(6) of the I.T. Act read with the e-verification scheme 2021. The ITO took note of the submissions of the taxpayer and recorded that the taxpayer submitted relevant page of ITR and audit report and its schedule. In its concluding paragraph, the ITO recorded as under:-

“After examining the documents submitted by the taxpayer, the verification issues stand explained as information value is taken into consideration against other PAN of the firm ABBFR2514C. Hence, reported information value is verified.”

24. It is with reference to this observation of the ITO, the learned Senior Counsel for the petitioner has made efforts to take this Court through the documents enclosed with the writ petitions which contains the audit report under Section 44AB of the IT Act with reference to PAN ABBFR2514C. The audit report nowhere takes note of the second PAN which was obtained by the petitioner showing the source of income as “business”. The balance sheet and Schedule ‘F’ forming part of the financial statements are not showing the banks account number and the



name of the banks in which the accounts have been maintained under the second PAN ABBFR3082R.

25. Learned Senior Counsel for the petitioner has made efforts to persuade this Court to take a view that the cash deposits in the HDFC Bank account in which the second PAN has been used are part of the sales figure of Rs.27,78,97,279.70/- during the Financial Year 2020-21. We are afraid, this exercise cannot be undertaken by this Court sitting in its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

26. We find that in this case, the notice under Section 148 of the I.T. Act has been issued after the information with regard to the escaped income of Rs. 4,59,91,700/- was flagged on Insight Portal under “High Risk e-Verification Scheme” formulated by the Central Board of Direct Taxes. The foundation of the “High Risk e-Verification Scheme” may be found in the communication dated 11.03.2025 issued by the Directorate of Income Tax (Systems). We reproduce the said communication hereunder:-

“DIRECTORATE OF INCOME TAX (SYSTEMS)”

ARA Centre, E-2 Ground Floor Extension, Jhandewalan, New Delhi-110055

F. No.: CIT (eVerification)/2024-25/FVR/Instr./ 1

Date: 11.03.2025

To,
All Pr. Chief Commissioner(s)/Pr. Director General(s) of Income Tax
All Chief Commissioner(s)/Director General(s) of Income Tax



All Commissioner(s)/Pr. Director(s) of Income Tax
All Commissioner(s)/Director(s) of Income Tax

Sir/Madam,

Sub: Dissemination of High-Risk e-Verification Cases to Assessing Officers - Reg

Kindly refer to the CBDT's Notification No. 137/2021/F. No. 370142/57/2021TPL(Part-1) dated 13.12.2021 notifying the e-Verification Scheme, 2021.

2. Vide aforementioned Notification, the Central Government has notified the eVerification Scheme, 2021 in accordance with the provisions of Section 135A of the Income-tax Act, 1961. Accordingly, High Risk Cases related to Assessment Year 2021-22 have been verified by the Prescribed Authority under the scheme and submitted a Preliminary Verification Report (PVR) estimating the Income Escapement. As per Clause 4(9) of the e-Verification Scheme-2021, CIT (e-Verification) has matched the Preliminary Verification Report with the latest Income Tax Return to prepare the Final Verification Report (FVR) wherein Value at Risk (VaR) has been arrived at.

3. Based on Value at Risk, certain High-Risk Cases have been identified and shared with the Assessing Officers for further action under the Act. In cases where scrutiny is not pending, the Assessing Officer may utilise the information under clause (iv) of Explanation 1 of section 148.

4. In view of the clause (d) to the Proviso of the Section 148A of the Act, the Assessing Officer is not required to issue Notice under section 148A of the Act in these cases. The Assessing Officer may proceed to get the approval of the Specified Authority for issuing notice u/s 148 in such cases as per 1st proviso to Sec 148 of the Income-tax Act, 1961.

5. All proceedings carried out by the Prescribed Authorities and documents submitted by the taxpayer during the e-Verification procedure have been made available to the Assessing Officer who may view the same under e-Verification module in Insight portal. The user may navigate the path Insight Portal >> Verification Module >> e-Verification (Taxpayer) >> eVerification Scheme 2021(FY 2020-21) >> Verified >> Count

6. Value at Risk shown in the FVR is an estimated value arrived during verification under the e-Verification Scheme, 2021 formulated by the Central Government in accordance with the provisions of Section 135A of the Income-tax Act, 1961. During the course of assessment, the AO is advised to draw his own conclusion based on the material gathered in the course of eVerification Procedure.

7. In view of the above, the respective Assessing Officers are advised to invoke provisions of section 147 of the Act and issue Notice u/s 148 of the Act accordingly in such e-Verification cases. To initiate proceedings u/s 147 of the Act, the path is as under:- Insight Portal >> Verification Module >> e-Verification (Taxpayer) >> High Risk - e-Verification Scheme >> Under Verification >> count.

8. Quick Reference Guide for 'High Risk e-Verification Scheme' Cases is available on Insight Portal for the assistance of the Users.

9. It is to be noted that there are certain High-Risk Cases which are currently under scrutiny and therefore need not be reopened. In such cases, the Assessing Officer may utilise this additional information in conducting assessment. (Refer Insight Portal ->



Taxpayer Profile View -> Annual Summary (TAS) -> e-Verification-FVR to access additional information). Further, all proceedings carried out by the Prescribed Authorities and documents submitted by the taxpayer during the e-Verification procedure have been made available in e-Verification module in Insight portal. The user may navigate the path Insight Portal >> Verification Module >> e-Verification (Taxpayer) >> eVerification Scheme 2021(FY 2020-21) >> Verified >> Count.

This issues with the prior approval of the DGIT(Systems), New Delhi.

Yours faithfully,
Sd/-
(Shailesh Thakur)
CIT(e-Verification), Directorate
of Systems, New Delhi.

Copy to:

1. The PPS to Chairman, Member (S&FS), Member (IT), Member (Admin), Member(L), Member(R&TPS), Member (A&J), CBDT and Pr. DGIT(Systems), New Delhi.
2. Nodal Officer of www.irsofficersonline.gov.in, DGIT(Systems) corner, ITBA, Insight, i-Library for uploading on website.

Sd/-
CIT(e-Verification), Directorate of Systems, New Delhi”

27. In view of the aforesaid communication, the Department has taken a stand that on perusal of the Final Verification Report (FVR), it was found to be a case of escaped income.

28. The scope and ambit of interference with a notice under Section 148 of the Act has been succinctly laid down by the Hon’ble Supreme Court in the case of **Chhabil Dass Agarwal** (supra). We reproduce paragraphs ‘15’, ‘16’ and ‘17’ of the judgment in case of **Chhabil Dass Agarwal** (supra) hereunder for a ready reference:-

“**15.** Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not



acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case*²², *Titaghur Paper Mills case*³ and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/reassessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram and Shyam Co. v. State of Haryana*⁴⁰ this Court has noticed that if an appeal is from “Caesar to Caesar's wife” the existence of alternative remedy would be a mirage and an exercise in futility.

²² *Thansingh Nathmal v. Supt. Of Taxes*, [AIR 1964 SC 1419]

³ [*Titaghur Paper Mills Co. Ltd. v. State of Orissa*, (1983) 2 SCC 433 : 1983 SCC (Tax) 131]

⁴⁰ (1985) 3 SCC 267



17. In the instant case, neither has the writ petitioner assessee described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of the instant case. In light of the same, we are of the considered opinion that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.”

29. In the light of the aforesaid judgment of the Hon’ble Supreme Court, this Court refused to quash the notice under Section 148 of the IT Act in case of **Alkem Laboratories Limited** (supra).

30. Section 147 of the IT Act provides for initiation of a proceeding in respect of such income which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in course of proceedings under this section. The Assessing Officer is competent to recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. Section 147 of the IT Act has come up for consideration on several occasions before the Hon’ble Supreme Court of India. For a better appreciation of the said



provision, we would reproduce Section 147 of the IT Act (as existed at the relevant period) hereunder for a ready reference:-

“³[Income escaping assessment.

⁴147. If the ⁵[Assessing] Officer . Su⁶[has reason to believe⁷] that any income chargeable to tax has escaped assessment⁷ for any assessment year, he ⁷may, subject to the provisions of sections 148 to 153, assess or reassess⁷ such⁷ income⁷ and ⁷also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings⁷ 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 years⁸, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure⁸ on the part of the assessee to make a return under section 139 or in response to a

3. Substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989.

4. See also Circular [F.No. 45A/180/54-IT], dated 6-12-1955 (Piecemeal assessments to be avoided) and Circular No. 40/2016, dated 9-12-2016 (Demonetization and reassessment). For details, see Taxman's Master guide to Income-tax Act.

5. Substituted for "Income-tax" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1988.

6. Substituted for ", for reasons to be recorded by him in writing, is of the opinion" by the Direct Tax Laws (Amendment) Act, 1989, w.e.f. 1-4-1989.

7. For the meaning of the terms/expressions "reasons to believe", "escaped assessment", "assess or reassess", "such", "in the course of the proceedings", "may", "and also... chargeable to tax", see Taxman's Direct Tax Manual, Vol.3.

8. For the meaning of the expressions "after expiry of four years from end of relevant assessment year", "failure" and "material facts", see Taxmann's Direct Taxes Manual, Vol. 3.



notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts⁸ necessary for his assessment, for that assessment year:

⁹[**Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]

¹⁰[**Provided** ¹¹[also] that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment]

Explanation 1-Production¹² before the Assessing Officer of account books or other evidence from which material evidence could with diligence have been discovered by the Assessing Officer will not necessarily¹² amount to disclosure within the meaning of the foregoing proviso.

Explanation 2- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year

9. Inserted by the Finance Act, 2012, w.e.f. 1-7-2012.

10. Inserted by the Finance Act, 2008 w.e.f. 1-4-2008.

11. Substituted for "further" by the Finance Act, 2012, w.e.f. 1-7-2012.

12. For the meaning of the expressions "production" and "not necessarily", See Taxmann's Direct Taxes Manual, Vol. 3.



exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

¹³(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]

(c) where an assessment has been made, but --

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate¹⁴; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

¹⁵[(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]

13. Inserted by the Finance Act, 2012, w.e.f. 1-7-2012.

14. For the meaning of the expression "rate", See Taxmann's Direct Taxes Manual, Vol.3

15. Inserted by the Finance Act, 2016, w.e.f. 1-6-2016.



¹⁶[(d) where a person is found to have any asset (including financial interest in any entity) located outside India.]

¹⁷[*Explanation 3*-For the purpose of assessment or reassessment^{17a} 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.]

¹⁶[*Explanation 4*-For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012]”

31. In a recent judgment in the case of **Sanand Properties Private Limited (supra)**, the Hon’ble Supreme Court has reviewed the previous case laws on the subject in detail. In that case, the assessee had undergone scrutiny assessment under Section 143(3) whereafter the Income Tax Department found certain materials during a survey under Section 133A of the IT Act in the business premises of the assessee. Certain books of account and documents were seized and impounded. Statement of one of the directors of the assessee was also recorded under Section 131

16. Inserted by the Finance Act, 2012, w.e.f. 1-7-2012.

17. Inserted by the Finance (No. 2) Act, 2009, w.e.f. 1-4-1989.

17a. For the meaning of the expression “assessment or reassessment”, See Taxmann’s Direct Taxes Manual, Vol. 3



of the IT Act whereafter it was held by the Assessing Officer that these materials indicated that the income received by the assessee was not a share of its profit but a share of its revenue. Based on this reason, the Department issued notice under Section 148 of the IT Act. The Department was of the view that the income had escaped assessment within the meaning of sub-clause (iv) of clause (c) of Explanation 2 to Section 147 of the IT Act.

32. In the context of the aforesaid case, the Hon'ble Supreme Court went into its earlier judgment in case of **CIT vs. Kelvinator of India** (supra), **Calcutta Discount Co. Ltd. vs. Income Tax Officer, Companies District Calcutta and Another** reported in (1961) 41 ITR 191, **Phool Chand Bajrang Lal vs. Income Tax Officer and Anr.** reported in (1993) 4 SCC 77 and on a review of the case laws, the Hon'ble Supreme Court held in paragraph '71' of its judgment as under:-

“71. Moreover, as pithily put by this court in *Phool Chand Bajrang Lal v. ITO*¹⁹, one must understand that acquiring fresh information relating to a concluded assessment which goes to expose the falsity of a statement made by the assessee at the time of original assessment is different from drawing a fresh inference from the same facts and material which was available with the Assessing Officer at the time of original assessment proceedings. Where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the

19. (1993) 203 ITR 456 (SC); (1993) 4 SCC 77; 1993 SCC OnLine SC 214.



mere disclosure of that transaction at the time of original assessment proceedings, cannot be said to be disclosure of the “true” and “full” facts in the case, and the Income-tax Officer would have the jurisdiction to reopen the concluded assessment in such a case. The relevant observation of this court in *Phool Chand Bajrang Lal v. ITO*²¹ reads thus²¹ :

“19.... Acquiring fresh information, specific in nature and reliable in character, relating to the concluded assessment which goes to expose the falsity of the statement made by the assessee at the time of original assessment is different from drawing a fresh inference from the same facts and material which were available with the Income-tax Officer at the time of the original assessment proceedings. The two situations are distinct and different. Thus, where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings, cannot be said to be disclosure of the ‘true’ and ‘full’ facts in the case and the Income-tax Officer would have the jurisdiction to reopen the concluded assessment in such a case. It is correct that the assessing authority could have deferred the completion of the original assessment proceedings for further enquiry and investigation into the genuineness of the loan transaction but in our opinion his failure to do so and complete the original assessment proceedings would not take away his jurisdiction to act under section 147 of the Act, on receipt of the information subsequently. The subsequent information on the basis of which the Income-tax Officer acquired reasons to believe that income chargeable to tax had

21. Page 473 of 203 ITR.



escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts was relevant, reliable and specific. It was not at all vague or non-specific....

25. From a combined review of the judgments of this court, it follows that an Income-tax Officer acquires jurisdiction to reopen an assessment under section 147(a) read with section 148 of the Income-tax Act, 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income-tax has escaped assessment. *He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information.* Since the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on



the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer at the time of making the original assessment, could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income-tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and, therefore, income chargeable to tax had escaped assessment. The High Courts which have interpreted *CIT v. Burlop Dealers Ltd.*²² as laying down the law to the contrary fell into an error and did not appreciate the import of that judgment correctly.

26. We are not persuaded to accept the argument of Mr. Sharma that the question regarding the truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of sections 147(a) and 148 of the Act and is against the settled law laid down by this court. *We have to look to the purpose and intent of the provisions. One of the purposes of section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say 'you*

22. (1971) 79 ITR 609 (SC); (1971) 1 SCC 462



accepted my lie, now your hands are tied and you can do nothing'. It would be travesty of justice to allow the assessee that latitude.” (emphasis⁸ supplied)”

33. The Hon’ble Supreme Court has held in paragraph ‘87’ of its judgment in the case of **Sanand Properties (P) Ltd.** (supra) as under:-

“**87.** Thus, it is settled law that the validity of a reopening must be tested solely on the basis of the reasons recorded at the time of issuing the notice under section 148. A document not referred to in those reasons recorded under section 148 cannot be used to justify the validity of the reopening, as the assessee must not be deprived of a fair opportunity to dispute such grounds. In the present matter, while we exclude the extraneous documents relied upon by the High Court, our inquiry into the reassessment's validity, when tested strictly against the reasons recorded, reveals existence of “tangible material” to form a bona fide belief that income has escaped assessment. Accordingly, Civil Appeal No. 9107 of 2012 stands dismissed.”

34. In the facts of the present case and keeping in view the judgments of the Hon’ble Supreme Court laying down the scope and ambit of scrutiny at this stage, this Court is of the considered opinion that this Court cannot go into the sufficiency of reasons aspect, which is in the sole domain of the Income Tax

8. Here printed in italics.



Officer. We cannot come to a conclusion in this writ petition that the belief of the Assessing Officer/Intelligence Officer is not at all a *bona fide* one or is based on vague, irrelevant and non-specific information. The limited extent within which the Court may look into the conclusion arrived at by the Income Tax Officer would not permit this Court to travel beyond and take a view otherwise.

35. This Court has already taken note of the admitted fact that the assessee/writ petitioner had not filed its return of income under the second PAN i.e. ABBFR3082R.

36. In result, this Court finds no reason to interfere with the impugned notice (Annexure ‘P/1’).

37. This writ petition is dismissed.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

Rishi/-

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