

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH**

WRIT PETITION No. 8311 of 2023

BETWEEN :-

**NITIN NEMA S/O SHRI S.L. NEMA,
AGED ABOUT 42 YEARS, OCCUPATION:
BUSINESSMAN R/O 4/10, GOPALBAGH
DAMOH NAKA JABALPUR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI H.S. CHHABRA, ADVOCATE)

AND

- 1. OFFICE OF PRINCIPAL CHIEF
COMMISSIONER OF INCOME TAX THROUGH
THE PRINCIPAL CHIEF COMMISSIONER
OFFICE AT AAYAKAR BHAWAN 48 ARERA
HILLS HOSHANGABAD BHOPAL (MADHYA
PRADESH**
- 2. OFFICE OF ASSISTANT COMMISSIONER OF
INCOME TAX CIRCLE 1, THROUGH THE
ASSISTANT COMMISSIONER AAYAKAR
BHAWAN NAPIER TOWN JABALPUR
(MADHYA PRADESH)**

3. INCOME TAX OFFICER, WARD 1(1),
JABALPUR AAYAKAR BHAWAN NAPIER
TOWN JABALPUR (MADHYA PRADESH)

.....RESPONDENTS

*(SHRI SIDDHARTH SHARMA, ADVOCATE FOR
RESPONDENT NO.1)*

Reserved on : 19.6.2023

Pronounced on : 16.8.2023

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, Hon'ble Shri Justice Sheel Nagu
pronounced the following:*

ORDER

This petition under Article 226 of the Constitution assails the order dated 25.3.2023 Annexure P-3 passed under Section 148A (d) of the Income Tax Act (IT Act for brevity) deciding that the case is fit for issuance of notice under Section 148 for assessment/re-assessment/re-computation of income which has escaped assessment qua Assessment year 2016-2017. Further challenge is laid to the consequential notice issued under Section 148 vide Annexure P-5.

2. Shri H.S. Chhabra, learned counsel for petitioner and Shri Siddharth Sharma, learned counsel for the respondents are heard on the question of admission so also final disposal.

3. The grounds raised by learned counsel for petitioner in support of challenge to the impugned order and notice are as follows:

(a) The income referred to in impugned order and notice Annexure P-3 and P-4 is not income chargeable to tax but is the gross proceeds/consideration received by petitioner for sale of 16 scooters during the assessment year 2016-2017 and thus the Revenue has no authority to invoke Section 148A or issue notice under Section 148.

(b). The proceedings for reopening assessment of income having escaped assessment are beyond jurisdiction of the Revenue since it is barred under Section 149.

3.1. Learned counsel for the petitioner in support of the aforesaid challenge and the grounds raised has relied upon Division Bench decision of Gujarat High Court rendered on 20.4.1999 in ***The Commissioner of Income Tax Vs. President Industries, 1999 SCC Online Guj. 402***, the Division Bench decision of Bombay High Court in ***I.T.A. No.313/2013 Commissioner of Income Tax Vs. Shri***

Hariram Bhambhani decided on 4.2.2015 and decision of Karnataka High Court in the case of ***Mr. Sanath Kumar Murali Vs. The Income Tax Officer & Ors. In W.P.No.7647/2023 (T-IT)***.

4. *Per contra*, learned counsel for the Revenue has filed return opposing this petition raising the following contentions:

(1) Revenue has jurisdiction to invoke Section 148A and issue notice under Section 148 of the IT Act by virtue of Section 149(1)(b) specially when the amount of Rs.7205084/- received by the petitioner as a result of export transaction falls under the definition of asset.

(2) Since the aforesaid amount of Rs.7205084/- is more than the limit of Rs.50 lacs stipulated in Section 149(1)(b), the said income becomes amenable to the proceedings of re-opening assessment under Section 148 and 148A.

(3) The petitioner having not filed return qua assessment year 2016-2017 is not entitled to any benefit as claimed by him, and thus Revenue assumes jurisdiction since the unassessed income found with the petitioner/assessee is 'asset' and not 'income chargeable to tax'.

(iv) The Revenue has relied upon Sections 2(24), 14, 28 and 44 (A)(D) to emphasize the expression 'income'.

5. For proper appreciation of facts and adjudication of the cause raised herein, it would be appropriate to reproduce the relevant Sections 2(24), 14, 28, 44 (A) (D) (explanation) including Sections 148, 148A and 149 which have been referred to by counsel for the rival parties.

“Sec.2(24) “income” includes—

(i) profits and gains;

(ii) dividend;

[(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes 3 [or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) 4 [or by any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via)] of clause (23C), of section 10 [or by an electoral trust].]

Explanation.—For the purposes of this sub-clause, “trust” includes any other legal obligation;]

(iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17;

[(iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

(iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;]

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

[(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the "beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;]

(v) any sum chargeable to income-tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;

[(va) any sum chargeable to income-tax under clause (iiia) of section 28;]

[(vb) any sum chargeable to income-tax under clause (iiib) of section 28;]

[(vc) any sum chargeable to income-tax under clause (iiic) of section 28;]

[(vd)] the value of any benefit or perquisite taxable under clause (iv) of section 28;

[(ve) any sum chargeable to income-tax under clause (v) of section 28;]

(vi) any capital gains chargeable under section 45;

(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;

[(viiia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;]

** * * * **

[(ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.]

[Explanation.—For the purposes of this sub-clause,—

(i) “lottery” includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;

(ii) “card game and other game of any sort” includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;]

[(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees’ State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees;]

[(xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression “Keyman insurance policy” shall have the meaning assigned to it in the Explanation to clause (10D) of section 10;]

[(xii) any sum referred to in [clause (va) of section 28;]

[(xiia) the fair market value of inventory referred to in clause (via) of section 28;]

[(xiii) any sum referred to in clause (v) of sub-section (2) of section 56;]

[(xiv) any sum referred to in clause (vi) of sub-section (2) of section 56;]

[(xv) any sum of money or value of property referred to in clause (vii) [or clause (viia)] of sub-section (2) of section 56;]

[(xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in clause (viib) of sub-section (2) of section 56;]

[(xvii) any sum of money referred to in clause (ix) of sub-section (2) of section 56;]

[(xviii) any sum of money or value of property referred to in clause (x) of sub-section (2) section 56;]

[(xvii) any compensation or other payment referred to in clause (xi) of sub-section (2) of section 56;]

*[(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee [other than,—
(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43; or*

(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be];]

14. Heads of income.—*Save as otherwise provided by this Act, all income shall, for the purposes of charge of income-tax and computation of total income, be classified under the following heads of income:—*

A.—Salaries.

*I * * * * **

C.—Income from house property.

D.—Profits and gains of business or profession.

E.—Capital gains.

F.—Income from other sources.

28. Profits and gains of business or profession.—*The following income shall be chargeable to income-tax under the head “Profits and gains of business or profession”,—*

(i) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year;

(ii) any compensation or other payment due to or received by,—

(a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or

in connection with the termination of his office or the modification of the terms and conditions relating thereto;

(c) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto ;

[(d) any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business;]

[(e) any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions, of any contract relating to his business;]

(iii) income derived by a trade, professional or similar association from specific services performed for its members;

[(iiia) profits on sale of a licence granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947 (18 of 1947);]

[(iiib) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;]

[(iiic) any duty of customs or excise re-paid or re-payable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971;]

[(iiid) any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);]

[(iiie) any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);]

[(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;]

[(v) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm:

Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted;]

[(va) any sum, whether received or receivable, in cash or kind, under an agreement for—

(a) not carrying out any activity in relation to any business II[or profession]; or

(b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:

Provided that sub-clause (a) shall not apply to—

(i) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business [or profession], which is chargeable under the head “Capital gains”;

(ii) any sum received as compensation, from the multi-lateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

Explanation.—For the purposes of this clause,—

(i) “agreement” includes any arrangement or understanding or action in concert,—

(A) whether or not such arrangement, understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

(ii) “service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as

accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging;]

[(vi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy. [(via) the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner;]

Explanation.—For the purposes of this clause, the expression “Keyman insurance policy” shall have the meaning assigned to it in clause (10D) of section 10;]

[(vii) any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD.]

* * * * *

Explanation 2.—Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as “speculation business”) shall be deemed to be distinct and separate from any other business.

[44AD. Special provision for computing profits and gains of business on presumptive basis.—(1) Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of an eligible assessee engaged in an eligible business, a sum equal to eight per cent of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee, shall be deemed to be the profits and gains of such business chargeable to tax under the head “Profits and gains of business or profession”.

[Provided that this sub-section shall have effect as if for the words “eight per cent.”, the words “six per cent.” had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the

previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year.]

(2) Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of sub-section (1), be deemed to have been already given full effect to and no further deduction under those sections shall be allowed:

** * * * **

(3) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

[(4) Where an eligible assessee declares profit for any previous year in accordance with the provisions of this section and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1), he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1).

(5) Notwithstanding anything contained in the foregoing provisions of this section, an eligible assessee to whom the provisions of sub-section (4) are applicable and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep and maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB.]

[(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to—

(i) a person carrying on profession as referred to in sub-section (1) of section 44AA;

*(ii) a person earning income in the nature of commission or brokerage;
or*

(iii) a person carrying on any agency business.]

Explanation.—For the purposes of this section,—

(a) “eligible assessee” means,—

(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined under clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009); and

(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading “C. - Deductions in respect of certain incomes” in the relevant assessment year; (b) “eligible business” means,—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of [two crore rupees].]

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

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:]

[**Provided** also that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.]

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 18 [***] 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; *or*

[(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) 20 [***] 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 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 [where] 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. 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, 23 [***] 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:

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, 24 [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 purposes of this section, specified authority means the specified authority referred to in section 151.]

149. Time limit for notice.— (1) No notice under Section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

[(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

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

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

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

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

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153-A, or Section 153-C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021:

[Provided also that for cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to Section 148, where,—

- (a) a search is initiated under Section 132; or
- (b) a search under Section 132 for which the last of authorisations is executed; or
- (c) requisition is made under Section 132-A,

after the 15 day of March of any financial year and the period for issue of notice under Section 148 expires on the 31 day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under Section 148 in such case shall be deemed to have been issued on the 31 day of March of such financial year:

Provided also that where the information as referred to in Explanation 1 to Section 148 emanates from a statement recorded or documents impounded under Section 131 or Section 133-A, as the case may be, on or before the 31 day of March of a financial year, in consequence of,—

- (a) a search under Section 132 which is initiated; or
- (b) a search under Section 132 for which the last of authorisations is executed; or
- (c) a requisition made under Section 132-A,

after the 15 day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of Section 148-A in such case shall be deemed to have been issued on the 31 day of March of such financial year:]

Provided also that 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 148-A or the period during which the proceeding under Section 148-A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of Section 148-A is [does not exceed 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.

Explanation.—For the purposes of clause (b) of this sub-section, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

[(1-A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under Section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.]

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.]”

6. After hearing learned counsel for rival parties, short question which falls for consideration is as to whether income of Rs.7205084/- shown

in the impugned order and notice to have escaped assessment, is income chargeable to tax or not?

6.1 Admittedly, the expression ‘income chargeable to tax’ is not defined in the IT Act. However, the scheme of the IT Act specially the provisions which deal with computation of business income make it abundantly clear that definition of expression ‘income’ and ‘income chargeable to tax’ are at variance to each other. The expression ‘income’ is inclusively defined under Section 2(24) of IT Act whereas ‘income chargeable to tax’ obviously denotes an amount which is less than ‘income’. The ‘income chargeable to tax’ is arrived at after deducting the permissible deductions under IT Act from ‘income’. As such quantum of ‘income’ is invariably more than the income chargeable to tax.

6.2 More so, all penal provisions under the scheme of income tax, emanate from the factum of evasion of tax calculated based on income chargeable to tax.

6.3 Several High Courts have held that income chargeable to tax cannot be the gross receipts/consideration in any business transaction. One such decision which appears to be closest to the facts of present case is the Single Bench decision of Karnataka High Court rendered on 24.5.2023 in **W.P.No.7647/2023 (T-IT) (Mr. Sanath Kumar Murali**

Vs. The Income Tax Officer & Ors.), the relevant extract of which is reproduced as follows:

“18. Accordingly, in the present case, the words found in Section 149 which is 'income chargeable to tax' must be read in terms of 'income' as arising out of the 'Capital Gains' as provided under Section 48 and this is the only manner of understanding the words, 'income chargeable to tax under Section 149(1)(b) of I.T. Act.

19. The contention of the Revenue that under Section 149 what is required to be taken note of, is the 'income that has escaped assessment' being the entirety of sale consideration of Rs.55,77,700/- cannot be accepted, in light of the express words in the statutory provision '.....income chargeable to tax..... which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more'. It cannot be stated that since the stage at which the notice is issued is at a premature stage, the entirety of consideration of Rs.55,77,700/- ought to be taken note of. A plain reading of Section 48 would provide that the entirety of sale consideration does not constitute 'income'. The memorandum explaining the provisions of Finance Act, 2021 does not in any way lead to giving a different interpretation to the words, 'income chargeable to tax'. The words used under Section 149 for the purpose of extended time limit is to be interpreted in terms of the plain wordings of Section 149 and cannot be construed differently while relying on any executive instruction.

20. Learned counsel appearing for the Revenue has relied on the judgment of Rajasthan High court in the case of Abdul Majeed v. Income Tax Officer passed in Civil Writ Petition.No.7853/2022. However, a close reading of the said judgment does not support the interpretation sought to be placed and the High Court of Rajasthan has also reiterated the same position as laid down above.”

6.4. The objection of learned counsel for Revenue that the petitioner having failed to file return for the relevant assessment year cannot seek to challenge the impugned order, is heard to be dismissed. The provisions from Section 147 to Section 151 pertaining to subject of income escaping assessment in the IT Act do not support the contention of the Revenue. There is nothing in Section 148, 148 A or Section 149 which may prevent assessee from taking advantage of said provisions merely because of his failure to file return.

6.5. More over, neither the notice under Section 148A(b) nor order under Section 148 A(d), nor the consequential notice under section 148A give any indication that amount of Rs.7205084 alleged to be income escaping assessment, includes land/buildings/shares/equities/loans/ advances etc. as contended by the Revenue.

6.6 In fact when petitioner/assessee filed a reply to the notice under Section 148(A)(b) of the IT Act vide Annexure P-2, it was clearly revealed that the said amount of Rs.7205084/- is the gross receipt of sale consideration of 16 scooters. Meaning thereby that the said amount of Rs.7205084/- was the total sale consideration receipt of the transaction in question, and not income chargeable to tax which would obviously be less than the said amount.

6.7 Along with reply vide Annexure P-2, the details of items sold and payment receipt, computation of total income and the computation of tax on total income was worked out and submitted to the Revenue.

6.8 It appears that while considering the said reply and before passing the impugned order under Section 148A(b) of the IT Act, highly casual and perfunctory approach was adopted, turning a Nelson's eye towards the palpable and elementary aspect of clear distinction between consideration of sale and income chargeable to tax.

7. In a recent decision rendered by this Bench where a view in favour of Revenue was taken, it was observed that provisions under Section 148A was inserted in the IT Act w.e.f. 1.4.2021 to render the power of Revenue of reopening cases to be more transparent so as to avoid casual invocation of Section 147-148. It was held that insertion of Section 148A not only saves the assessee from casual commencement of proceedings under Section 147-148 but will also save the Revenue of precious time and energy which may be wasted in pursuing fruitless, frivolous and vexatious cases. The decision rendered on 9.8.2023 in **W.P.No.15244/2023 (M/s Amrit Homes Private Limited Vs. Deputy Commissioner of Income Tax & Anr.)** passed by this Bench, the relevant extract of which is reproduced below:

“7.2 The object behind insertion of Section 148A by the Legislature w.e.f. 01.04.2021 inter alia appears as follows:-

(a) to prevent rampant and casual issuance of notice u/S. 148 by the Revenue;

(b) to save unnecessary harassment to the assessee of being subjected to re-opening a case under Section 148;

(c) to save the Revenue of the time and energy which may be vested pursuing frivolous and fruitless proceedings u/S 148. ”

8. It may not be out of place to mention that had the Revenue arrived at the correct figure of income chargeable to tax instead of the gross receipts/consideration, the possibility of the amount of Rs.7205084/- coming down to a figure below Rs.50 lacs cannot be ruled out.

9. From the aforesaid discussion what comes out loud and clear is that the Revenue has failed to understand the fundamental difference between sale consideration on one hand and income chargeable to tax on the other. The Revenue despite being assisted by thousands of experts in the field of finance and taxation, has committed such elementary mistake leading to harassment to the assessee who has been compelled to file the present avoidable piece of litigation. More so, this Court has been compelled to decide this frivolous matter wasting its precious time and energy which could have been utilized in more pressing matters.

9.1 Thus, the Revenue deserves to be saddled with exemplary cost and correspondingly the petitioner is entitled to compensatory cost.

10. Consequently, this petition stands **allowed** in the following terms:

- (I) The impugned order dated 25.3.2023 under Section 148 A (d) of IT Act vide Annexures P-3 and P-4 are quashed.
- (II) The notice dated 25.3.2023 vide Annexure P-5 under Section 148 issued by the ITO Ward 1(1), Jabalpur is quashed.
- (III) Revenue however, is at liberty to invoke Section 148A, but only in accordance with law.
- (IV) Revenue is saddled with cost of **Rs.25,000/- (Rupees Twenty Five Thousand Only)**, out of which **Rs.15,000/- (Rupees Fifteen Thousand Only)** shall be credited in favour of the M.P. High Court Employees' Association, Jabalpur (S.B.A/c No.519302010000235, Union Bank of India, State Bar Council Branch, Jabalpur) and the remaining **Rs.10,000/- (Rupees Ten Thousand Only)** shall be paid to the petitioner through digital transfer in his bank account within a period of 30 days failing which the

case shall be listed before the Bench under Caption
'Direction' as PUD qua cost.

(SHEEL NAGU)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

P/