

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.7244 of 2022**

Shree Shakambhari Udyog Partnership Firm having its Office at Prakash Market Chowk, Patna City, Patna through its Partner Rajesh Bagla (Male Aged about 54 Years Son of Ram Gopal Bagla, resident of Flat No. 501, Durga Apartment, Mirchai Gali Chowk, Near Bank of Baroda, Patna City, Patna-800008.

... .. Petitioner

Versus

1. Commissioner of Income Tax having its Office at Central Revenue Building, Patna.
2. Dy. Commissioner/Asst. Commissioner Central Circle 1, Patna.

... .. Respondents

with

**Civil Writ Jurisdiction Case No. 16693 of 2022**

Shree Shakambhari Udyog partnership firm having its office at Prakash Market Chowk, Patna City, Patna through its Partner Rajesh Bagla (Male) aged about 54 years, son of Ram Gopal Bagla, resident of Flat No. 501, Durga Apartment, Mirchai Gali Chowk, near Bank of Baroda, Patna City, Patna-800008.

... .. Petitioner

Versus

1. Commissioner of Income Tax having its office at Central Revenue Building, Patna.
2. Dy. Commissioner/Asst. Commissioner Central Circle 1, Patna.

... .. Respondents

with

**Civil Writ Jurisdiction Case No. 16697 of 2022**

Shree Shakambhari Udyog partnership firm having its Office at Prakash Market Chowk, Patna City, Patna through its Partner Rajesh Bagla (Male) aged about 54 years son of Ram Gopal Bagla, resident of Flat No. 501, Durga Apartment, Mirchai Gali Chowk, Near Bank of Baroda, Patna City, Patna - 800008.

... .. Petitioner

Versus

1. Commissioner of Income Tax having its office at Central Revenue Building, Patna.
2. Dy. Commissioner/Asst. Commissioner of Income Tax Central Circle 1, Patna.

... .. Respondents



with

**Civil Writ Jurisdiction Case No. 17742 of 2022**

Shree Shakambhari Udyog partnership firm having its office at Prakash Market Chowk, Patna City, Patna through its Partner Rajesh Bagla (Male) aged about 54 years son of Ram Gopal Bagla, resident of Flat No. 501, Durga Apartment, Mirchai Gali Chowk, Near Bank of Baroda, Patna City, Patna-800008.

... .. Petitioner

Versus

1. Commissioner of Income Tax having its office at Central Revenue Building, Patna.
2. Dy. Commissioner/ Asst. Commissioner Central Circle 1, Patna.

... .. Respondents

**Appearance :**

(In Civil Writ Jurisdiction Case No. 7244 of 2022)

For the Petitioner/s : Mr. D.V.Pathy, Sr. Advocate  
Mr. Sadashiv Tiwari, Advocate  
Mr. Hiresh Karan, Advocate  
Ms. Shivani Dewalla, Advocate  
Ms. Prachi Pallavi, Advocate

For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv.  
(In Civil Writ Jurisdiction Case No. 16693 of 2022)

For the Petitioner/s : Mr. D.V.Pathy, Sr. Advocate  
Mr. Sadashiv Tiwari, Advocate  
Mr. Hiresh Karan, Advocate  
Ms. Shivani Dewalla, Advocate  
Ms. Prachi Pallavi, Advocate

For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv.  
(In Civil Writ Jurisdiction Case No. 16697 of 2022)

For the Petitioner/s : Mr. D.V.Pathy, Sr. Advocate  
Mr. Sadashiv Tiwari, Advocate  
Mr. Hiresh Karan, Advocate  
Ms. Shivani Dewalla, Advocate  
Ms. Prachi Pallavi, Advocate

For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv.  
(In Civil Writ Jurisdiction Case No. 17742 of 2022)

For the Petitioner/s : Mr. D.V.Pathy, Sr. Advocate  
Mr. Sadashiv Tiwari, Advocate  
Mr. Hiresh Karan, Advocate  
Ms. Shivani Dewalla, Advocate  
Ms. Prachi Pallavi, Advocate

For the Respondent/s : Ms. Archana Sinha @ Archana Shahi, Sr. Adv.



**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE SHAILENDRA SINGH  
CAV JUDGMENT  
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 25-04-2025**

Heard Mr. D.V. Pathy, learned Senior Counsel for the petitioner and Ms. Archana Sinha, learned Senior Counsel for the respondents.

2. These four writ applications have been taken up for consideration together on the request of learned counsel for the parties and are being disposed of by this common judgment.

**CWJC No. 16697 of 2023**

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

“i) the notice dated 31.03.2021 (as contained in Annexure – 2) issued by the respondent no. 2 under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2017-18 be quashed.

ii) the order dated 31.03.2022 (as contained in Annexure – 15 series) passed by the respondent no. 2 under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2017 – 18 ex parte to the best of his judgement without allowing an opportunity to cross examine the witness; manually passing the order without mention of Document Identification Number (DIN) to be mandatorily mentioned in the assessment order in terms of the Circular No. 19/2019 dated 14.08.2022 issued by the Central Board of Direct Taxes; without digitally signing the



order in terms of e assessment procedure notified by Central Board of Direct Taxes under Notification No. 61/2019 dated 12.09.2022 and also without uploading the order on the web portal of the Income Tax Department be quashed.

iii) the notice of demand dated 31.03.2022 (as contained in Annexure – 15 series) issued by the respondent no. 2 for the Assessment Year 2017 – 18 be quashed.

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

**CWJC No. 7244 of 2022**

4. In this writ application, the petitioner has prayed for an identical relief, however, for the sake of convenience the reliefs prayed in this writ application are being reproduced hereunder for a ready reference:-

“i) the notice dated 31.03.2021 (as contained in Annexure – 2) issued by the respondent no. 2 under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2016–17 be quashed.

ii) the order dated 22.03.2022 (as contained in Annexure – 10 series) passed by the respondent no. 2 under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2016 – 17 ex parte to the best of his judgment without grant of a copy of the complaint, materials on the basis of which the assessment was sought to be reopened and also



without allowing an opportunity to cross examine the witness be quashed.

iii) the notice of demand (as contained in Annexure – 10 series) issued by the respondent no. 2 for the Assessment Year 2016 – 17 be quashed.

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

**CWJC No. 16693 of 2022 & CWJC No. 17742 of 2022**

5. This two writ applications have been preferred for setting aside the order(s) passed by respondent no. 2 imposing penalty under Section 270A/271(1)(c) of the Income Tax Act, 1961 for the assessment year 2016-17 and the assessment year 2017-18 respectively. In these two writ applications, the grievance of the petitioner is that the impugned order dated 29.09.2022 has been passed by respondent no. 2 without consideration of the detailed written submission and also without recording reasons solely on the basis of an ex parte order of assessment passed in derogation of binding Circular No. 19/2019 dated 14.08.2019 and the Notification No. 61/2019 dated 12.09.2019.

6. It is the common contention of learned counsel for the parties that the fate of these two writ applications would depend upon the outcome of the first two writ applications i.e. CWJC No. 16697 of 2022 and CWJC No. 7244 of 2022. For the purpose of



reference hereunder, we will take the records of the lead case being CWJC No. 16697 of 2022.

**Submissions on behalf of the Petitioners**

7. Mr. D.V. Pathy, learned Senior Counsel submits that in the present case the Assessing Officer has acted in complete defiance of the Notification No. 61 of 2019 issued by the Central Board of Direct Taxes (in short 'CBDT') on 12<sup>th</sup> September, 2019, a copy of which has been enclosed as Annexure '16' to the writ application. It is pointed out that the CBDT has notified Income Tax E-Assessment Scheme, 2019. It has been issued in exercise of powers conferred under sub-Section (3A) of Section 143 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961') by the Central Government, therefore, it is a statutory scheme. Paragraph '2' of the scheme contains the definitions of the various words. Clause (xi) under paragraph '2' defines "digital signature". It has the same meaning as assigned to it in clause (p) of sub-Section (1) of Section 2 of the Information Technology Act, 2000 (hereinafter referred to as 'the Act of 2000').

8. Paragraph '3' of the scheme lays down the scope of the scheme and paragraph '9' of the scheme talks of authentication of electronic record. According to this provision, for purpose of this scheme an electronic record shall be authenticated



by the originator by affixing his digital signature in accordance with the provisions of sub-Section (2) of Section 3 of the Act of 2000. Proviso to paragraph '9' says that in case of the originator, being the assessee or any other person, such authentication may also be done by electronic signature or by electronic authentication technique in accordance with the provision of sub-Section (2) of Section 3A of the said Act. It is pointed out that the E-proceeding scheme makes it mandatory that every notice or order or any other electronic communication under the scheme was to be delivered to the addressee.

9. Learned Senior Counsel has further brought to the notice of this Court the Circular No. 19 of 2019 (Annexure '17'). Paragraph '2' thereof has been relied upon to submit that in order to prevent manual issuance of any notice, order, summons, letter and any correspondences without maintaining a proper audit trail of such communication it has been decided that no communication shall be issued by any Income Tax authority relating to assessments, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1<sup>st</sup> day of October, 2019 unless a computer-generated Document Identification Number (DIN) has



been allotted and is duly quoted in the body of the such communication. It is submitted that under paragraph '3' of the Circular No. 19/2019, some exceptional circumstances have been laid down by way of exception and only in such cases, the communication may be issued manually but only after recording reasons in writing in the file and prior written approval of the Chief Commissioner/Director General of Income Tax.

**10.** In the aforementioned background of Annexure '16' and Annexure '17' to the writ application, learned Senior Counsel for the petitioner has submitted that in this case, respondent no. 2 issued a notice under Section 148 of the Act of 1961 for the assessment year 2017-18. The said notice has been signed manually. The petitioner filed a return under Section 148 of the Act of 1961 on 09.01.2022. The respondent no. 2 issued another notice dated 08.03.2022 under Section 143(2) read with Section 147 of the Act of 1961 for the assessment year 2017-18 and issued letter dated 11.03.2022 for the assessment year 2017-18. Respondent no. 2 further issued a show cause notice dated 20.03.2022 and all these correspondences have been made manually. Learned Senior Counsel has drawn our attention towards the assessment order (Annexure '15') and the notice of demand under Section 156 of the Act of 1961 attached therewith to



show that these documents have been signed by hand and not digitally. It is submitted that in view of the scheme and the circular referred hereinabove, these documents are to be held invalid.

**11.** Learned Senior Counsel has further submitted that it would appear from the statements made in the counter affidavit that there were three partners of the petitioner firm, namely, Smt. Kumud Bagla, Mr. Pradeep Bagla and Mr. Rajesh Bagla. Smt. Kumud Bagla sent a complaint on 22.02.2021 to the Department. As per the said complaint, the petitioner had understated its actual business receipt in order to defraud the revenue during the financial year 2015-16 and 2016-17.

**12.** It is submitted that the petitioner had filed its original receipt of income for the assessment year 2017-18 on 28.08.2018 against the due date of 30.10.2017 as prescribed under Section 139(1) of the Act of 2000. In the said return, total income of Rs.1,46,91,120/- was admitted. The return was processed under Section 143(1). It is his submission that the petitioner had, on receipt of the notice under Section 142(1) of the Act of 1961 submitted a written submission stating therein that on receipt of the notice, the petitioner has filed its return online and thereafter prayed for supply of reasons recorded in writing which form the basis of issuance of notice under Section 148 of the Act of 1961.



The petitioner was provided show cause of the information/complaint received from one of the partners. It was his contention that he has maintained proper books of accounts as mandated under the Act of 1961. Referring to the complaint, he submitted that the complainant has indulged in making false and baseless allegations. She had approached the Hon'ble High Court for appointment of a sole Arbitrator and when Hon'ble Mr. Justice Ramesh Kumar Dutta (retired) was appointed as a sole Arbitrator, he has noted the conduct of the complainant in one of his order dated 22.11.2019. The petitioner claimed that he was unable to comprehend the basis of the complaint made. It was contended that the complaint was malicious and it does not bring on record any corroborative material to prove the transactions having been carried out by the petitioner.

**13.** Learned Senior Counsel for the petitioner submits that the complaint contained a hand written volume of certain transactions and unless the complainant is allowed to be cross-examined on the point of her allegations, it would not have been appropriate for the Assessing Authority to rely upon the complaint while passing the assessment order. Learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Andaman Timber Industries versus Commissioner of**



**Central Excise, Kolkata-II** reported in **(2016) 15 SCC 785**, (paragraph '6') wherein it has been held that not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order a nullity inasmuch as it amounted to violation of the principles of natural justice.

**14.** Learned Senior Counsel, therefore, submits that the impugned order of assessment has been passed by respondent no. 2 in violation of the principles of natural justice, therefore, it will come within the meaning of jurisdictional error, hence, liable to be interfered with by this Court under Article 226 of the Constitution of India.

**Submissions on behalf of the Department**

**15.** On the other hand, Ms. Archana Sinha, learned Senior Counsel for the Department has opposed the writ application firstly on the ground that the petitioner has got an alternative equally efficacious remedy of appeal but instead of availing his remedy in accordance with law, he has moved this Court invoking its extraordinary writ jurisdiction under Article 226 of the Constitution of India. Learned Senior Counsel submits that recently in **Godrej Sara Lee Ltd. versus Excise and Taxation**



**Officer-cum-Assessing Authority and Others** reported in **2023 SCC OnLine SC 95**, the Hon'ble Supreme Court has once again dealt with the issue of alternative remedy and observed that High Court should normally not entertain a writ petition.

**16.** Learned Senior Counsel has placed before this Court the communication dated 31.03.2022 which is enclosed with the assessment order (Annexure '15', page 108) of the writ application. It is pointed out that because of some technical glitch, earlier while uploading the order of assessment and notice of demand (Annexure '15'), the document could not be digitally signed and no DIN was provided but after noticing this discrepancy, on the same day, the Assessing Officer issued this communication in which DIN and letter number have been duly mentioned. This communication is digitally signed and is in accordance with the scheme and circular of the Department.

**17.** Learned Senior Counsel further submits with reference to the screenshot of the portal of the Income Tax Department present at page 109 of the writ application that it provides for a choice to be marked (tick) by the assessee, if he wants to avail an opportunity of personal hearing. In this case, the petitioner had not marked (tick) on the portal of the Department seeking personal hearing, therefore, it cannot be allowed to be



argued by the petitioner that the Department had not given him an opportunity to cross-examine the complainant.

**18.** It has been further argued that in this case, the Assessing Officer has not recorded statements of the complainant, therefore, it would not be correct to say that the petitioner was required to be given an opportunity to cross-examine the complainant.

**19.** Referring to paragraph '6' of the judgment of the Hon'ble Supreme Court in the case of **Andaman Timber Industries** (supra), learned Senior Counsel submits that in the said case, the order of the Commissioner was found based upon the statements given by the two witnesses and even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. In the said case, the impugned order passed by the Adjudicating Authority specifically mentioned that such an opportunity was sought by the assessee. It is, therefore, submitted that the present case is completely distinct and different from that of **Andaman Timber Industries** (supra). In such circumstance, it cannot be said that the impugned order of assessment has been passed in violation of principles of natural justice.



### **Consideration**

**20.** We have heard learned Senior Counsel for the parties and have perused the records. So far as the submissions with regard to the non-signing of the notices and orders digitally by respondent no. 2 is concerned, we find no merit in the submissions of learned Senior Counsel for the petitioner. On record, we have found that the communication dated 31.03.2022 forms part of Annexure '15' to the writ application. It has been digitally signed and contains DIN.

**21.** In the opinion of this Court, the whole case of the petitioner would depend upon the success of his submission that in this case, the Department had not given him any opportunity to cross-examine the complainant.

**22.** The Hon'ble Supreme Court in the case of **Godrej Sara Lee Ltd.** (Supra) has held that the High Court should normally not entertain a writ petition. Paragraph '4' of the said judgment reads as under:-

“4. .... It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of



appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper."

**23.** So far as the contention of learned Senior Counsel based on the Circular (Annexure '17') is concerned, the Circular no doubt states in paragraph '4' that "Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued."



24. Paragraph '2' makes it mandatory that no communication shall be issued by any authority relating to assessment/appeals/orders/statutory or otherwise, exemptions, inquiry or investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the first day of October 2019 unless a computer generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication. However, paragraph '3' of the Circular No. 19 of 2019 dated 14<sup>th</sup> August, 2019 carries out certain exceptional circumstances such as-

- (i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance of communication electronically; or
- (ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; or
- (iii) when due to delay in PAN migration, PAN is lying with non-jurisdictional Assessing Officer; or
- (iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or
- (v) When the functionality to issue communication is not available in the system;"



In the aforementioned exceptional circumstances, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/Director General of Income Tax. Paragraph '5' of the Circular states as under:-

“5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by-

- i. uploading the manual communication on the System;
- ii. compulsorily generating the DIN on the System;
- iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.”

**25.** In the light of the aforementioned circular, it has been contended in the counter affidavit of the Department that the case of the petitioner for the assessment year 2017-18 was reopened on 31.03.2021 after recording of reasons for doing so as per law. The prior sanction of the competent authority was taken for the initiation of the assessment proceeding. Accordingly, the notice was issued under Section 148 of the Income Tax Act.

**26.** It is the further stand of the Department that the assessment order for assessment year 2017-18 and computation



sheet for the assessment year 2017-18 had common DIN and date 31.03.2022 which is digitally signed by the Assessing Officer. It is evident from the Circular No. 19 of 2019 that under certain exceptional circumstances communication may be issued without a computer generated DIN but the same is curable within fifteen working days of its issuance.

**27.** In the present case, the assessment order (Annexure '15') was initially issued by the Assessing Officer without generating a DIN without documents attached to the assessment order and the notice were also issued in the hand-writing signature of the Assessing Officer but subsequently, the Assessing Officer has cured the defect and the Assessing Officer issued a digitally signed letter dated 31.03.2022 with computer generated DIN and letter number. There is no contention of the petitioner that the online service of orders-letter present at page number 108 of the writ application (CWJC No. 16697 of 2022) has not been served upon the petitioner. It is, therefore, evident that on the same date, the defect was cured, therefore, all issues raised in this regard by the petitioner would liable to fail.

**28.** The second contention of learned Senior Counsel is that the revenue proceeding justified in relying upon the complaint and the statement of the complainant without giving an



opportunity to the petitioner to cross-examine the complainant. It is submitted that in the present case, the complaint which is undated and unsigned has been made basis of the re-assessment proceeding.

**29.** This Court has gone through the assessment order. It contains the reason for re-opening of the assessment year 2017-18 relevant to financial year 2016-17. It is based on information passed on to the office and after analysis of the said information. The reason for reopening of the assessment was made known to the petitioner and the petitioner has been made available a copy of the complaint-information. The petitioner was served with a show cause notice to explain as to why the amount of Rs.5,59,47,257/- should not be treated as escaped amount and why the mentioned amount should not be added back in his income. The petitioner received the show cause notice and submitted his reply through online/e-mail along with ledgers which have been perused and examined by the Assessing Officer. The Assessing Officer has recorded that in spite of supply of reason of proceedings and other relevant documents to the assessee as well as sufficient opportunity, the assessee has failed to prove and substantiate that how the undisclosed sales amount of sattu, maida, atta, besan, daliya and suji and other by-products of Rs.5,59,47,257/- have



been accounted in the books of account for the assessment year 2017-18. In the operating part of its order, the Assessing Officer has *inter alia* recorded as under:-

“Sale for the AY 2017-18 as per assessee is: Rs. 174269125

Actual Sale as per information received and as per calculation: Rs. 433923267.33 Difference in sale as per information received over sale as per assessee's return for the AY 2017-18-259654142.33

Since despite being given multiple opportunities, assessee failed to explain the differences, difference amount of Rs: 25,96,54,142/- is being treated as unaccounted sales of above items.

Gross Profit Ratio as per Audit Report for the AY 2017-18 is 18.395%

Income escaped for the AY 2017-18 = 18.395% of 259654142.33 i.e Rs. 47763379.48

Further, it was calculated that income from sale of by product Rs.7526423/-. Assessee was asked to explain along with documentation evidences that how the figures of sales which is under the proceedings u/s 147 were included in the books of accounts for the relevant year, hence income of Rs 75,26,423). as sales from by products is being added in its income for the relevant year.

Further, it was calculated that Income from sale of Gunny bags is Rs 6,03,455/

which assessee has failed to explain/submit and substantiate despite being given multiple opportunities. Therefore income of Rs 6,03,455/ is being added in his income Laxuy, income from sale



or cartoonx on the piano packaging materials in which plastics rolls was calculated no. Rs 4500 x 13 Rs. 84000 as basis, which assess did not explain. Therefore Rs. 54000 is being added in his income.

5. Hence, as per the above discussion, total unexplained business income of the assessee is Rs.47763379.48 +Rs.7526423 +Rs.603455 + Rs.54000 = Rs.5,59,47, 257/-.”

**30.** Neither from the assessment order nor from the averments made in the writ application, it would appear that in this case, the Assessing Officer has examined the complainant in course of the proceeding. The petitioner has placed on record its written submissions. In paragraph ‘8’ and ‘9’ of the written submission, the petitioner has mentioned the contents of the complaint and the fact that the complainant had also filed handwritten volumes of certain transactions. In his written submissions, the petitioner admits that the complaint contains a handwritten volume of certain transactions. He has made a submission that unless, the complaint along with handwritten volumes are shown to have a rational connection with the business carried out by the petitioner, the same cannot form a basis of re-assessment. He has sought to cross-examine the complainant and relied upon the judgment of the



Hon'ble Supreme Court in the case of **Andaman Timber Industries** (supra).

**31.** It is evident from his submissions that the petitioner was provided with xerox copies of the information/complaint and the voluminous documents showing some transactions and admits that the complaint contained the quantum of sales and also profit, it appears to this Court that the information and documents of transactions furnished by the complainant, who happened to be one of the partners of the petitioner-firm, is the basis of the issuance of notice and the reason to believe for the re-assessment proceeding. So far as the assessment order is concerned, the Assessing Officer has examined the information with reference to the documents of transactions which came from the complainant and this has been done only after giving an opportunity of hearing to the petitioner.

**32.** In the case of **Andaman Timber Industries** (supra), the adjudicating authority under the Central Excise Act carried out an investigation after noticing huge discrepancy in the price of goods shown by the assessee in its declaration under Section 173C of the Central Excise Rules.



In course of investigation, statements of two buyers were recorded and on that basis, show-cause notice dated 03.05.1995 was served upon the assessee. Based on that statement of the two buyers, a show-cause notice was served upon the assessee stating as to why the price at which the goods were sold to these customers from the depots may not be the basis for determining the value for the purpose of excise duty. This was being contested by Andaman Timber Industries challenging the correctness of the statements of the two witnesses, they demanded right to cross-examine the witnesses but the request was refused. In the aforementioned background of facts when the matter travelled to the Hon'ble Supreme Court, the Hon'ble Supreme Court were of the view as under:-

“According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses....”



**33.** This Court is of the considered opinion that the case of the petitioner would stand on a different footing from that of **Andaman Timber Industries** (supra). In the present case, not only the copy of complaint but even the documents showing transactions of the firm were made available to the petitioner. The impugned order is not based on any examination of the complainant. In fact, there is no recording of the statement of the complainant or any other witness. The impugned order of assessment is based upon the materials which came to the notice of the Assessing Officer. After analysing the same, when the Assessing Officer was of the view that despite supply of reason of proceedings and other relevant documents to the assessee as well as sufficient opportunity, the assessee has failed to prove and substantiate that how undisclosed sales amount have been accounted in the books of accounts for the assessment year 2017-18, he has passed the impugned order.

**34.** In the case of **Bharat Petroleum Corporation vs. N.R. Vairamani and Anr.** reported in **(2004) 8 SCC 579**, the Hon'ble Supreme Court has put a word of caution when the Court opined that the judgment of the Court should not be



cited like a Euclid's theorem as a slight change in the facts of the case would make a sea difference in the opinion of the Court. We extract that part of the observation of the Hon'ble Supreme Court in paragraph '9' of its judgment hereunder:-

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*<sup>2</sup> (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge...”

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2. 1951 AC 737 : (1951) 2 All ER 1 (HL)



**35.** It is not for this Court sitting in its writ jurisdiction to analyse the kind of information and the documents which were in possession of the Assessing Officer while passing the impugned order of assessment.

**36.** In result, we find no jurisdictional error in the impugned order. These writ applications are dismissed but with liberty to the petitioner to seek its statutory remedy in appeal, if so advised, before the competent/authority appropriate forum.

**37.** If any such remedy is applied for within a period of four weeks from today, the same will be considered by the Appellate Authority keeping in view that the petitioner was pursuing its remedy before this Court in the present writ application under some legal advice.

**(Rajeev Ranjan Prasad, J)**

**(Shailendra Singh, J)**

SUSHMA2/-

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