HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.284 of 2022

Sri Abhijit Paul, son of Sri Swapan Kumar Paul, resident of B.K. Road, P.O. Agartala, P.S. East Agartala, District- West Tripura.

..... *Petitioner*(s)

V E R S U S

1. Union of India, represented by the Secretary, Ministry of Finance, Income Tax Department, Government of India, Aayakar Bhawan, Near Scope Minar, Laxmi Nagar, Delhi-110092.

2. The Secretary, Ministry of Finance, Income Tax Department, Government of India, Aayakar Bhawan, Near Scope Minar, Laxmi Nagar, Delhi-110092.

3. Principal Chief Commissioner of Income Tax, North East Region, Government of India, 1st Floor, Ayakar Bhawan, G.S. Road, Guwahati 781005.

4. Principal Chief Commissioner of Income Tax, Shillong, Income Tax Department, Government of India, Ayakar Bhawan, M.G. Road, Shillong-793001.

5. Deputy Commissioner of Income Tax, Income Tax Department, Government of India, Aayakar Bhawan, PWD Road Circle- Silchar, Assam-788001.

6. Additional Commissioner of Income Tax, Income Tax Department, Government of India, Aayakar Bhawan, PWD Road Circle- Silchar, Assam-788001.

7. Joint Commissioner of Income Tax, Income Tax Department, Government of India, National Faceless Assessment Centre, Delhi.

8. Deputy Commissioner of Income Tax, Income Tax Department, Government of India, National Faceless Assessment Centre, Delhi.

9. Additional Commissioner of Income Tax, Income Tax Department, Government of India, National Faceless Assessment Centre, Delhi.

10. Assistant Commissioner of Income Tax, Income Tax Department, Government of India, National Faceless Assessment Centre, Delhi.

11. Income Tax Officer, Income Tax Department, Government of India, National Faceless Assessment Centre, Delhi.

12. Assessing Officer, National Faceless Assessment Centre, Delhi, Government of India.

..…. *Respondent*(s)

For Petitioner(s) : Mr. Raju Datta, Advocate.

For Respondent(s) : Mr. S. Chetia, Advocate,
Mr. Koushik Roy, Advocate,
Mr. U.S. Sinha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE BISWAJIT PALIT

Date of argument and delivery of Judgment & Order : 9th January, 2025.

Whether Fit for Reporting : YES

JUDGMENT & ORDER (ORAL)

Heard Mr. Raju Datta, learned counsel appearing for the petitioner and also heard Mr. S. Chetia, learned counsel assisted by Mr. Koushik Roy, learned counsel appearing for the respondents-revenue.

[2] Petitioner has sought quashing of notice under Section 148 of the Income Tax Act, 1961 vide DIN & Notice No. ITBA/AST/S/148/2020-21/1032094963(1) dated 31.03.2021 issued by the Deputy Commissioner of Income Tax for the assessment year 2014-2015 and the order dated 21.02.2022 rejecting the objection of the petitioner vide letter No. ITBA/AST/F/17/2021-22/1039954650(1) issued by the Additional/Joint/ Deputy/Assistant Commissioner of Income Tax Department. He also prayed for a direction upon the respondents not to proceed further on the basis of the notice under Section 148 of the Act of 1961 and drop the proceedings after considering the objection dated 21.02.2022. Petitioner also prayed for an interim stay of the impugned notice.

[3] When the matter was taken up earlier before the Co-ordinate Bench of this Court on 29.03.2022 while issuing notices the proceedings initiated against the petitioner under Section 148 of the Income Tax Act 1961 were kept in abeyance. Therefore, the re-assessment proceedings have not been concluded. Respondents filed their counter affidavit on 01.08.2022. When the matter was taken up on 27.06.2023, this Court taking note of the of the fact that the averments in the writ petition have not been specifically

answered by the respondents in their counter affidavit directed the respondent No.5 or any officer specifically authorized by him to appear and assist the Court with the relevant assessment records relating to the year 2014-2015 i.e. the subject matter of the impugned notice. The authorized officer thereafter appeared before the Court with the relevant documents.

[4] During the course of hearing on 17.08.2023, learned counsel for the respondent-department had sought to place certain documents from the record and also the un-amended provisions under Sections 149 and 151 of the Income Tax Act, 1961 as existing on 31.03.2021. The respondent-department was, therefore, allowed two weeks' time to bring on record the relevant documents and the relevant provisions of the un-amended Act by way of an additional affidavit. The additional affidavit was filed thereafter on 31.08.2023. However when the matter was again taken up on 28.02.2024, learned counsel for the respondent-revenue, sought to make certain assertions after going through the records of the assessment proceedings. However, no additional affidavit had been filed in respect of the assertions made on facts. Therefore, learned counsel for the respondent-revenue was allowed four weeks' time to file affidavit to bring on record the additional facts. Another additional affidavit had been filed thereafter on 20.05.2024. Earlier, a rejoinder affidavit was filed on behalf of the petitioner to the first counter affidavit on 01.08.2022. Another rejoinder affidavit was filed by the petitioner on 15.09.2023 to the first additional affidavit.

[5] The brief background facts relevant for appreciating the present issue in controversy are hereinafter delineated in short as are borne out from the records of the writ proceedings.

A search and seizure operation was conducted on 23.08.2023 at office premises of Rajarshi Motors Private Limited and also in the residence of one Shri Swapan Kumar Paul during which various books of account and other incriminating documents of the present petitioner, who is the son of said Shri Swapan Kumar Paul were also seized along with other documents pertaining to Swapan Kumar Paul Group of Companies. During such search operation, Shri Swapan Kumar Pal made disclosures of undisclosed income in the hands of the present petitioner. After the search operation was completed, a detailed appraisal report was prepared by the department containing the search details and other details of Shri Swapan Kumar Paul along with eight other assessees connected with Shri Swapan Kumar Paul including the present Petitioner i.e. Shri Abhijit Paul. Based on such disclosure of Shri Swapan Kumar Paul and the appraisal report prepared by the department, notice under Section 142(1) of the Act was served upon the petitioner. The petitioner was directed to file his return of income for the assessment year 2014-15. Accordingly, petitioner filed his return on 25.11.2015 showing the total income at Rs. 64,17,120/-

[6] It is the case of the respondent-revenue that based on such information gathered from the appraisal report as well as the disclosure of Shri Swapan Kumar Paul and also after considering the return filed by the petitioner pursuant to the notice issued under Section 142(1) of the Act, the

Assessing Authority completed the assessment of the petitioner after complying with all the required provisions of law and passed the assessment order dated 29.03.2016 whereby the total income of the petitioner was assessed at Rs.12,98,56,202.00. In the said assessment order dated 29.03.2016, the Assessing Authority made certain additions on two heads i.e. addition of Rs.9,62,33,682.00 on account of undisclosed investment and addition of Rs.2,72,33,682.00 on account of undisclosed income. The addition made by the Assessing Authority was put to challenge by the petitioner before the Commissioner of Income Tax (Appeals). The Appellate Authority deleted both the aforesaid additions made by the Assessing Authority. Being aggrieved, the department preferred an appeal before the Learned Income Tax Appellant Tribunal, which is still pending before the said Tribunal.

[7] The revenue has further contended that subsequent to the assessment order dated 29.03.2016 passed by the Assessing Officer, it had come to the notice of the respondent No. 5 that certain income chargeable to tax of the petitioner had escaped assessment. The escapement of tax of the petitioner had come to the notice of the respondent No. 5 only on 07.03.2017 i.e. after the assessment order was passed on 29.03.2016 by the respondent No.5 vide Letter No.APDPP3896B/ACIT(Audit)/Ghy/Range-Agartala/2016-17 dated 07.03.2017. On such information received from the audit wing of the department, the respondent No. 5 had revisited the records of the assessee including the appraisal report based on which assessment proceedings were initiated and formed reason to believe that certain income chargeable to tax had escaped assessment. He accordingly initiated

proceedings under Section 147 of the Act. Accordingly, notice under Section 148 of the Act had been issued to the petitioner by requiring him to file his return. Petitioner filed his return disclosing the same income as disclosed in the original return. Thereafter, the respondents issued as many as seven notices to the petitioner requiring him to furnish documents and records pertaining to the assessment year 2014-15. However, the petitioner did not comply with the same. On 30.01.2022, petitioner filed an objection against the said proceedings initiated under Section 147 of the Act and requested to drop the said proceedings being time barred and without jurisdiction. Petitioner took a ground that no new material came up before the Assessing Authority so as to initiate a proceeding under section 147 of the Act. However, by an order dated 21.02.2022, the Assessing Authority disposed of the said objection filed by the petitioner holding that the proceedings were initiated as per provisions of the Act which was valid and justified. Being aggrieved, the Petitioner preferred this writ petition before this Court under Article 226 of the Constitution of India seeking interference of the said action of the respondents in initiating the said proceedings under Section 147 of the Act.

[8] Petitioner challenged the said proceedings initiated under Section 147 of the Act mainly on four grounds: (i) It is barred by limitation as the notice was issued after the expiry of the period prescribed under Section 149(1)(b) of the Act. (ii) The matter is still sub-judice before the Appellate Tribunal in respect of additions made by the Assessing Authority while passing the initial assessment order. (iii) There was no new or fresh material which came up to the notice of the Assessing Authority to initiate a

proceedings under section 147 of the Act and (iv) The proceedings were initiated based on borrowed satisfaction of a different authority i.e. the audit wing of the department and not of the Assessing Authority. There was no 'reason to believe' formed by the Assessing Authority that the case of the petitioner falls under escaped assessment.

[9] Mr. Raju Datta, learned counsel for the petitioner submits that when the assessment order has already been set aside by Commissioner of Income Tax by order dated 22.03.2018 and the matter is sub-judice before the Second Appellate Authority, the office of the Income Tax Department has no *locus standi* or authority to send second notice under Section 148 of Income Tax Act. In the affidavit-in-reply, it is mentioned that notice under Section 148 of Income Tax Act was issued on 01.04.2021 and as per Section 151 of Income Tax Act and Section 149 of Income Tax Act limitation for assessment is 4 years. As per Section 151 of Income Tax Act it is specifically mentioned that before obtaining sanction under Section 151 of the Income Tax Act there must be income escaping assessment. In the present case approval was given by Principal Commissioner of Income Tax. After more than 4 years from the date of assessment the approval should be made by Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner and Director General are authorized person to approve sanction as per Section 151 of Income Tax Act. As a result, Principal Commissioner of Income Tax has no *locus standi* to approve sanction. Moreover, on the approval, it is specifically mentioned that income escaping income is 0(zero). If no income had escaped in the assessment

year, there is no scope to issue any fresh notice under Section 148 of Income Tax Act.

[10] He further submits that the respondents have categorically admitted that the case was reopened by Assessing Officer after notice was issued under Section 148 Income Tax Act only on the basis of appraisal report but fact remains that in the additional affidavit the respondents specifically admitted that the appraisal report was not a fresh material rather the appraisal report was available with AO at the time of original assessment. No income escapement took place for the assessment year 2014-2015. There was no failure on part of the petitioner to disclose any material facts. In absence of fresh materials, second notice under Section 148 of IT Act is not permissible under the law. Reassessment cannot be ordered based on objection raised by audit. Such reassessment should not be valid as the Assessing Officer has no reason to believe on his own that the income of assessee had escaped assessment on ground of erroneous computation. Learned counsel for the petitioner has placed reliance upon decision of the Apex Court in case of ***Commissioner of Income Tax, Delhi Versus Kelvinator of India*** reported in ***(2010) 2 SCC 723*** at paragraph No.7 wherein it was held that one must treat the concept of "change of opinion" as in in-built test to check abuse of power by the assessing officer. Hence, after 01.04.1989, the assessing officer has power to re-open provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Under the Direct Tax Laws (Amendment), Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted

the word “opinion” in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words “reason to believe” Parliament reintroduced the said expression and deleted the word “opinion” on the ground that it would vest arbitrary powers in the assessing officer.

[11] Learned counsel for the petitioner has also relied upon a recent judgment of the Apex Court in case of ***Mangalam Publications, Kottayam Versus Commissioner of Income Tax, Kottayam***, reported in ***(2024) 10 SCC 433*** wherein it was categorically held that mere change of opinion without any fresh materials cannot be a ground for reopening of assessment. Learned counsel for the petitioner has submitted that on the basis of same documents/materials borrowed from third party by the Assessing Officer, higher authority granted approval under Section 151 of IT Act. The present Assessing Officer has reopened the assessment of the petitioner under Section 148 IT Act without any fresh tangible material. Therefore, it suffers from non-application of his own mind. One of the reasons for believe for reopening of the case against the petitioner under Section 148 of IT Act is audit objection dated 07.03.2017 but the very said document i.e. page 32 of appraisal report was also available with the Assessing Officer during the original assessment proceedings. The materials at page No.32 of the appraisal report cannot be considered as a fresh material for reason to believe to review the original assessment order passed on 29.03.2016. The same materials were the basis for approval under Section 151 of the IT Act issued on 31.03.2021 for initiating proceedings under Section 148 of the Act, as such, it is nullity/ impermissible/ unlawful as per the provisions of

Section 147 of the Act of 1961. Both the Assessing Officer as well as CIT(A) have already dealt with same materials which were in the possession as the tally data referred to in the appraisal report and the audit report. After perusal of audit objection dated 17.03.2017, it is evident that net profit for the period from 01.04.2013 to 22.08.2013 on the basis of profit & loss account was found on the tally data of the petitioner. Therefore, it is crystal clear that tally data is the very basis of audit objection which has been annexed by the respondents. The fact remains that tally data and the audit report i.e. the appraisal report was the part of original assessment dated 29.03.2016. Therefore, all these materials are not at all fresh materials. The respondents issued second notice under Section 148 IT Act only on the basis of materials which were part of original assessment report.

[12] He has also placed reliance upon a decision of the Apex Court in case of ***M/S Indian & Eastern Newspaper Society, New Delhi versus Commissioner of Income Tax, New Delhi***, reported in ***(1979) 4 SCC 248*** and submits that the Apex Court in the said case has held that opinion of an internal audit party of Income Tax Department on a point of law cannot be regarded as an information within the meaning of Section 147 of Income Tax Act. Notice under Section 148 IT Act issued on 01.04.2021 after expiry of 6 years from the relevant assessment year 2014-2015 is not permissible under the un-amended Act which was applicable till 31.03.3021.

[13] Mr. S. Chetia, learned counsel for the respondents-revenue submits that the submission of the petitioner that in view of Section 149(1)(b) of the Act, the notice dated 31.03.2021 issued under Section 148

of the Act was time barred, is not legally correct. The respondent No. 5 has formed his 'reason to believe' that the income of the petitioner had escaped assessment on account of 'net profit' for the period 01.04.2013 to 22.08.2013. The petitioner had not disclosed his income fully and truly in his return of income filed on 25.11.2015. Therefore, respondent No. 5 had sought an approval from the Principal Commissioner of Income Tax, Shillong to initiate proceedings under Section 147 of the Act as contemplated under Section 151 of the Act. After being satisfied with the reasons so recorded by the respondent No. 5, the Principal Commissioner of Income Tax, Shillong accorded sanction to the respondent No. 5 to initiate proceedings against the petitioner under Section 147 of the Act. Accordingly, the respondent No. 5 issued notice under Section 148 of the Act on 31.03.2021 by digitally signing the said notice on 31.03.2021 at 7.01 p.m.

[14] The respondents in their additional affidavit dated 31.08.2023 submitted that the moment, the respondent No. 5 puts his digital signature on the said notice in the specified online portal of the department, it goes out of the hands of the respondent No. 5 to the centralized online application unit of the Income Tax Department. Thereafter it is beyond the control of the respondent No. 5 to do anything. It is the software on the online portal which automatically delivered the notice at the email address of the assessee/ petitioner. A third party has been awarded with the contract for operation and maintenance of online portal and the software used by the Income Tax Department and the Department has no access to the operation and maintenance of its web-portal and programmed software expect the regular

working process which are controlled by the programmed software maintained by a third party. Therefore once the respondent No. 5 puts his digital signature on the said Notice under Section 148 of the Act on 31.03.2021 at 7.01 pm, it goes out of the hands of the respondent No. 5 beyond his control which was delivered upon the petitioner on his e-mail on 01.04.2021 by the automatic computer system over which the respondent has no control over it. Therefore, notice under Section 148 was issued by the respondent No. 5 on 31.03.2021 at 7.01 pm i.e. within the prescribed time limit of six years as provided under Section 149(1)(b) of the Act.

[15] With regard to the submission made by the petitioner that the matter is still sub-judice before the Appellate Tribunal in respect of the deletion of the additions made by the Assessing Authority, the respondents submit that issues decided by the Appellate Authority are yet to attain finality as the appeal filed by the department is still pending before the Learned Income Tax Appellate Tribunal. Both are altogether on a different footing i.e. issues before the Appellate Authority and the Tribunal were 'undisclosed investment' and 'undisclosed income' of the petitioner and the present proceedings initiated under Section 147 of the Act was in respect of escapement of tax because of non-disclosure of actual profits by the petitioner. Therefore, there is no bar under the Income Tax Act, 1961 to Initiate any proceedings under Section 147 of the Act for reassessment of the petitioner which was escaped assessment during the original assessment and which came to the notice of the respondent No. 5 subsequently after the original assessment order was passed.

[16] As regards the submission made by the petitioner that no new or fresh material came up to the notice of the Assessing Authority to initiate proceedings under section 147 of the Act, it is stated that subsequent to the assessment order dated 29.03.2016 passed by the Assessing Officer, it has come to the notice of the respondent No. 4 that certain income chargeable to tax of the petitioner had escaped assessment. The escapement of tax of the petitioner had come to the notice of the respondent No. 4 only on 07.03.2017 i.e. after the assessment order was passed on 29.03.2016 by the respondent No. 4 when the Audit Wing of the Department had brought it to the notice of the respondent No. 4. The respondents further stated that the audit wing is a special wing of the department which is responsible for second check in ensuring accuracy in the assessment of income. The respondent No. 4 had therefore re-visited the records of the assessee and formed a 'reason to believe' that certain income chargeable to tax had escaped assessment and accordingly drawn a proceeding under section 147 of the Act. Therefore, it is clear that the proceedings was initiated based on a new material on record i.e. intimation from the audit wing of the department which is responsible for second check of the materials of the record.

[17] Learned counsel for the respondents has submitted that all throughout the petitioner did not co-operate with the Assessing Authority in spite of repeated requests and opportunities were granted by the respondent No. 5 to submit his documents and records. The petitioner did not produce any books of account, ledgers, bills or vouchers and any other supporting evidence substantiating his case either during the time of original assessment made under Section 143 (3) of the Act or during the present proceedings

initiated under Section 147 of the Act. Therefore, the petitioner is not entitled to any relief from this Court. The writ petition deserves to be dismissed.

[18] It is further submitted that the proceedings initiated under Section 147 of the Act against the petitioner were *bona fide*, legally valid and justified after compliance of all the relevant provisions of the Act and only after the assessing officer has formed his 'reason to belief' after applying his independent mind based on the information received from the Audit Wing of the Department that the income of the petitioner had escaped assessment. The respondents have placed reliance upon a decision of the Apex Court in case of ***Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd***, reported in ***(2008) 14 SCC 208*** and submitted that the Apex Court has observed that the expression 'reason to believe' cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. Section 147 authorizes and permits the assessing officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the assessing officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. The function of the assessing officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers.

[19] Learned counsel for the respondents-revenue has also relied upon a decision of the Apex Court in case of ***Raymond Woollen Mills Limited vs. Income Tax Officer***, reported in ***(2008) 14 SCC 218*** and submitted that the Apex Court at paragraph 3 of the said judgment held that it has to see whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at that stage. The Apex Court was of the view that it cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumptions of facts made in the notice were erroneous. The assessee may also prove that no new facts came to the knowledge of the Income Tax Officer after completion of the assessment proceedings. The question of fact and law were left open to be investigated and decided by the assessing authority. It was observed that the appellant was entitled to take all points before the assessing authority.

[20] Relying upon the proposition of law laid down by the Apex Court, learned counsel for the respondents submitted that the proceedings initiated under Section 147 of the Act are justified and within the parameters of the provisions of the Act. Therefore, this Court may not interfere with the said action of the assessing authority in initiating the proceedings under Section 147 of the Act and dismiss the writ petition filed by the petitioner.

[21] We have considered the submissions of learned counsel for the parties and taken note of the materials placed from record. In order to appreciate the controversy, it is necessary to refer to the provisions of

Section 147 to 149 and 151 of the Income Tax Act as it stood prior to its amendment by Finance Act, 2021, as under:

> "147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings 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 year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:
>
> 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:
>
> Provided 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*.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.
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> *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 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 ;
>
> (*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 rate ; 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;

(*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 as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

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

Explanation 3.—For the purpose of assessment or reassessment 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.

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.

148. (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, 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 in a case—
(*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and
(*b*) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—
(*a*) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and
(*b*) subsequently a notice has been served under clause (*ii*) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (*ii*) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—
(*a*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*) or clause (*c*);
(*b*) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;
(*c*) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of *Explanation 2* of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.
(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.
Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), 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

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151. Sanction for issue of notice. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.
(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.
(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."

[22] The existing provision under Section 147 at the relevant point of time provided that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income and such other income which has

escaped assessment and which comes to his notice subsequently in the course of proceedings under Section 147. Section 148 says that before making an assessment, reassessment etc. under Section 147, the Assessing Officer is required to issue and serve a notice on the assessee calling upon the assessee to file return of his income in the prescribed form i.e. setting forth such particulars as may be called upon. Such a notice is subject to the time limit prescribed under Section 149. Under sub-section 1(b) of Section 149, no notice under section 148 shall be issued in a case if four years but not more than six years have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year. Section 151 provides that no notice shall be issued under Section 148 by an Assessing Officer, after the expiry of a period for four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice.

[23] On the introduction of the amended Section 147 *with effect from* 01.04.1989 the only one condition that remained for the Assessing Officer to reopen assessment proceedings was where the Assessing Officer had reason to believe that income has escaped assessment. The Apex Court, however, cautioned that it needs to be given a schematic interpretation to the words “reason to believe”, otherwise Section 147 would give arbitrary powers to the Assessing Officer to reopen assessment on the basis of “mere change of opinion” which cannot be *per se* reason to reopen.

[24] The Apex Court in case of ***Commissioner of Income Tax, Delhi versus Kelvinator of India Limited***, reported in ***(2010) 2 SCC 723*** at paragraphs No.6 and 7 has explained the change in the law as regards the basis to reopen the concluded assessment only on the basis of 'reason to believe' and not on the basis of 'change in opinion' after the amendment made *with effect from* 01.04.1989 which reads as under:

> "6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.
>
> 7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer."

[25] It would also be relevant to go back a bit further on the expatiation of the interpretation of Section 147 of the Act as laid down by the Apex Court in case of ***M/S Phool Chand Bajrang Lal and another versus Income Tax Officer and another***, reported in ***(1993) 4 SCC 77*** and in the case of ***Sri Krishna Private Limited and others versus I.T.O. Calcutta and others***, reported in ***(1996) 9 SCC 534***. The Apex Court in the case of ***Phool Chand Bajrang Lal*** (supra) examined the purport of Section 147 of the Act and observed that the object of section 147 is to ensure that a party cannot get away by willfully 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 accept my lie, now your hands are tied and you can do

nothing". The Apex Court opined that it would be a travesty of justice to allow an assessee such latitude. After adverting to various previous decisions, it held 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 due to 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. Paragraph 25 of the judgment rendered in this context is quoted hereunder:

> "25. From a combined review of the judgments of this Court, it follows that an Income Tax Officer acquires jurisdiction to reopen 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 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 b 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 Burlop Dealer case as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly."

[26] Again in the case of ***Sri Krishna Private Limited*** (supra), the Apex Court emphasized that what is required of an assessee in the course of assessment proceedings is a full and true disclosure of all material facts necessary for making assessment for that year. It was emphasized that it is the obligation of the assessee to disclose the material facts or what are called primary facts. It is not a mere disclosure but a disclosure which is full and true. Referring to a decision in the case of ***Phool Chand Bajrang Lal*** (supra), it was highlighted that a false disclosure is not a true disclosure and would not satisfy the requirement of making a full and true disclosure. The obligation of the assessee to disclose the primary facts necessary for his assessment fully and truly can neither be ignored or watered down. All the requirements stipulated by Section 147 must be given due and equal weight.

[27] In a recent judgment rendered by the Apex Court in case of ***M/S Mangalam Publications Kottayam***, ***versus Commissioner of Income Tax, Kottayam***, reported in ***(2024) 10 SCC 433***, the Apex Court had the occasion to once again examine the perennial question which arises in income tax jurisprudence i.e. whether reopening of a concluded assessment i.e. reassessment under Section 147 of the Income Tax Act, 1961 following issuance of notice under Section 148 of the Act is legally sustainable or is bad

in law. The Apex Court in ***Mangalam Publication*** (supra) extensively dealt with the position in law as it existed prior to the amendment to Section 147 and post amendment introduced by Direct Tax Laws (Amendment) Act, 1989 and also the decisions rendered by the Apex Court in case of ***Kelvinator of India Limited*** (supra); ***Phool Chand Bajrang Lal*** (supra) and ***Sri Krishna Private Limited*** (supra).

[28] The Apex Court also dealt with the Constitution Bench judgment rendered in case of ***Calcutta Discount Company Limited versus Income Tax Officer, Companies District Calcutta & another***, reported in ***AIR 1961 SC 372***. It was a case under Section 34 of the Income Tax Act which is *pari materia* to Section 147 of the Act. The Apex Court in the case of ***Mangalam Publication*** (supra) once again reiterated the salient principles as regards reopening of assessment by invocation of power under Section 147 of the Act.

[29] In the background of the position in law as above, the issues which fall for consideration in the present writ petition *inter alia* are as under:

(i) Whether reopening of assessment for the assessment year 2014-2015 by the impugned notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 is proper in the eye of law.

(ii) Whether the impugned notice is barred by limitation as per Section 149(1)(b) of the Act of 1961.

(iii) Whether the Principal Commissioner of Income Tax was the competent authority to grant permission for invoking the extended period of limitation beyond four years as per Section 149(1)(b) to the Assessing Officer to reopen the assessment for the assessment year 2014-2015.

(iv) Whether the notice issued under Section 148 of the Act of 1961 on 01.04.2021 is permissible in law as the period of limitation expired on 31.03.2021 itself.

[30] In order to deal with the issues in controversy hereinabove, we proceed to dilate on the relevant materials placed from record in the same succession. The assessment order dated 29.03.2016 is at (Annexure-1) concerning the assessment year 2014-2015. Consequent to notice issued under Section 142(1) upon the assessee, he submitted his return of income of Rs.64,17,120/-. Thereafter notices under Section 143(2) were issued on him on 11.12.2015 and again on 31.12.2015 a notice under Section 142(1) was issued fixing the case for hearing on 15.01.2016. On 15.01.2016, the authorized representative of the assessee appeared and submitted reply but failed to submit any documents or books of accounts etc. On 24.02.2016 another notice under Section 143(2)/142(1) was issued upon the assessee fixing the case for hearing on 02.03.2016. On that date, the authorized representative of the assessee appeared but failed to produce any books of accounts, ledgers, bills, vouchers and any other supporting evidence substantiating his case. The Assessing Officer thereafter undertook the assessment on the basis of the materials which were procured during the search and seizure operation which included the ledger/cash book of

different years in the tally data of the petitioner. It showed huge amount of undisclosed investment, negative cash and undisclosed withdrawal. The assessee failed to explain the difference and was also unable to produce any counter documentary evidence during the hearing. Therefore, the amount of difference of Rs.9,62,33,682/- was added back into the income of the assessee under Section 68 as undisclosed investment. Penalty proceedings under Section 271(i)(c) were initiated for furnishing inaccurate details and concealment of income. Further, on the basis of loose sheets which are statements showing the details of pendency with FCI towards different dispatching point in respect of amount receivable by Abhijit Paul and Subhajit Paul as on 17.04.2013 and 13.04.2013 and also the details of liability against such receivable, the assessee could not explain the surplus of Rs.2,72,33,682/- by producing any counter documentary evidence. Therefore, the difference of Rs.2,72,33,682/- after considering depreciation of Rs.35,36,591/- was added back into the income of the assessee as undisclosed investment. Penalty proceedings were separately initiated Section 271(i)(c). As a result, the additions were Rs.9,62,33,682.00 + Rs. 2,72,33,682.00 totaling Rs.12,98,56,202.00.

[31] The tally data as contained under paragraph 5 of the assessment order is extracted hereunder as it may have a bearing on the answer to the issue.

Tally data with path	F.Y/Date	Ledger/nature of account	Amount	Remarks
CN-8/D Drive/Tally/data/0005	2013-22.08.2013	Ramkrishna Enterprise	4729255	
		Namita Paul	13205126	
		Subhajit Paul	16458109	
		Rajarshi Motors	56313098	Liability

		Pvt. Ltd.		
		Drawings	5499812	

[32] Petitioner being aggrieved went in appeal before the Commissioner of Income Tax (Appeals) under Section 143(3) of the Income Tax Act. The Commissioner (Appeals), however, after hearing the petitioner the revenue was pleased to delete both the additions. The appellate order dated 22.03.2018 is at (Annexure-2). Thereafter, the revenue has gone in appeal before the Income Tax Appellate Tribunal, Guwahati bearing ITAT 113/GTY/2018 which is still pending. In the meantime, notice under Section 148 of the Income Tax Act, 1961 was issued on 31.03.2021 by the DCIT/ACIT Circle, Silchar (Annexure-4) stating that he had reason to believe that the assessess's income chargeable to tax for the assessment year 2014-2015 had escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. He was asked to file his return in the prescribed form for the relevant assessment year. It also recorded that the notice has been issued after obtaining the necessary satisfaction of the PCIT, Shillong.

[33] Petitioner made a request for grant of reasons recorded for issuing notice under Section 148 and the copy of the approval of the superior officer under Section 151 of the Act vide letter dated 14.05.2021 (Annexure-6). The reasons recorded were communicated to the petitioner and are extracted hereunder:

> "In this case the assessment order was passed u/s 143(3) On examination of the record it was found that as per page 32 of Appraisal report there is a net profit for the period 01.04.2013 to 22.08.2013 is 96,89,209/- on the basis of P&L account found in the tally data of Abhijit Paul. The net profit disclosed in the Return of Income filed in response to notice u/s 142(1) was Rs.50.65,358. Therefore the amount of Rs.46,23,851/- being the difference in net profit should have been

> added as undisclosed income of the assessee. This resulted in underassessment of income of Rs.46,23,851/-
>
> In this context, you are, required to submit in writing as to why the above amount of Rs.46.23.851/- should not be added back to your income and taxed accordingly.
>
> Note. Please provide the necessary documents/evidences in support of the details furnished by you in response to the above questionnaire."

[34] The approval under Section 151 of the Income Tax Act by the PCIT, Shillong is at (Annexure-11). Thereafter, petitioner filed his objection against initiation of proceedings on 30.01.2022 (Annexure-19). The same has been rejected by the order dated 21.02.2022 (Annexure-20) which is also impugned in the present writ petition. It holds that the assessee had not disclosed the material facts truly and fully and therefore income chargeable to tax had escaped assessment. Therefore, the provisions of Section 147 and 148 of the Act are correctly invoked. The objection as to the authority of the PCIT to grant permission was also rejected as untenable.

[35] During course of hearing of this case, the revenue relied upon the appraisal report which formed the basis of the audit objection on which the notice under Section 148 was issued for reopening assessment under Section 147 of the Act of 1961. Since the appraisal report was being relied upon to justify the reopening of the assessment and they were not part of the pleadings, the respondent-revenue was asked to make a categorical statement on affidavit as to whether the appraisal report was available before the assessing authority while making the initial assessment. A categorical statement has been made at paragraph 4 of the second additional affidavit to the following effect:

> "That based on such information gathered from the 'Appraisal Report' as well as the disclosure of Shri Swapan Kumar Paul and also after considering the return filed by the Petitioner pursuant to the Notice issued under Section 142(1) of the Act, the Assessing Authority completed the assessment of the Petitioner after complying with all the required provisions of law and passed the Assessment Order vide dated 29.03.2016 whereby the total income of the Petitioner was assessed at Rs.12,98,56,202.00. In the said Assessment Order dated 29.03.2016, the Assessing Authority made certain additions on two heads i.e. addition of Rs.9,62,33,682.00 on account of 'Undisclosed Investment' and addition of Rs.2,72,33,682.00 on account of 'Undisclosed Income'. Therefore the said 'Appraisal Report' was available with the Assessing Authority who completed the original assessment of the petitioner after initiating a proceedings based on the said 'Appraisal Report' as well as the disclosure made by Sri Swapan Kumar Paul. Since the said 'Appraisal Report' contains information of nine different assesses including the said Sri Swapan Kumar Paul in whose residence the search operation was conducted, the complete 'Appraisal Report' was not furnished to the Petitioner and only the relevant portion was furnished which was annexed as Annexure with the writ petition filed by the Petitioner. The Respondents further states that since the 'Appraisal Report' discloses confidential information of other assesses also the same could not be shared with the present Petitioner except the relevant portion so far as the present Petitioner is concerned. However the Respondents crave leave of this Hon'ble Court to produce the complete 'Appraisal Report' before this Hon'ble Court on the next date of hearing."

[36] The appraisal report is also enclosed at page 75 and 87 to 92 of the writ petition concerning the petitioner as supplied by the revenue. Perusal of the appraisal report shows that undisclosed income was found during search and seizure operation in the tally data of Abhijit Paul on the basis of profit and loss account. It showed difference in the different financial year in net profit when compared to the net profit shown in the audit report or P&L so prepared. For the relevant year 2013 it showed net profit of Rs.96,89,209/-. It is not in dispute that this appraisal report was available before the Assessing Officer during the assessment. The assessment order was passed based on the materials seized during search and seizure operation including ledger, cash book of different years found in the tally data of the petitioner and in the wake of the fact that the assessee had failed to produce any books of accounts, ledgers, bills, vouchers and any other supporting evidence substantiating his cause. Evidently, the materials

were present before the Assessing Officer when undertook the assessment on the basis of the materials seized during search and seizure operation.

[37] Perusal of the reasons for issuance of the notice for reopening assessment as extracted in the foregoing paragraph also indicates that as per page 32 of the appraisal report there was a net profit for the period 01.04.2013 to 22.08.2013 to the tune of Rs.96,89,209/- on the basis of profit and loss account found in the tally data of Abhijit Paul whereas the net profit disclosed in his return of income filed in response to the notice under Section 142(1) was Rs.50,65,358/-. Therefore, the Assessing Officer while reopening assessment stated that an amount of Rs.46,23,851/- was found to have escaped assessment and should be added as undisclosed income of the assessee.

[38] From these material facts culled out from the records in the light of the settled principles for invocation of power under Section 147 of the Income Tax Act, as discussed above, it is but apparent that the initiation of proceedings for reassessment is not based on discovery of new materials which were not available before the Assessing Officer during the initial assessment proceedings and which has subsequently come to the notice of the Assessing Officer. The audit objection dated 07.03.2017 is based upon the same appraisal report.

[39] The Apex Court in the decisions referred to hereinabove and reiterated in case of ***Mangalam Publication*** (supra) has in very categorical terms held that the Assessing Officer may start reassessment proceedings either because some fresh facts have come to light which were not

previously disclosed or some information with regard to the facts previously disclosed comes into possession which tends to expose the untruthfulness of those facts. In such situation, it is not a case of mere change of opinion or the drawing of a different inference from the same set of 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.

[40] In the facts of the present case, the assessment was carried out at the first instance on the basis of the materials collected during search and seizure operation including the ledgers/cash book of different years found in the tally data of the petitioner and also the appraisal report based thereupon.

The Appraisal report was placed before the Assessing Officer to examine the claim. If the same material formed the basis of the Assessing Officer to pass the original assessment order, the reopening of the assessment by issuance of notice under Section 148 of the Act would be a mere change of opinion of the Assessing Officer and not a case of reason to believe on basis of the material which has subsequently come to his notice and/or which the assessee failed to truly and fully disclose during assessment proceedings. This is a case where the assessee had not submitted any books of account, ledgers, bills, vouchers or supporting evidence and the Assessing Officer proceeded to assess his returns on the basis of the materials collected during search and seizure operation including the appraisal report based upon that. Therefore, reopening of assessment on the ground that the income liable to tax has escaped assessment as per the ingredients of Section 147 of the Act either on account of failure to truly and fully disclose the full details of the income derived by the petitioner or on the basis of materials subsequently coming to the notice of the Assessing Officer are not satisfied. Therefore, the initiation of the reassessment proceedings by issuance of notice under Section 148 following the provisions of Section 147 of the Act is bad in law. The first issue is answered accordingly.

[41] In answer to the second issue as to whether initiation of the proceedings was barred by limitation as provided under Section 149(1)(b) of the Act, we are satisfied that as per the existing provisions of Section 149(1)(b) which stood amended by the Finance Act of 2021 *with effect from* 01.04.2021, the reassessment proceedings could be initiated beyond the period of four years up to six years counted from the end of the concerned

assessment year i.e. 31.03.2015 up to 31.03.2021. Petitioner has wrongly interpreted the provisions of Section 149(1)(b) in that regard as the relevant provisions of the Act quoted above do squarely indicate otherwise. As such, the notice under Section 148 was not barred by limitation.

[42] Coming to the third issue as to whether the PCIT was competent to grant permission for initiation of reassessment proceedings, we are once again clear in our mind that as per the provisions of Section 151 of the Income Tax Act which stood before its amendment by the Finance Act of 2021 *with effect from* 01.04.2021, the Principal Commissioner of Income Tax was fully competent to accord permission for reopening of assessment beyond the period of four years as prescribed under Section 149(1)(b). Petitioner has laboured under a misconception of law in that regard. Therefore, the issue is answered in favour of the revenue.

[43] Now coming to the last question as to whether the notice under Section 148 uploaded on the portal on 01.04.2021 was beyond the period of limitation as the Assessing Officer was bound to issue notice for reopening assessment till 31.03.2021 and as such the same is bad in law, we may usefully refer to a decision on this point rendered by a Division Bench of the Jharkhand High Court in which one of us (*Aparesh Kumar Singh, CJ*) was a party. The matter relates to the period of limitation prescribed under Section 153 in case of ***Prakash Lal Khandelwal versus Commissioner of Income Tax and another*** in ***WP(T) No.1901 of 2022***. The issue involved in the said case was whether if the DIN number was generated on 01.04.2022 and the

order was uploaded on 03.04.2022, was it barred in time as the limitation to initiate proceedings expired on 31.03.2022.

[44] In the present case, the revenue in its first additional affidavit has made a categorical statement at paragraph 9 to the effect that the respondent No.4 i.e. the Assessing Officer issued notice under Section 148 of the Act by digitally signing the notice on 31.03.2021 at 7.01 p.m. The moment the respondent No.4 put his digital signature on the said notice in the specified online portal of the department, it went out of the hands of respondent No.4 to the centralized online application unit of the Income Tax Department and therefore it was beyond the control of the respondent No.4 to do anything. It is the software on the online portal which automatically delivers the notice at the email address of the assessee/petitioner. The operation and maintenance of the online portal and the software used by the Income Tax Department is awarded on contract to a third party. The department has no access to its operation and maintenance of the web-portal and the programmed software except the regular working process which are controlled by the programmed software maintained by a third party. Therefore, notice under Section 148 was issued by the respondent No.4 on 31.03.2021 at 7.01 p.m. within the prescribed time limit of six years as provided under Section 149(1)(b) of the Act. Therefore, it is not a case where initiation of proceedings by issuance of notice under Section 148 was done after expiry of the limitation period on 31.03.2021 by the Assessing Officer. It is only the generation of the DIN number by the online portal that has been done on 01.04.2021. On facts, the statement remains un-rebutted by the petitioner.

[45] So far as the legal issue is concerned, the learned Division Bench of the Jharkhand High Court in case of ***Prakash Lal Khandelwal*** (supra) had the occasion to examine the use of the expressions in different provisions of the Income Tax Act in the context of the language used in Section 153(3). It was held that 'making of order', 'issue of order' and 'uploading of order on web portal' or 'communication of order' are all different acts or things. In the facts of the said case, it was held that Section 153(3) regulates only making of order. There is no restriction or limitation period prescribed under Section 153(3) for 'issue of order', 'uploading of order on web portal' or 'communication of order'. The opinion of the Apex Court as laid down in the case of ***CIT versus Mohammed Meeran Shahul Hameed***, reported in ***(2022) 1 SCC 12*** while interpreting Section 263 of the Income Tax Act, 1961 which uses similar expression like Section 153(3) was also referred to and relied upon. The learned Court after going through the provisions of the Act, the opinion of the Apex Court, dispelled the contention of the petitioner that though the assessment order was dated 31.03.2021 but since it was uploaded on the next day i.e. 01.04.2022 the same was barred by limitation. It opined that different expression used by the Legislature at different places has certainly a different objective. Making of the order and communication of the order are two different things. Even the circular No.19 of 2019 dated 14.08.2019 relevant to the issue in the said case and relied upon by the assessee stipulated communication of the order and not making of the order as it said that every communication relating to assessment, appeal, order, etc. shall have a DIN on the body of the order. On facts, in the present case, it is undisputed that the Assessing Officer had digitally signed the notice under

Section 148 of the Act on 31.03.2021 at 7.01 p.m. As such, it was not barred by limitation though it may have been uploaded on the portal on 01.04.2021. The instant issue is, therefore, answered against the assessee in favour of the revenue.

[46] On consideration of the entire conspectus of facts and circumstances narrated above and the principles of law as regards the reopening of assessment under Section 147 read with Section 148 of the Act of 1961 and the findings recorded in respect of the issue No.(i) hereinabove, in conclusion, we are of the considered opinion that the reopening of the assessment of the petitioner for the assessment year 2014-2015 as per the impugned notice dated 31.03.2021 under Section 148 following the provisions of Section 147 of the Act was bad in law. The materials relied upon by the Assessing Officer were not such which had subsequently come to his notice rather they were very much part of the assessment proceedings i.e. the appraisal report based on the search and seizure operation. The impugned notice dated 31.03.2021 and the order rejecting his objection dated 21.02.2022 are accordingly set aside.

[47] The writ petition is accordingly allowed in the aforesaid terms. Pending application(s), if any, also stands disposed of.

(BISWAJIT PALIT), J **(APARESH KUMAR SINGH), CJ**