CNR No.SKHC010001002022

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extraordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 39 of 2022

Zydus Healthcare Limited
(Earlier M/S Zydus Healthcare
Sikkim (Firm),
Anil Matai, Managing Director of Zydus
Healthcare Ltd. Sikkim
Represented by Constituted Power of Attorney
Shri Suman Bag, Aged about 46 years,
(Head of Manufacturing Plant)
Son of Shri Ramkrishna Bag
Resident of Nh-31A, Rangpo, Sikkim
P.O. & P.S. Rangpo, Sikkim-737101

….. Petitioner

versus

Assistant Commissioner of Income Tax,
Circle 3(2), Gangtok Aayakar Bhawan,
Bhanupath, Near White Memorial Hall,
Gangtok, Sikkim-737101.

…..Respondent

Petition under Article 226 of the Constitution of India.

Appearance:

Mr. Mukesh M. Patel, Mr. Anup Kumar Bhattacharjee, Mr. Abhishek Singh, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India along with Ms. Natasha Pradhan and Mr. Amit Kr. Sharma, Advocates for the Respondent.

Date of Hearing : 25.03.2026

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with

CNR No.SKHC010000582024

W.P. (C) No. 13 of 2024

Zydus Healthcare Limited
Represented by Constituted Power of Attorney
Shri Suman Bag,
Aged about 47 years,
(Head of Manufacturing Plant)
Son of Shri Ramkrishna Bag
Resident of Nh-31A, Rangpo, Sikkim
P.O. & P.S. Rangpo, Sikkim, 737101.

….. Petitioner

Versus

Assistant Commissioner of Income Tax,
Circle 3(2), Gangtok Aayakar Bhawan,
Bhanupath, Near White Memorial Hall, Gangtok
Sikkim-737101 OR his Successors to Office.

…..Respondent

Petition under Article 226 of the Constitution of India

Appearance:

Mr. Mukesh M. Patel, Mr. Anup Kumar Bhattacharjee, Mr. Abhishek Singh and Mr. Deepu Prasad, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India along with Ms. Natasha Pradhan, Ms. Sittal Balmiki and Mr. Amit Kr. Sharma, Advocates for the Respondent.

Date of Hearing : 14.08.2026

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and

CNR No.SKHC010001452025

W.P. (C) No 50 of 2025

Zydus Healthcare Limited
Represented by Constituted Power of Attorney
Shri Suman Bag,
Aged about 48 years,
(Head of Manufacturing Plant)
Son of Shri Ramkrishna Bag
Resident of Nh-31A, Rangpo, Sikkim
P.O. & P.S. Rangpo, Sikkim, 737101.

….. Petitioner

Versus

Assistant Commissioner of Income Tax,
Circle 3(2), Gangtok Aayakar Bhawan,
Bhanupath, Near White Memorial Hall, Gangtok
Sikkim-737101 or his successors to Office.

…..Respondent

Petition under Article 226 of the Constitution of India

Appearance:

Mr. Mukesh M. Patel, Mr. Anup Kumar Bhattacharjee, Mr. Abhishek Singh and Mr. Deepu Prasad, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India along with Ms. Natasha Pradhan, Ms. Sittal Balmiki and Mr. Amit Kr. Sharma, Advocates for the Respondent.

Date of Hearing : 14.08.2026
Date of Judgment : 14.10.2026
Date on which uploaded: 15.10.2026

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Introduction

The present writ petitions raises issues regarding reassessment proceedings initiated by the respondents for the assessment years 2015-16, 2017-18 and 2018-19. The initial assessments done by the respondent under section 143(3) of the Income Tax Act, 1961 was sought to be reassessed under section 148 on the ground that income chargeable to tax for assessment years 2015-16, 2017-18 and 2018-19 had escaped assessment by the respondent provoking the petitioner to approach this Court questioning the legality of the proceedings.

For clarity, W.P.(C) No. 39 of 2022 is examined separately and the other two writ petitions are examined jointly.

The arguments in W.P.(C) No. 39 of 2022 were concluded on 25.03.2026, however, as the connected writ petitions raised similar issues, pronouncement of judgment was deferred until the conclusion of hearing in W.P.(C) No. 13 of 2024 and W.P.(C) No. 50 of 2025 were concluded, at the request of the learned Counsel for the parties as recorded in the order dated 25.03.2026.

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J U D G M E N T

Bhaskar Raj Pradhan, J.

WP(C) No. 39 of 2022

1. The petitioner is Zydus Healthcare Limited, Sikkim. Zydus Healthcare, Sikkim was converted into Zydus Healthcare Limited on 02.02.2016 after amalgamation with German Remedies Limited.

Petitioner's submissions

2. Firstly, the learned Counsel for the petitioner submits that the reassessment proceeding is without jurisdiction and therefore, the writ petition was maintainable against the impugned order and notices for reassessment passed under sections 148A(d), 148A(b) and 148 of the Income Tax Act, 1961 (the Income Tax Act). The judgment of the Supreme Court in ***Red Chilli International Sales vs. Income-tax Officer***[1] is relied upon to show that such a challenge was maintainable.

2.(i) Secondly, it is submitted that the proceeding under section 148 and 148A(b) of the Income Tax Act could not have been initiated by the respondent unless the requirement of section 149(1)(b) was fulfilled, i.e., the respondent had in his possession "books of account or other documents or evidence" which revealed that income chargeable to tax represented in the form of asset, expenditure in respect of a transaction or in relation to an event or occasion; or an entry or entries in the books of account, had escaped assessment amounts to or is likely to amount to fifty lakh

[1] [2023] 146 taxmann.com 224 (SC)

rupees or more and relies on the judgment of the Madras High Court in ***IDFC Ltd vs. Deputy Commissioner of Income-tax***[2].

2.(ii) Thirdly, the Petitioner submits that relevant information and data pertaining to all the issues on the basis of which the orders u/s 148A(d) and notices under section 148A(b) and 148 passed were available on record at the stage of the original scrutiny assessment proceeding and nothing new was available at the time of reassessment and therefore, the notice under section 148A(b) for reassessment could not be issued on a change of opinion as was sought to be done in the present case and relies upon the judgment of the Delhi High Court in ***Sapphire Foods India Ltd. vs. ACIT***[3]***.***

2.(iii) Fourthly, the petitioner submits that the notice for reassessment under section 148 was issued in violation of period of limitation prescribed under section 149. It is submitted that the impugned notices under section 148A(b) and 148 were issued after three years of the original assessment order and before the expiry of ten years without the Assessing Officer having in his possession "books of account or other documents or evidence" which revealed that income chargeable to tax had escaped assessment and amounts to or likely to amount to fifty lakh rupees or more. Therefore, the notices and order would be hit by limitation under section 149(1)(a) and the respondent would be precluded from reassessing the assessment already made.

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[2] [2023] 155 taxmann.com 602 (Madras)
[3] (2026) 183 Taxmann.com 506 (Delhi)

2.(iv) Fifthly, the petitioner submits that reassessment proceeding under section 148A(b) and 148 was based solely on audit party objection which is devoid of any "information" as required under Explanation 1 of section 148.

2.(v) The petitioner submits that the Assessing Officer in his order under section 148A(d) did not dispute the petitioner's contention regarding its claim for Excise Duty refund being exempt from income tax as it was a capital receipt and was covered by various judicial pronouncements including the judgment of Jammu & Kashmir High Court in the case of ***Shree Balaji Alloys vs. Commissioner of Income-Tax and Another***[4] which was followed by the Income Tax Appellate Tribunal, Kolkata, in the case of ***SICPA India P. Ltd. vs. DCIT***[5]. However, the Assessing Officer incorrectly opined that the issue had not reached its finality and he was not inclined to accept the petitioner's submission. It is further submitted that the issue regarding subsidy received by the petitioner in Sikkim has achieved finality in their favour in view of the judgment of the Supreme Court in ***Commissioner of Income Tax, Jammu & Another vs. Shree Balaji Alloys***[6].

Respondent's submissions

3. The learned Deputy Solicitor General of India submits that the present writ petition involves disputed questions of facts and therefore, is outside the ambit of writ jurisdiction.

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[4](2011) 333 ITR 335 : 2011 SCC OnLine J&K 269
[5] [2017] 18 Taxmann.com 87 (Kolkata-Trib)
[6] (2018) 13 SCC 373

3.(i) It is submitted that the writ petition has become infructuous since the impugned notice dated 04.08.2022 had been adjudicated upon and assessment order has been passed against which appeal has been preferred by the petitioner under section 246A of the Income Tax Act.

3.(ii) It is further submitted that the present case falls under section 149(1)(b) and not under section 149(1)(a). According to the respondent, the Excise duty refund deposited in the bank account of the assessee were assets in view of Explanation to section 149(1)(b) and such Excise duty refund reflected in the bank account of the assessee would be evidence in possession of the Assessing Officer.

3.(iii) It is also submitted that initial scrutiny dated 26.12.2018 was only limited scrutiny by CASS (Computer Added Scrutiny Selection) and did not include Excise duty refund.

3.(iv) The learned Deputy Solicitor General relies upon the judgment of the Supreme Court in ***GNK Driveshafts (India) Ltd. vs. Income Tax Officer & Others***[7], ***CIT vs. P.V.S. Beedies Pvt. Ltd.***[8] and ***Molbio Diagnostics (formerly Molbio Diagnostics Pvt. Ltd.) vs. Assistant Commissioner of Income Tax***[9].

The facts

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[7] (2003) 1 SCC 72
[8] (1998) 9 SCC 272
[9] WP(C) No. 142 of 2025 judgment of Bombay High Court at Goa dated 5.8.2025

4. According to the petitioner, the erstwhile firm Zydus Healthcare, Sikkim, had filed return of income for the year 2015-2016. Limited scrutiny notice under section 143(2) of the Income Tax Act dated 28.07.2016, was received by Zydus Healthcare, Sikkim.

4.(i) Thereafter, assessment order dated 26.12.2018 under section 143(3) accepting the return of income as NIL claiming a deduction of Rs.4,04,22,93,947/- was passed by the Deputy Commissioner of Income Tax after considering the explanation and submissions filed by the petitioner.

4.(ii) The petitioner, thereafter, was served a notice under section 148A(b) dated 19.03.2022, stating that the respondent had information which suggested that income chargeable to tax for the assessment year 2015-16 had escaped assessment within the meaning of section 147 and therefore, the petitioner was required to show cause as to why, in view of the details contained therein, a notice under section 148 should not be issued.

4.(iii) The petitioner gave a detailed reply to this notice on 26.03.2022.

4.(iv) On 27.04.2022, order under section 148A(d) was passed stating that the respondent had prima facie material and it was a fit case for reopening under section 148 on the issue of undercharge of Alternative Minimum Tax (AMT) and understatement of income as a result of accepting the petitioner's claim of Excise refund of Rs.22,99,92,702/- as Capital Receipts.

4.(v) On 27.04.2022, the respondent issued notice under section 148 stating that final objection has been raised by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of the Act suggesting that income chargeable to tax has escaped assessment within the meaning of section 147. Order under Sub-section 148A(d) having being passed on 27.04.2022, the respondent proposed to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the assessment year 2015-16 and requiring the petitioner to furnish within 30 days from service of the notice a return in the prescribed form of the Assessment Year 2015-16.

4.(vi) The petitioner responded to this notice dated 27.04.2022 vide its letter dated 23.05.2022 stating that the notice under section 148 was bad in law. However, without prejudice to their rights and contentions, they filed their return of income for the year 2015-16 under protest in compliance to notice under section 148.

4.(vii) On 04.08.2022, the respondent issued notice under section 143(2) read with section 147 of the Income Tax Act acknowledging the return of income filed by the petitioner and pointing out that, "*There are under charge of AMT and under statement of income as a result of accepting assessee's claim of Excise refund of Rs.22,99,92,702/- as Capital Receipts*.", on which further clarification was required asking the petitioner to submit

any evidence on which they sought to rely in support of their return.

4.(viii) The petitioner, therefore, filed the writ petition on 12.08.2022 before this Court challenging:

(a) Impugned Notice dated 27.04.2022 under section 148 of the Income Tax Act, 1961
(b) Impugned Order dated 27.04.2022 under section 148A(d) of the Income Tax Act, 1961
(c) Subsequent Notice under section 143(2) read with section 147 of the Income Tax Act, 1961

4.(ix) On 26.03.2024, the respondent passed an assessment order under section 147 read with section 144B stating that they were satisfied that there is concealment of particulars of income corresponding to the disallowance of Rs.22,99,92,702/- and therefore, initiating penalty proceeding under section 271(1)(c) and finally computing the petitioner total income under section 115JC as Rs.4,24,12,86,649/-.

4.(x) This assessment order dated 26.03.2024 was filed by the respondent vide an additional affidavit dated 16.04.2025. However, the petitioner has not challenged this assessment order.

Consideration

5. The relevant provisions of the Income Tax Act as it existed during the relevant period are reproduced hereinbelow:

"**147. Income escaping assessment**. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or

deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.- For the purpose of assessment or reassessment or recomputation 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, irrespective of the fact that the provisions of section 148A have not been complied with."

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

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (*d*) of Section 148A to the effect that it is a fit case to issue a notice under this section.

Explanation 1.—For the purposes of this section and Section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(*i*) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(*ii*) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(*iii*) any information received under an agreement referred to in Section 90 or Section 90A of the Act; or

(*iv*) any information made available to the Assessing Officer under the scheme notified under Section 135A; or

(*v*) any information which requires action in consequence of the order of a Tribunal or a Court.

Explanation 2.—For the purposes of this section, where,—

(*i*) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(*ii*) a survey is conducted under Section 133A, other than under sub-section (2-A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(*iii*) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under Section 132 or under Section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(*iv*) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under Section 132 or Section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in Section 151."

"148-A. Conducting inquiry, providing opportunity before issue of notice under Section 148.—The Assessing Officer shall, before issuing any notice under Section 148,—

(*a*) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(*b*) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (*a*);

(*c*) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (*b*);

(*d*) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (*c*) is received by him, or where no such reply is furnished, within one month from the end of the

month in which time or extended time allowed to furnish a reply as per clause (*b*) expires:

Provided that the provisions of this section shall not apply in a case where,—

(*a*) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(*b*) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee;

(*c*) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under Section 132 or requisitioned under Section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee;

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in Section 151."

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

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

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

(*i*) an asset;

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

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

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

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

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153A, or Section 153C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other

documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (*b*) of Section 148-A or the period during which the proceeding under Section 148-A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (*d*) of Section 148A is does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

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

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

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

Alternative remedy is not a bar

5.(i) The issue of alternative remedy has been finally dealt with by this Court in its order dated 5.11.2025 by which this issue was rejected holding that alternative remedy is no bar in entertaining a writ petition in an appropriate case. The judgment of the Supreme Court in ***Red Chilli International Sales*** (supra), reassures this Court on the correctness of its ruling dated 5.11.2025.

Writ petition was not infructuous

5.(ii) The respondent's objection that the writ petition has become infructuous as final order has been passed, is next to be considered. The learned Counsel for the petitioner counters this argument by submitting that as the writ petition has challenged the very jurisdiction of the respondent for issuance of notice under section 148 and if this Court comes to the conclusion that the respondent did not have the jurisdiction to issue the impugned notice, the subsequent proceedings would in any case not survive. The learned counsel also submitted that the appeal filed by the petitioner against the assessment order has been filed without prejudice to their rights and contentions before this Court in the pending writ petition.

5.(iii) I am of the view that the impugned notices under section 148 were challenged by the petitioner before this Court on the ground that the same were issued without jurisdiction. Adjudication of the proceedings during the pendency of the writ petition cannot render the writ petition infructuous if the petitioner establishes that the impugned notices were issued without jurisdiction. If it is so then the question of further proceedings resulting in final assessment by the respondent would not arise. If the notice under section 148 is held to be without jurisdiction then consequently the subsequent assessment order must also be held to be without jurisdiction. Thus, I am of the considered view that the present writ petition challenging the jurisdiction of issuance of notices under section 148 must be examined.

The writ petition does not involve disputed questions of facts

5.(iv) The present writ petition does not involve disputed questions of facts as asserted by the learned Deputy Solicitor General. The issue raised in the writ petition can be decided on the basis of admitted materials furnished by the parties. The writ petition raises jurisdictional issues and therefore, I am of the view that this Court is competent to examine it in writ jurisdiction.

5.(v) As the petitioner contends that the reassessment proceedings was without jurisdiction; it was barred by limitation; it could not have been initiated unless the requirement of section 149(1)(b) was fulfilled; the audit party objection could not be considered "books of account or other documents or evidence" although it may be "information", it would be important for me to examine the mandate of the relevant provisions.

Notice has to be judged according to law as it existed on the date of notice

5.(vi) In ***Union of India vs. Rajiv Bansal***[10], the Supreme Court held that notices have to be judged according to the law existing on the date the notice is issued. Since, notice under section 148 in the present case was issued on 27.04.2022, section 149(1)(b) and section 148 quoted above as substituted by the Finance Act, 2022, w.e.f., 1.04.2022, would apply.

Mandate of the provisions of law under consideration

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[10] (2024) 469 ITR 46: 2024 SCC Online SC 2693

Section 147

5.(vii) On a perusal of section 147, it is clear that the Assessing Officer gets the jurisdiction to reassess the assessment already done only when income has "escaped" assessment which has come to his notice subsequently in the course of the proceedings under section 147. The legislature had advisedly used the word "escaped" to signify what is required to be seen if reassessment is contemplated. It is only when the Assessing Officer comes to a conclusion that income has "escaped" assessment, can further steps be taken.

Section 148

5.(viii) However, under section 148 before making the assessment, reassessment or recomputation under section 147 subject to the provisions of section 148A, the Assessing Officer is required to serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A requiring him to furnish within a specified period a return of his income.

Section 149

5.(ix) Section 149(1)(a) mandates that no reassessment proceedings can be initiated if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b). Section 149(1)(b) mandates that no notice under section 148 shall be issued for the relevant assessment year if three years but not more than ten years have elapsed from the end of the relevant assessment year unless the Assessing Officer has in

his possession "books of account or other documents or evidence" which reveal that income chargeable to tax, represented in the form of asset, expenditure in respect of a transaction or in relation to an event or occasion, or entry or entries in the books of account which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year. Therefore, unless the Assessing Officer has in his possession "books of account or other documents or evidence" as mandated by 149(1)(b), no notice under section 148 could be issued after three years.

The reassessment proceeding was initiated after three years but before ten years had elapsed

5.(x) The original assessment was of the year 2015-16 and the order under section 143(3) was dated 26.12.2018. The order under section 148A(d) was dated 27.04.2022. The notice under section 148 was dated 27.04.2022. Therefore, it is seen that the notice under section 148 was issued after three years but before ten years had elapsed from the relevant assessment year.

The notice under section 148 must therefore explicitly state that the Assessing Officer has in his possession "books of account or other documents or evidence" and reveal the same

5.(xi) When section 149(1)(b) mandates that the Assessing Officer should have in his possession "books of account or other documents or evidence" which reveal that the income chargeable to tax" before notice under section 148 can be issued, then it is mandatory for the Assessing Officer to state explicitly in the reassessment order under section 148A(d) that he has in his

possession such "books of account or other documents or evidence" from where he comes to the conclusion that the income chargeable to tax has escaped assessment and reveal the same. Failure to do so will disentitle the reassessment under section 148. It must be borne in mind "re-assessment" under section 148 signifies that it is only in those specific circumstances that reassessment can take place. As the reassessment proceeding was initiated by the respondent, the burden of establishing the essential ingredient of section 149(1)(b) was upon the respondent. The respondent has failed to discharge this burden. No new material as required has been placed save the audit objection. Consequently, a change in opinion cannot tantamount to the Assessing Officer having in his possession "books of account or other documents or evidence", entitling him to reopen closed assessment even if he has with him the audit objections raised as above.

Audit objection

5.(xii)(a) The impugned notice under section 148 proposes to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance, or deduction for the assessment year 2015-2016 on the basis of final objection raised by the Comptroller and Auditor General of India to the suggestion that income chargeable to tax has escaped assessment within the meaning of section 147. The notice, therefore, does not specify that the Assessing Officer had in his possession "books of account or other documents or evidence".

Details of Audit objections

5.(xii)(b) The respondent has placed on record the relevant audit objection raised by the office of the Director General of Audit (Central) Kolkata, Revenue Audit Direct Taxes (ITRA Wing). It is dated 2.12.2021. It observed that:

(i) the return was filed electronically on 26.11.2015 declaring total income of rupees Nil after claiming a deduction of Rs.403,84,19,795/- under section 80IE (as per 10CCB submitted by the petitioner).

(ii) the petitioner computed his deemed income under section 115JB Rs.401,12,93,947/- which was allowed by the Assessing Officer.

(iii) the petitioner received an amount of Rs.22,99,92,702/- as Excise duty refund during the previous year 2014-15 relevant to the Assessment Year 2015-16, in P/L Account, the petitioner deducted Excise Duty from the total sales to the tune of 5% of total sales, however, the same varies with the classification of the medicines.

(iv) the Excise Duty return and notifications applicable thereof was not in the record.

(v) the Central Excise duty are part of Government package with an aim to promote industrial development in North Eastern States. Under the scheme Central Excise Duty which is paid by the companies is refunded to them. These companies in the region are exempted from income tax too. The Central Excise Duty refund cannot be interpreted as profit derived from Industrial activity. The refunds are rather a benefit

derived from Government scheme and distinct from profit derived from Industrial activity.

(vi) Therefore, the duty refund is liable to be taxed even though the hundred percent profit of the Industrial undertaking is exempt from tax. Thus, there was an under charge of tax to the tune of Rs.22,99,92,702/- with consequent potential tax effect of Rs.8,17,27,905/- (30% tax, 15% SC with 3% Edu Cess).

Audit objection is not "books of account or other documents or evidence"

5.(xii)(c) The question which, therefore, falls for consideration is whether the final objection raised by the Comptroller and Auditor General of India as above would amount to Assessing Officer having in his possession "books of account or other documents or evidence".

5.(xii)(d) Section 148 also mandates that such a notice shall not be issued unless there is "information" with the Assessing Officer which suggests that income chargeable to tax has escaped assessment and the Assessing Officer has obtained prior approval of the specified authority to issue such notice. Explanation 1 to section 148 clarifies that "any audit objection" raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of assessee for the relevant assessment year has not been made in accordance with the provisions of the Income Tax Act would amount to "information".

"Information" should disclose escapement of income during initial assessment

5.(xii)(e) The final objection raised by the Comptroller and Auditor General of India would be an "information" and a basis for consideration of issuance of notice. However, the "information" would not be sufficient unless that "information" suggests that income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such a notice.

Change of opinion

5.(xii)(f) A mere change of opinion on the basis of the audit objection cannot give the jurisdiction to the Assessing Officer to reopen an assessment already completed. Otherwise, there was no requirement for amendment in section 147 by the Direct Tax Laws (Amendment) Act, 1987.

The case of Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited

5.(xii)(g) In ***Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited***[11], the Supreme Court examined whether the concept of "change of opinion" stands obliterated, w.e.f., 1.4.1989, i.e., after substitution of section 147 of the Income Tax Act, 1961 by the Direct Tax Laws (Amendment) Act, 1987. The Supreme Court opined that section 147 with effect from 1.4.1989 gives a go by to

[11] (2010) 2 SCC 723

the twin conditions required earlier and now jurisdiction to reopen the assessment is conferred upon the Assessing Officer only when he has reason to believe that income has escaped assessment.

5.(xii)(h) Therefore, I am of the view that the impugned notice under section 148 dated 27.04.2022 and the order dated 27.04.2022 under section 148A(d) are not tenable as the respondent could not have assumed jurisdiction merely because of the audit objection by the Director General of Audit which was only a contrary opinion. I am of the view that the reassessment proceedings could not have been initiated by the respondent only on the basis of the opinion rendered by the Director General of Audit although under Explanation 1 of section 148 the audit objection may amount to information for the purpose of section 148 and section 148A.

Audit objection is a not document under section 149(1)(b)

5.(xii)(i) I am not in agreement with the submission of the respondent that the audit objection issued by the Director General of Audit (Central), Kolkata, would qualify as a document as envisaged under section 149(1)(b). The language used in section 149(1)(b) clearly contemplates new evidence and not new opinion. Merely because that opinion is written down in a document, it cannot be termed as new evidence entitling the Assessing Officer to revisit and reassess the assessment proceeding already completed.

Audit objection was only an opinion

5.(xii)(j) It is seen that the observations and findings of the Director General of Audit is based on his opinion on the returns filed by the petitioner. These observations and findings are contrary to the assessment made by the Assessing Officer earlier. However, it is after revisiting the same set of facts and the law as it existed at the time of the original assessment proceeding. The audit objection does not disclose any new material which would amount to having in possession "books of account or other documents or evidence".

Role of Assessing Officer on receipt of Audit objection

5.(xii)(k) Once such an audit objection as contemplated under section 148 is raised, it becomes incumbent upon the Assessing Officer to examine and consider the audit objection and come to his independent assessment as to whether the income of the assessee has escaped assessment. During this process, if he acquires possession of "books of account or other documents or evidence" which establishes the mandate of section 149(1)(b), the information becomes relevant and Assessing Officer can proceed with the reassessment.

The case of Songwon Speciality Chemicals India (P.) Ltd.

5.(xii)(l) The High Court of Gujarat in ***Songwon Speciality Chemicals India (P.) Ltd.*** (supra) had occasion to examine a similar circumstance of audit objections raised after the initial assessment

and thereafter, reassessment under section 148. The assessee had filed its return of income for the assessment year 2017-2018 and 2018-2019. The same was selected for scrutiny and assessment was completed under section 143(3) accepting the return income. Subsequently, the Assessing Officer issued notice under section 148A(b) on the basis of audit objections which suggested that creation of goodwill by assessee was a mere book entry and the claim of depreciation was clearly in violation of the explicit provisions of the Income Tax Act. The Assessing Officer passed orders for the assessment years under section 148A(d) rejecting the explanation tendered by the assessee which was challenged in a writ petition. The Division Bench of the High Court of Gujarat held that:

> "**8.** On perusal of the above observations given in the impugned orders, it is apparent that the Assessing Officer has not taken into consideration the reply filed by the assessee stating in no uncertain terms that the assessee has claimed the depreciation from Assessment Year 2015-16 and the same has been accepted during the course of the regular assessment for the Assessment Years 2015-16 and 2016-17 and therefore, the Assessing Officer could not have reopened the assesssment for the subsequent years for Assessment Years 2017-2018 and 2018-2019 on the same facts which were earlier available with the Assessing Officer during the previous two years of 2015-2016 and 2016-2017. The Assessing Officer has conveniently ignored such facts and has reiterated what is stated in the audit objections. Thus, there is total non application of mind on behalf of the respondent-Assessing Officer which is also reiterated in the affidavit-in-reply filed pursuant to the order dated 24-9-2024 passed by this Court.
>
> **9.** In such circumstances, we are of the opinion that the impugned notice as well as the order passed under Section 148 and Section 148A(*d*) of the Act, respectively, are not tenable as the Assessing Officer could not have assumed jurisdiction in view of the audit objection which is contrary to the facts and evidence on record, more particularly when the department itself has accepted and granted depreciation on the goodwill claimed by the assessee for the earlier years. No reassessment proceedings could have been initiated by the respondent-Assessing Officer on the basis such audit objection.

> **10.** It is true that as per provision of Section 148 as amended from 1-4-2021 even the audit objection can be considered for reopening the assessment as part of "information". However, it does not mean that merely because the audit objection is raised, the Assessing Officer is bound to issue notice under Section 148 of the Act merely by reiterating what is stated in the audit objection ignoring the facts of the case and contents of the reply filed by the assessee pursuant to the notice issued under Section 148A(*b*) of the Act.
>
> **11.** Therefore, the impugned order passed under Section 148A(*d*) of the Act cannot be sustained as it can not be said to be a fit case to reopen the assessment by any stretch of imagination.
>
> **12.** It is pertinent to note that merely producing of audit objection in the order under Section 148A(*d*) of the Act ignoring the reply filed by the assessee is nothing but non application of mind on the part of the respondent-Assessing Officer. The Assessing Officer merely reproduced the contents of the reply filed by the *assessee* without dealing with the same, which is apparent from the extract of the order reproduced hereinabove without considering the facts that the audit objection contained various factual mistake which is pointed out by the petitioner to the effect that the depreciation on the goodwill was being granted from the Assessment Year 2015-16 onwards to the petitioner and therefore, there is no question of escapement of income for the year under consideration by holding that the petitioner wrongly claimed the depreciation for the Assessment Year 2018-2019. The impugned order is therefore, contrary to the record and liable to be quashed and set aside.
>
> **13.** In view of the foregoing reasons, both these petitions succeed and impugned notice issued under Section 148A(b) of the Act dated 10-2-2024 as well as impugned order passed under Section 148A(d) of the Act dated 30-3-2024 and the impugned notice issued under Section 148 of the Act dated 30-3-2024 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."

5.(xii)(m) The judgment of the Division Bench of the Gujarat High Court in ***Songwon Speciality Chemicals India (P.) Ltd.*** (supra) was challenged before the Supreme Court. The Supreme Court dismissed the Special Leave Petition filed by the Revenue in ***Deputy Commissioner of Income Tax vs. Songwon Speciality Chemicals India (P.) Ltd***.[12] by holding "*3. In the facts and circumstances of the case, we are satisfied that it is not a case for re-opening*

[12] (2025) 180 Taxmann.com 292 (SC)

assessment and as such, the High court has not erred in quashing the show cause notices."

The case of Sapphire Foods India Ltd. vs. ACIT

5.(xii)(n) In ***Sapphire Foods India Ltd. vs. ACIT***[13], a Division Bench of the Delhi High Court also examined similar issues. The assessee company had filed its return for assessment year 2016-17 on 8.10.2016 declaring a loss of about Rs.10.24 crores. The case was selected for scrutiny and assessment under section 143(3) was completed on 9.12.2018. During scrutiny, the Assessing Officer specifically called for details of salary/remuneration and legal/professional expenses, and the assessee furnished the Employment Agreement of its Managing Director and the Consulting Agreement of a shareholder, covering payment of Rs.8.90 crores and Rs.90.81 lakhs respectively. The Assessing Officer thus had these documents, though no specific finding on these expenses was recorded in assessment order. On 22.03.2023, the Assessing Officer issued a notice under section 148A(b) enclosing local audit party objections alleging escapement on account of (i)incorrect allowance of share premium of about Rs.5.43 crores, and (ii)incorrect allowance of expenses aggregating about Rs.9.81 crores. The Assessing Officer invoked Explanation 1(ii) to section 148 and sought compliance by 29.03.2023. After considering the assessee's reply, the Assessing Officer dropped the share premium objection but relying on the expenses objection, passed an order under section 148A(d) and issued notice under

[13] (2026) 183 Taxmann.com 506 (Delhi)

section 148 on 31.03.2023. The Delhi High Court examined the writ petition and held that:

> "**51.** No doubt, the notice under section 148A(b) was issued on the basis of the audit objection. Now the question is, whether the issue can be reopened based on such audit objection on the ground that expenses were not allowable, when the Assessing Officer had all the material/documents before him with respect to the transactions made to the managing director and the shareholder while passing the assessment order.
>
> **52.** It is apparent from the records that the petitioner had given all information with respect to the amounts and did not withhold any document. Further, the Assessing Officer had also specifically asked the petitioner to submit relevant details on the said amounts through the questionnaire attached to the notice under section 142 of the Act. The petitioner replied to the questions put by the Assessing Officer by submitting the employment agreement with the managing director Amar Raj Singh and the consulting agreement with the shareholder Sandeep Kohli, stating that the said amounts were in the nature of "joining bonus" and "professional fees". As such, the Assessing Officer was very much aware of the said amounts/transactions, and was also in possession of the relevant documents, though he failed to return any specific finding with regard to the same in the assessment order. If that be so, it must necessarily be inferred that the said amounts of Rs. 8.90 crores had already been subjected to assessment.
>
> **53.** We note that as contended by Mr. Shivakumar for the petitioner, the Supreme Court in *Dy./Asst. CIT* v. *Financial Software and Systems Pvt. Ltd.* [(2022) 447 ITR 370 (SC); (2022) 19 SCC 519; 2022 SCC OnLine SC 1411.] had held that when specific queries were raised, which were answered by the assessee, it was not open for the Revenue to reopen the assessment proceedings on the same ground.
>
> **54.** His submission is that the attempt of the Revenue to initiate reassessment proceedings is in fact an attempt to review the order of the Assessing Officer, which is impermissible in law.
>
> **55.** We agree with this submission. We are of the view that reopening the assessment on the basis of the objections of the audit party, shall in the above facts, amount to reviewing the assessment already made, as the relevant material was available with the Assessing Officer during that assessment. It is necessary to draw a distinction between a case where the assessee failed to provide some material/information during the assessment, which was flagged by the audit party, as against a case where all information was provided by the assessee, but was not considered or commented upon by the Assessing Officer in the assessment order, resulting in a subsequent audit objection. The latter cannot be subject matter of reassessment, as it shall have the effect of reconsidering the same material to arrive at a different conclusion, which cannot be permitted. The attempt of the Revenue to now hold that the amounts are chargeable to tax certainly amounts to a change of opinion, which cannot be sustained.

56. It is a trite law that the Revenue can reopen assessments based on audit objections to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of the Act. In fact, clause (ii) of *Explanation 1* to section 148 of the Act, which was incorporated into the Act by virtue of the Finance Act, 2022 ((2022) 442 ITR (St.) 91) empowers the Assessing Officer to issue notice reopening the assessment when audit objections suggests that income has escaped assessment. However, the first proviso to section 148 states that no notice shall be issued under the provision, unless the Assessing Officer has information with him which suggests that income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. The question that arises now is whether notice can be issued under section 148, notwithstanding the fact that the issue flagged by the audit party was subject matter of examination in the assessment proceedings and a final decision in terms of an assessment order. We are of the view that the mere fact that objections were raised by the audit party cannot change or expand the nature of the power vested in the Assessing Officer to assess/reassess the income of the assessee to a power to review an already concluded assessment.

57. A similar issue had come up for consideration before a co-ordinate Bench of this court in *Springer Healthcare Ltd.* v. *Asst. CIT* [(2025) 480 ITR 712 (Delhi); 2025 SCC OnLine Del 4481.] . The court, after discussing the relevant provisions, held as under (page 726 of 480 ITR):

"21. In the present case, the fact that the petitioner had received an aggregate amount of Rs. 1,44,34,773 during the previous year relevant to the assessment year 2017-18, which was not surrendered to tax, was not only within the Assessing Officer's knowledge, but was subject matter of examination as to whether the said amount was now held to be chargeable to tax under the Act. Concededly, all relevant facts regarding the aspect of taxability of the aforesaid amount were examined by the Assessing Officer. There is no additional material that has been discovered subsequently, which was not within the knowledge of the Assessing Officer at the material time.

22. Undeniably, this would be a case of change of opinion, if the said amount is now held as chargeable to tax under the Act.

23. We must, at this stage, note that there is no cavil that the exercise initiated pursuant to the impugned notice is for all intents and purpose an attempt to review the decision the Assessing Officer in the assessment proceedings. However, it is contended by the Revenue that the same is permissible as the initiation was triggered by audit observations and the same constitutes information that can trigger the reassessment proceedings. We find no merit in the said contention. *The fact that audit observation may be deemed to be information suggestive of the assessee's income escaping assessment does not enhance or expand the power available with the Assessing Officer to assess/reassess the assessee's income that has escaped assessment. It does not alter the very nature of power to assess/reassess under section 147 of the Act, to a power to review a concluded assessment*.

24. We consider it relevant to refer to section 148 of the Act and in particular *Explanation 1* to section 148 of the Act, as was in force

at the material time (that is, prior to the amendment by the Finance Act, 2023 ((2023) 452 ITR (St.) 425)). The relevant extract of the said section is set out below:

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

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or'

25. It is clear from the above that in terms of clause (ii) of *Explanation 1* to section 148 of the Act, an audit objection to the effect that the assessment in the case of an assessee was not made in accordance with the provisions of the Act, is information for the purpose of section 148 as well as section 148A of the Act.

26. The contention advanced on behalf of the Revenue is founded on interpreting *Explanation 1* as a mandatory command to issue a notice under section 148 of the Act notwithstanding the issue flagged under the audit objection has been subject matter of the examination in assessment proceedings and a final decision in terms of an assessment order. This requires us to examine section 148 of the Act in the light of the import of word 'information' as used in the main provision.

27. The term 'information' is used in the first proviso to section 148 of the Act. The said proviso proscribes issuance of notice under section 148 of the Act unless there is 'information' with the Assessing Officer, which suggests that an assessee's income chargeable to tax has escaped assessment for the relevant assessment year. *Thus, if the Assessing Officer is in receipt of an audit objection, the same is required to be construed as information that suggests that the income of the assessee has escaped*

assessment. The proviso to section 148 of the Act is couched in the negative. Whilst, the Assessing Officer is proscribed from issuance of the notice under section 148 of the Act, unless it has the 'information' that suggests that the assessee's income has escaped assessment, it is not mandatory for the Assessing Officer to issue such a notice, or to review the assessment order merely because issues were flagged in an audit objection. The Assessing Officer is required to apply its mind to the audit objection and form an independent, informed view.

28. The provisions of section 148A of the Act are also required to be construed by imputing the meaning of the term 'information' as provided under *Explanation 1* to section 148 of the Act. Section 148A of the Act prescribes the procedure to be followed prior to issuance of notice under section 148 of the Act. Section 148A as was in force prior to amendment Act 15 of 2024, is reproduced below:

'148A. *Conducting inquiry, providing opportunity before issue of notice under section 148.*—The Assessing Officer shall, before issuing any notice under section 148,—

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or

after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee; or

(d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.'

29. It is apparent from the above, the term 'information' is used in clause (a), clause (b) of section 148A of the Act and proviso (c) of the said section. Clause (a) of section 148A of the Act requires the Assessing Officer to conduct the enquiry, if necessary, with respect to the information which suggests the income chargeable to tax has escaped assessment. Accordingly, when an audit objection is raised, the Assessing Officer would have such information in respect of which an enquiry may be conducted under clause (a) of section 148A of the Act, if required. However, this does not mandate that the Assessing Officer proceeds to issue a notice under section 148A of the Act merely on the basis of the audit objection. Clause (b) of section 148A of the Act requires the Assessing Officer to provide the assessee with the basis of the information, which suggests that the income chargeable to tax has escaped assessment, in order to enable the assessee to respond to the said notice.

30. This clearly, establishes that the purpose of an audit objection cannot be considered as a command to issue a notice under section 148A of the Act irrespective of what such information is. On the contrary, it requires the Assessing Officer to furnish the information to the assessee and elicit the assessee's response. Thereafter, the Assessing Officer is required—in terms of clause (d) of section 148A of the Act—to take an informed decision whether it is a fit case for issuance of notice under section 148 of the Act 'on the basis of the material available on record including the reply of the assessee'. Obviously, if the Assessing Officer is satisfied with the reply furnished by the assessee and the material on record, the Assessing Officer is bound to hold that it is not a fit case for issuance of notice under section 148 of the Act.

31. *In a case such as this, the Assessing Officer was required to take an informed decision whether the issue raised had been considered and concluded in the assessment proceedings as contended by the petitioner. The said issue cannot be brushed aside by construing an audit objection as a ground of issuing a notice under section 148 of the Act regardless of whether the assessee's income had escaped assessment. The expression 'escaped assessment' by its very nature, means that the income has not been subjected to an assessment. The expression would not include a case where the Assessing Officer made an informed assessment of the assessee's income*.

32. Clause (c) of the proviso to section 148A of the Act excludes the procedure under section 148A of the Act where the information available with the Assessing Officer is contained in the books of account, documents or material seized in a search conducted under section 132 of the Act or requisitioned under section 132A of the Act on or after April 1, 2021. This clause is not applicable to the facts of the present case. (emphasis [Here printed in italics.] supplied)

58. From the bedrock of the aforesaid, it is clear that the audit objection pointing out that there is no justification available in the file as to why the amounts were paid, cannot be said to be

> "information" for the respondent to initiate reassessment proceedings, when the Assessing Officer was in possession of the information and necessary documents at the time of the assessment proceedings. As such, the impugned action of the respondents is unsustainable.
>
> **59.** At this stage, we may also refer to the plea of Mr. Shivakumar that the Assessing Officer has not referred to any transaction, which has resulted in escapement of income represented in the form of expenditure. This plea is unmerited as there are transactions in the nature of the payments to the managing director Mr. Amar Singh for Rs 8.90 crores and Rs 90.81 lakhs to the shareholder Mr. Sandeep Kohli on account of joining bonus and legal and professional expenses. However, the stand of the Revenue that these payments have escaped assessment in the nature of expenditure also cannot be accepted in view of our findings above."

Reassessment proceedings is extraordinary

5.(xiii) The reassessment proceedings under the provision of sections 147, 148 and 149 are extraordinary proceedings in which assessment already made is reopened. It is, therefore, not a review but reassessment based on concrete evidence. Audit objection for the purposes of section 148 would definitely be "information" but it would not be on its own, sufficient to give jurisdiction to the Assessing Officer to issue the notice under section 148 unless he has the requisite new material, i.e, "books of account or other documents or evidence".

Impugned notice under section 148A(b) issued on 19.03.2022

5.(xiv) The notice under section 148A(b) issued on 19.03.2022 stated that:

> "Assessee while computing the deemed income u/s 115JB deducted excise duty refund treating as capital receipt of Rs.22,99,702/- (as per 3CD any amount of profit chargeable to tax under section 41 and computation thereof – NIL). However, the same was not reflected in profit and loss account as income which resulted in under determination Book profit to the tune Rs.22,99,92,702/- with consequent under charge of tax u/s 115JB to the tune of Rs.4,82,07,620/- (tax 18.5% SC 10% with 3% Education cess).

> Further, in the instant case, the assessee received an amount of Rs.22,99,92,702/- as Excise duty refund during the previous year 2014-15 relevant to assessment year 2015-16. In P/L account the assessee deduct the Excise duty from the total sales to the tune of 5% of the total sales, however, the same varies with the classification of the medicines. The Excise Duty Return and notification applicable thereof was not in record.
>
> Central Excise Duty Refund are part of Government package with an aim to promote industrial development in North Eastern State. Under this scheme central Excise duty which is paid by the companies is refunded to them. These companies in the region are exempted from Income Tax too. The Central Excise Duty Refund cannot be interpreted as profit from Govt. scheme and distinct from profit derived from Industrial activity. Therefore, their duty refund is liable to be taxed even though the hundred percent of the Industrial undertaking is exempt from tax. Thus, there was under charge of tax to the tune of Rs.22,99,92,702/-.
>
> In view of the above there is under determination of Book profit to the tune of Rs.26,09,92,702/- (Rs.22,99,92,702/- + Rs.3,10,00,000/-) and escapement of income of Rs.22,99,702/- on account of said duty refund.
>
> Thus, prima facie, I have reason to believe that there is under assessment of to the tune of Rs.49,09,85,404/- for relevant A.Y. Therefore, Return of AY 2015-16 need to be reassessed under section 147."

5.(xv) The notice under section 148A(b) as quoted above is clearly an opinion without any new material based on all the materials and information which were available with the Assessing Officer at the time of original assessment.

Impugned order under section 148A(d) dated 27.04.2022

5.(xvi) Section 148A relates to conducting inquiry providing for opportunity before issuance of notice under section 148. Section 148A(d) provides that the Assessing Officer should decide whether or not it is a fit case to issue notice under section 148 on the basis of material available on record including reply of the assessee.

5.(xvii) The impugned order under section 148A(d) was issued on 27.04.2022. This was after three years of the end of the assessment year 2015-16 under consideration. Therefore, the Assessing Officer could not have issued the impugned order under section 148A(d) as well without any new material.

5.(xviii) As noticed above, the assessment proceedings were initiated solely based on audit objection without any new material. Consequently, I am in agreement with the contention of the petitioner that the reassessment proceeding was barred by limitation. Admittedly, the impunged notices and order were issued after three years beyond the period of limitation without any "books of account or other documents or evidence". Consequently, it is also clear that they were issued without jurisdiction.

Excise Duty treated as capital receipts

5.(xix) The petitioner also contends that they had correctly treated the Excise duty as capital receipts and that the audit objection was in any case contrary to a settled proposition of law. I shall now examine this final issue.

5.(xx) In the returns filed by the petitioner, Excise duty was declared as income credited to profit and loss account, which is exempt. The petitioner also furnished statement of total income to the Assessing Officer before the initial assessment. This fact was not contested by the respondent. In the statement of income so furnished, the petitioner had claimed exemption in respect of

Central Excise Refund in the form of re-credit received by it under the industrial policy of the Central Government for establishing a new industrial undertaking in Sikkim, the same being in the nature of capital receipts not chargeable to income tax. The petitioner relied upon the judgment of ***Shree Balaji Alloys*** (supra), ***CIT vs. Jay Ambey Corporation***[14] of the Jammu & Kashmir High Court and ***CIT vs. Tripti Menthol Industries***[15].

5.(xxi) The assessment order under section 143(3) passed on 26.12.2018 accepted the NIL returns filed by the petitioner claiming a deduction of Rs.4,04,22,93,947/- holding that "considering the explanation and submission filed by the assessee income of assessee for the Assessment year 2015-16 is accepted as per return".

5.(xxii) The plea that the Excise duty refund was to be treated as capital receipts was based on the above three judgments of the Jammu & Kashmir and Gujarat High Courts.

The case of Shree Balaji Alloys

5.(xxiii) In ***Shree Balaji Alloys*** (supra), the issue that arose for determination, *inter alia*, was:

> "(1) Whether the amount of Excise refund and interest subsidy received by the appellants – assesses, in pursuance of the incentives announced and sanctioned vide Government of India, Ministry of Commerce and Industry (Department of Industrial Policy and Promotion)'s Office Memorandum No. 1(13)2000-NER dated June 14, 2002 and Central Excise Notification Nos. 56 and 57, dated November 14, 2002 and other Notifications issued on the subject, pertaining to the industrial policy introduced in the

[14] (2013) 40 Taxmann.com 536 (Jammu & Kashmir High Court)
[15] (2013) 35 Taxmann.com 515 (Gujarat High Court)

> state of Jammu and Kashmir is a capital receipt and, thus not liable to tax under the provisions of the Act, or revenue receipt, as opined by the authorities under the Act."

5.(xxiv) The Jammu & Kashmir High Court examined the issue in detail and concluded:

> "35. For all what has been said above the finding of the tribunal on the first issue that the Excise duty refund, interest subsidy and insurance subsidy were production incentives, hence revenue receipt, cannot be sustained, being against the law laid down by the Hon'ble Supreme Court of India in Sahney Steel Case (1997) 228 ITR 253 and Ponni Sugars Case (2008) 306 ITR 392.
> 36. the finding of the tribunal that the incentives were revenue receipt is, accordingly set aside holding the incentives to be capital receipt in the hands of the assesses."

5.(xxv) The Supreme Court dismissed the appeals filed by the Revenue on the ground that the issue raised in the appeals were covered against the Revenue by the decision of the Court in ***CIT vs. Ponni Sugars & Chemicals Ltd***.[16] or in the alternative, in ***CIT vs. Meghalaya Steels Ltd***.[17]

The judgments relied upon by the respondent

5.(xxvi) The judgments relied upon by the respondent are distinguishable in the facts of the present case. In ***GKN Driveshafts*** (supra), the Supreme Court was examining assessment proceedings for assessment years 1992-93 to 1994-95, 1997-98 and 1998-99. The Supreme Court clarified that when a notice under section 148 of the Income Tax Act was issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices as the Assessing Officer was bound to furnish reasons within a reasonable time. This was the

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[16] (2008) 9 SCC 337
[17] (2016) 6 SCC 747

mandate of law as it existed then which is different now as the provisions have been amended.

5.(xxvii) In ***P.V.S. Beedies*** (supra), the Supreme Court was once again examining reopening of assessment for the accounting years 1974-1975 and 1975-1976. The Supreme Court opined that information given by internal audit party could be treated as information within the meaning of section 147(b) as it existed then. The petitioner does not contest that audit party objection is information. Therefore, the judgment also does not come to the aid of the respondent.

5.(xxviii) In ***Molbio Diagnostics Limited*** (supra), the High Court of Bombay at Goa in the facts of that case opined that the jurisdictional preconditions contemplated under section 148A(b) for reopening of assessment after three years have been met and the impugned order cannot be said to be without jurisdiction. In the present case, I am of the view that the reassessment proceedings suffers from a jurisdictional error. Therefore, the judgment of the High Court of Bombay at Goa would not help the respondent.

5.(xxix) Therefore, I am of the considered view that even on the merits of the case regarding treating Excise Duty refund as capital receipt by the petitioner is concerned, the same has been examined by the Supreme Court and rendered its opinion against the Revenue.

The issue regarding initial assessment under CASS raised by the respondent.

5.(xxx) The only issue which is left to be considered as raised by the respondent, is regarding the limited scrutiny under CASS which did not include the Excise Duty refund during the initial assessment. The initial scrutiny is done under section 143(3). Section 143 relates to assessment after returns have been filed or in response to a notice under sub-section (1) of section 142. In the returns filed by the petitioner, Excise duty was declared as income credited to profit and loss account, which is exempt. The petitioner also furnished statement of total income to the Assessing Officer before the initial assessment. This fact was not contested by the respondent. In the statement of income so furnished, the petitioner had claimed exemption in respect of Central Excise Refund in the form of re-credit received by it under the industrial policy of the Central Government for establishing a new industrial undertaking in Sikkim, the same being in the nature of capital receipts not chargeable to income tax. Even otherwise, the mandate of reassessment proceedings cannot change because the initial scrutiny was only a limited scrutiny under CASS. The Assessing Officer must establish and place on record any "books of account or other documents or evidence" which was not available with the Assessing Officer at the time of initial assessment, which would reflect that income chargeable had escaped assessment. The provisions relating to reassessment proceedings, as discussed above, does not permit the reassessment proceedings to be initiated because the initial scrutiny was only a limited scrutiny. I

am, therefore, of the opinion that this ground raised by the respondent is liable to be rejected.

5.(xxxi) The respondent also contends that the present case falls under section 149(1)(b) and not under section 149(1)(a). On a perusal of section 149, I am of the opinion that section 149(1)(a) and section 149(1)(b) must be read together and not in isolation. That would be clear from the words "unless the case falls under clause (b)" appearing in section 149(1)(a).

5.(xxxii) The respondent also contends that Excise duty refund deposited in the Bank Account of the petitioner were "assets" in view of Explanation to section 149(1) and therefore, this reflected in the Bank Account would be evidence in possession of the Assessing Officer. This submission although innovative discounts an important consideration, i.e., when was the evidence available. If the Excise duty refund was reflected in the returns at the time of initial assessment then it would be clear that the Bank Accounts statement would be available with the Assessing Officer even at the time of initial assessment. Re-examining the same evidence would only be a change of opinion based on the same material.

Conclusion

6. Resultantly, W.P.(C) No. 39 of 2022 is allowed and the impugned notice dated 27.04.2022 under section 148 of the Income Tax Act, 1961 the impugned order dated 27.04.2022 under section 148A(d) of the Income Tax Act and the subsequent

proceedings and orders, are quashed. The writ petition stands disposed of along with the pending interlocutory application.

7. The issues involved in W.P.(C) No. 13 of 2024 and W.P. (C) No. 50 of 2025, as stated above, are identical and therefore, both these writ petitions are considered together.

W.P.(C) No. 13 of 2024

8. The brief facts in W.P.(C) No. 13 of 2024 are:-

8.(i) On 28.11.2017, the petitioner filed their return of income for the assessment year 2017-18.

8.(ii) On 14.08.2018, Scrutiny notice under section 143(2) was issued to the petitioner.

8.(iii) On 07.04.2021, assessment order under section 143(3) was issued to the petitioner accepting the petitioner's return declaring NIL total income.

8.(iv) On 9.02.2024, the Director General of Audit (Central), Kolkata, raised audit objection regarding the assessment made regarding under charge of income tax amounting to Rs.314.54 crore due to allowing of depreciation on goodwill created during the course of amalgamation.

8.(v) The audit objection revisited the assessment made earlier and objected to allowance of depreciation of Goodwill to the petitioner. It stated that the department had carried out complete scrutiny of the case under section 143(3) dated 7.04.2021, however, no such issue was observed in the scrutiny. The audit

objection concluded that irregular allowance of depreciation of goodwill resulted in under charge of income tax amounting to Rs.314.54 crore including surcharge and cess. It noted that the respondent had replied to the audit observations by stating that depreciation on goodwill is allowable relying upon the judgment of the Supreme Court in ***Smifs Securities Ltd. vs. CIT***[18] and submitted that goodwill being a difference between the amounts paid and cost of shares in case of amalgamation scheme, is an asset eligible for depreciation under section 32 of the Income Tax Act. The audit objection was of the view that the respondent's reply was not tenable as the Supreme Court had given decision on the eligibility of claiming depreciation on goodwill, however, valuation of goodwill was not challenged. The audit objection maintained a view that the Supreme Court did not interfere with the factual finding with the tax authorities. The audit objection also opined that the claim for depreciation on goodwill had been challenged in the case of ***M/s United Breweries Ltd. vs. ACIT ITAT***[19]***,*** wherein the Bangalore Bench of the Tribunal had held otherwise.

8.(vi) On 01.03.2024, after three years of the assessment, petitioner was served with a notice under section 148A(b) alleging that income chargeable to tax for the assessment year 2017-18 had escaped assessment within the meaning of section 147 and therefore, issued a show cause notice. It was stated that Revenue Audit Party had raised objection on six points on the basis of which the amount of escapement was Rs.1037.56 crores, which was

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[18] [2012] 24 taxmann.com 222 (SC)
[19] [2016] 76 taxmann.com 103 (Bangalore – Trib)

more than fifty lakh as referred to in section 149(1)(b). The six points were:

Sl No.	**Issue**	**Amount of Escapement**
1	Depreciation on Goodwill created during Amalgamation with M/s Zydus Healthcare	900,12,83,375/-
2	Depreciation on Goodwill created during Amalgamation with M/s Biochem Pharmaceutical	121,48,58,188/-
3	Irregular deduction of Other Comprehensive Income (OCI) from chargeable Income	11,09,95,308/-
4	CSR Expenses not added back to Income	45,44,000/-
5	Undercharge of Tax on account of provision for claim on sale return	4,40,00,000/-
	Total	**1037,56,80,871/-**
6	Irregular carry forward of MAT Credit	87,67,58,007/-

8.(vii) The petitioner replied vide letter dated 8.03.2024 raising objections against the notice under section 148A(b).

8.(viii) On 27.03.2024, order under section 148A(d) was passed by the respondent dismissing the petitioner's contention and concluding that income of Rs.1033.16 crores had escaped assessment for Assessment Year 2017-18 and therefore, held that it was a fit case for issuance of notice under section 148.

8.(ix) The respondent issued notice under section 148 on 27.03.2024 to the petitioner.

8.(x) The petitioner preferred writ petition before this Court on 26.04.2024 challenging:

(a) Impugned Notice dated 27.03.2024 under section 148 of the Income Tax Act, 1961 and

(b) Impugned Order dated 27.03.2024 under section 148A(d) of the Income Tax Act, 1961

W.P.(C) No. 50 of 2025

9. The brief facts in W.P.(C) No. 50 of 2025 are:-

9.(i) On 29.11.2018, the petitioner filed their return of income for the assessment year 2018-19 declaring nil income and current year loss of Rs.158,76,72,077/-.

9.(ii) On 22.09.2019, scrutiny notice under section 143(2) was issued to the petitioner.

9.(iii) On 21.04.2021, a detailed order was issued to the petitioner under section 143(3) holding that the total assessed income of the petitioner was (-)1,58,25,49,293/-.

9.(iv) On 29.03.2022, after completion of the original assessment, notice under section 148 for reopening of the assessment was issued on the ground that information was flagged by the risk management strategy formulated in this regard suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act. It also records that order under sub-section (d) of section 148A of the Income Tax Act has been passed dated 29.03.2022.

9.(v) On 27.03.2023, assessment order was issued by the respondent under section 147. The assessment order records that the return of income was filed by the petitioner on 29.11.2018 declaring total income at NIL and current year loss of Rs.1,58,76,72,077/-. The return was processed under section

143(1) of the Income Tax Act. The case was selected for Scrutiny under CASS. The assessment of the case was completed under section 143(3), read with section 144B of the Income Tax Act with the addition for Disallowance under section 14A of the Income Tax Act amounting to Rs.51,22,784/- and assessed at NIL income and current year loss of Rs.1,58,25,49,293/-.

9.(vi) On 1.08.2024, after three years of completion of the original assessment and one year after completion of the first re-assessment, a show cause notice under section 148A(b) was issued to re-open the case of the petitioner on the ground that income chargeable to tax for the assessment year 2018-19 has escaped assessment within the meaning of section 147. The notice also stated that the Director General of Audit (Central), Kolkata, was conducting audit and had issued certain paragraphs of audit observations to the effect that there was: (1) undercharge of Income Tax amounting to Rs.1.07 crore on account of irregular deduction Other Comprehensive Income (OCI) from the chargeable income (AY 2018-19), (2) under charge of Income tax amounting to Rs.235.91 crore due to allowing of depreciation on Goodwill created during the course of amalgamation (AY 2018-19), and (3) undercharge of tax amounting to Rs.31.84 crore on account of Goodwill created during the course of amalgamation.

9.(vii) The audit objections as notified in the notice under section 148A(b) pointed out the lapses on the part of the department resulting in irregular deduction from the total income chargeable to tax on various points. The audit objections raised

reflects that the Director General of Audit had given an opinion on how the original assessment by the department was wrong. However, the audit objections did not point out any new material or evidence which would satisfy the requirement of section 149(1)(b) of the Income Tax Act without which no notice under section 148 could be issued by the respondent for reassessment having completed its original assessment three years prior to the issuance of the notice for reassessment.

9.(viii) On 16.08.2024, the petitioner replied to the notice under section 148A(b) objecting to it.

9.(ix) On 22.08.2024, the petitioner replied and objected to the reopening proceedings.

9.(x) On 27.08.2024, order under section 148A(d) was passed by the respondent dismissing the petitioner's contention and concluding there was escapement of income to the tune of Rs.769.29 crores for accounting year 2018-19. This notice also reiterated the observations made by the Director General of Audit without any material based solely on the opinion rendered.

9.(xi) On 27.08.2024, notice under section 148 was issued to the petitioner alleging that income chargeable to tax had escaped assessment and proposing to assess or reassess such income or recomputed the loss or the depreciation allowance or any other allowance or deduction for the assessment year 2018-19 and requiring the petitioner to furnish return in the prescribed form.

9.(xii) On 09.06.2025, scrutiny notice under section 143(2) read with section 147 was issued to the petitioner.

9.(xiii) On 16.06.2025, the petitioner filed a preliminary response to the notice under section 143(2).

9.(xiv) On 30.06.2025, scrutiny notice under section 143(2) read with section 147 was issued.

9.(xv) On 14.07.2025, petitioner filed preliminary response to the said notice.

9.(xvi) On 22.07.2025, scrutiny notice under section 142(1) was issued to the petitioner.

9.(xvii) On 11.08.2025, the petitioner filed their response requesting them to await direction of this Court in the writ petition filed challenging the assessment proceedings.

9.(xviii) On 12.08.2025, writ petition was filed by the petitioner challenging:

(a) Impugned Notice dated 27.08.2024 under section 148 of the Income Tax Act, 1961 and
(b) Impugned Order dated 27.08.2024 under section 148A(d) of the Income Tax Act, 1961

Petitioner's submissions

10. The petitioner raises five contentions. Firstly, the reassessment proceedings were without jurisdiction. The second contention raised by the petitioner is that the reassessment proceedings are barred by limitation. In W.P.(C) No. 13 of 2024, the assessment year was 2017-18 and the notice under section 148A(b) is dated 01.03.2024 which is beyond three years but within ten years. In W.P.(C) No. 50 of 2025, the assessment year was 2018-19 and the notice under section 148A(b) is dated

01.08.2024 which is also beyond three years but within ten years. The third issue raised by the petitioner is that the reassessment proceedings based solely on audit party objection were liable to be set aside. The fourth issue raised by the petitioner that the reassessment proceedings based on mere change of opinion is not sustainable. The final issue raised by the petitioner is that the reassessment proceedings would be barred by limitation unless the Assessing Officer had in his possession any "books of account or other documents or evidence".

Consideration

11. I have examined the audit objections as well as the impugned notices and orders in both the writ petitions. Neither the audit objection nor the impugned notices and orders for reassessment spell out any new material that they were in possession of which would confer the jurisdiction for reassessment. All the above issues pressed by the petitioner in both the writ petitions under consideration have been elaborately examined in W.P.(C) No. 39 of 2022 and I do not propose to reiterate my opinion on them again. The opinion would bind the outcome of these writ petitions as well.

Issue of Goodwill

11.(i) Besides the five contentions raised by the petitioner, both the writ petitions also involve the question of Goodwill. The petitioner's contend that Goodwill on which depreciation has been claimed was created as a consequence of the amalgamation duly

approved by the High Court in accordance with law during the preceeding financial years 2015-16 [W.P.(C) No. 13 of 2024] and 2015-16 and 2016-17 [W.P.(C) No. 50 of 2025]_and the claim of depreciation on such Goodwill was duly allowed in the scrutiny assessment for assessment years, following the ratio of the judgment in ***Commissioner of Income-tax, Kolkata vs. Smifs Securities Ltd.***[20]

11.(ii) In both the cases pursuant to audit objections raised on the claim for depreciation on goodwill by the petitioner, the respondents initiated reassessment proceedings. The petitioner had relied upon the judgment of the Supreme Court in ***Smifs Securities Ltd.*** (supra), in which it was held that Goodwill is an asset under explanation 3(b) to section 32(1) of the Income Tax Act. The Supreme Court examined a case in which in the relevant assessment year, one 'Y' limited amalgamated with assessee company. In accordance with a scheme of amalgamation of 'Y' limited with assessee, assets and liabilities of 'Y' limited were transferred to and vested with the assessing company. According to the assessee, excess consideration paid by it over the value of net assets acquired of 'Y' limited should be considered as Goodwill arising on amalgamation. The assessee's claim for depreciation on Goodwill was rejected by the Assessing Officer on ground that Goodwill was not an asset falling under Explanation 3 to section 32(1). On appeal, the Supreme Court held that Explanation 3 to section 32(1) states that expression 'asset' shall mean an

[20] [2012] 24 taxmann.com 222 (SC)

intangible asset, being know how patents, copyrights, trademarks, licences, franchises or other business or commercial rights of similar nature, a reading of the words 'any other business or commercial rights of similar nature' in clause (b) of Explanation 3 indicates that Goodwill would fall under the expression 'any other business or commercial rights of a similar nature'. The principle of *ejusdem generis* would strictly apply while interpreting the said expression which finds place in Explanation 3(b). In view of the above, the Supreme Court opined that Goodwill is an "asset" under Explanation 3(b) to section 32(1). It was also held that depreciation on Goodwill is allowable under section 32.

11.(iii) The claim for depreciation on Goodwill by the petitioner was not merely their contention but based on the law laid down by the Supreme Court in ***Smifs Securities Ltd.*** (supra). Therefore, if the respondent did not have any new material at the time of proposed reassessment, it could not have issued the notice under section 148 merely because the audit objection had a different opinion. Accordingly, it is held that the respondent could not have initiated the reassessment proceedings on this ground merely because of their change of opinion based on audit objection.

11.(iv) I will now endeavour to examine the submissions made by the learned Deputy Solicitor General on behalf of the respondents. The submissions in both the writ petitions are identical.

Respondent's submission

12. The learned Deputy Solicitor General of India submitted that:

(i) The petitioner had an alternative remedy to file an appeal and therefore, the writ petition should not be entertained.

(ii) Although assessment proceedings under section 143(3) were completed, the issues raised in the reopening were not addressed and therefore, cannot be a 'change of opinion'.

(iii) Order u/s 148A(d) is a speaking order for issuance of notice and not a conclusion. The Assessing Officer, upon receiving audit memo, verified bank transactions examined financial disclosures and applied his mind and passed the Impugned order. It is settled position of law that audit based reopening is valid, if Assessing Officer applies mind.

(iv) Upon being satisfied, the Statutory Notice u/s 148 was issued, requiring to furnish return of income in respect of income escaping assessment. No decision has been taken by the Revenue so far. It is absolutely upon the assessee to prove its case before the Revenue Authority.

(v) Statutory requirement u/s 149(1)(b) is satisfied. Under section 149 of the Income Tax Act, reopening beyond three years (up to ten years) is permissible where, the Assessing Officer has in his possession books of account or other documents or evidence revealing escapement of income.

(vi) the expression "other documents or evidence" is of wide amplitude and is not restrictively defined. Therefore, any official, credible and documentary material in possession of

the Assessing Officer which reveals escapement, qualifies under this provision.

(vii) Audit paragraph is a formal written record issued by a constitutional authority based on examination of accounts and records. Hence, it squarely qualifies as a document.

(viii) the audit memo is not a mere opinion but contains: factual findings, identification of discrepancies, quantification of escapement. Therefore, it also constitutes evidence.

(ix) Audit objection recognized as "information" by statute itself. The legislature itself in the Explanation to Section 148, recognizes: audit objection as "information suggesting escapement of income". If audit objection is statutorily recognized as information, then when it is in written form supported by records it necessarily qualifies as "documentary evidence" u/s 149(1)(b).

(x) "other documents or evidence" must be interpreted broadly. The legislature has deliberately used the expression:"books of account or other documents or evidence". The use of "or" and broad terminology indicates inclusive and expansive scope not confined to assessee's own records.

(xi) Legislative Intent behind section 149(1)(b): the purpose of extended limitation is to enable reopening where credible documentary evidence emerges later. Audit conducted by CAG is a post-assessment statutory scrutiny precisely intended to detect such escapement. Hence, it fits squarely within the legislative intent.

Consideration

13. The relevant provisions of the Income Tax Act as it existed during the relevant period is reproduced hereinbelow:

> **"147. Income escaping assessment**. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).
>
> *Explanation*.- For the purpose of assessment or reassessment or recomputation 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, irrespective of the fact that the provisions of section 148A have not been complied with."
>
> **"148. Issue of notice where income has escaped assessment**.—Before making the assessment, reassessment or recomputation under Section 147, and subject to the provisions of Section 148-A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (*d*) of Section 148A, requiring him to furnish within a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139:
>
> Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.
>
> Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (*d*) of Section 148A to the effect that it is a fit case to issue a notice under this section.
>
> Provided also that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.
>
> *Explanation* 1.—For the purposes of this section and Section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(*i*) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(*ii*) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(*iii*) any information received under an agreement referred to in Section 90 or Section 90A of the Act; or

(*iv*) any information made available to the Assessing Officer under the scheme notified under Section 135A; or

(*v*) any information which requires action in consequence of the order of a Tribunal or a Court.

Explanation 2.—For the purposes of this section, where,—

(*i*) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(*ii*) a survey is conducted under Section 133A, other than under sub-section (2-A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(*iii*) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under Section 132 or under Section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(*iv*) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under Section 132 or Section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in Section 151."

"148-A. Conducting inquiry, providing opportunity before issue of notice under Section 148.—The Assessing Officer shall, before issuing any notice under Section 148,—

(*a*) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(*b*) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not

exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (*a*);

(*c*) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (*b*);

(*d*) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (*c*) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (*b*) expires:

Provided that the provisions of this section shall not apply in a case where,—

(*a*) a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(*b*) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee;

(*c*) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under Section 132 or requisitioned under Section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee;

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in Section 151."

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

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

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

(*i*) an asset;

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

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

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

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

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

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

(*a*) a search is initiated under Section 132; or

(*b*) a search under Section 132 for which the last of authorisations is executed; or

(*c*) requisition is made under Section 132A,

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

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

(*a*) a search under Section 132 which is initiated; or

(*b*) a search under Section 132 for which the last of authorisations is executed; or

(*c*) a requisition made under Section 132A,

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

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (*b*) of Section 148-A or the period during which the proceeding under Section 148-A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (*d*) of Section 148A is does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

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

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

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

13.(i) The issue of alternative remedy has already been examined in WP(C) No. 39 of 2022 and my opinion thereof would bind the parties in both these writ petition as well.

13.(ii) I am unable to agree with the submission of the learned Deputy Solicitor General that merely because the issues raised in the reopening had not been addressed in the earlier assessment it cannot be called a change of opinion. I am of the view that it is precisely a change of opinion and nothing more. The mandate of the law is to come to an opinion that taxable income has escaped assessment based on "books of account or other documents or evidence". In both these reassessment proceedings, the respondents have not been able to show any such new material

which would allow the Assessing Officer to reassess the income already assessed.

13.(iii) The contention that the order under section 148A(d) is unassailable as it is a speaking order; and the Assessing Officer had verified bank transactions and examined financial disclosures, which reflects his application of mind, cannot be accepted. When a law requires you to do a certain thing in a certain way, it must be done in that way and in no other. The mandate of section 149(1)(b) is that no notice can be issued under section 148 unless the Assessing Officer has in his possession "books of account or other documents or evidence" which reveal that income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakhs rupees or more for that year. Merely because the Assessing Officer revisited the assessment already made and came to a different conclusion may reflect application of mind, however, the application of mind was not as per law and the mandate of section 148 and 149.

13.(iv) The respondent's contention that the statutory notice under section 148 was issued directing the petitioners to furnish his return in respect to income assessing escapement only requires that much and no more and since no decision has been taken by the respondent so far, it is upon the petitioner to prove his case discounts the mandate of section 149(1). The language of the provision is clear - "No notice under section 148 shall be issued".

This implies a mandatory precondition for issuance of notice under section 148 *sans* which the reassessment proceeding would be without jurisdiction.

13.(v) As submitted by the respondent, it is correct that the statutory requirement of section 149(1)(b) would be satisfied if the Assessing Officer has in his possession "books of account or other documents or evidence". However, the subsequent notices and orders issued for reassessment does not reflect that the Assessing Officer had such "books of account or other documents or evidence" in his possession.

13.(vi) The expression 'other documents or evidence', as contended by the learned Deputy Solicitor General is of wide amplitude and any official, credible and documentary material in possession of the Assessing Officer which would reveal escapement qualifies as such. However, I am of the view that audit paragraph cannot qualify into this category as it is ordinarily a communication or an opinion pointing out an alleged error in the assessment. I am of the view that the audit objection although raised by a Constitutional authority based on examination of accounts and records is still an opinion. This opinion would be of great relevance for the respondents. Based on the opinion, if the respondents applied their mind and procured "books of account or other documents or evidence", then the respondents could have the necessary jurisdiction to issue the notice under section 148. Merely because the Explanation to section 148 recognises audit objection

as "information", it does not automatically qualify as "books of account or other documents or evidence".

13.(vii) As rightly contended by the learned Deputy Solicitor General, the legislative intent behind section 149(1)(b) is to enable reopening where "credible documentary evidence emerges later". Admittedly, however, besides the audit objection, the respondent did not have any credible documentary evidence whatsoever. Therefore, reassessments were without jurisdiction in both the proceedings and also barred by limitation.

13.(viii) Besides the above submissions, the respondent has also raised the issue of limited scrutiny under CASS in W.P.(C) No. 13 of 2024. It is contended that the original assessment made and order passed under section 143(3) was under CASS limited scrutiny as the Assessing Officer had no power to delve into the reasons. However, the facts of the present case is on a completely different issue which was not highlighted in the scrutiny assessment proceedings under section 143(3). As such, it is a fresh aspect which was not covered under the original assessment. The petitioner contests this assertion and states that it is an incorrect statement. It is stated that the assessment order dated 7.04.2021 clearly mentions that the case was selected for "complete scrutiny assessment" and not under CASS as suggested. I have perused the order dated 7.04.2021 and I find that the petitioner's contention is correct. The initial scrutiny is done under section 143(3). Section 143 relates to assessment after returns have been filed or in

response to a notice under sub-section (1) of section 142. Even otherwise, the mandate of reassessment proceedings cannot change because the initial scrutiny was only a limited scrutiny under CASS as pleaded by the respondent even if the respondents contention is to be believed. The Assessing Officer must establish and place on record any "books of account or other documents or evidence" which was not available with the Assessing Officer at the time of initial assessment that would reflect that income chargeable had escaped assessment. The provisions relating to reassessment proceedings, as discussed above, does not permit the reassessment proceedings to be initiated because the initial scrutiny was only a limited scrutiny without anything more. The opinion of the Assessing Officer at the time of reassessment has to be that income chargeable to tax had escaped assessment which must be based on "books of account or other documents or evidence". I am, therefore, of the opinion that this ground raised by the respondent is also liable to be rejected.

Conclusion

14. Consequently:

(i) W.P.(C) No. 13 of 2024 is allowed and the impugned Notice dated 27.03.2024 under section 148 of the Income Tax Act, 1961, the impugned Order dated 27.03.2024 under section 148A(d) of the Income Tax Act, 1961 and the subsequent proceedings and orders, are quashed.

(ii) W.P.(C) No. 50 of 2025 is allowed and the impugned Notice dated 27.08.2024 under section 148 of the Income Tax Act, 1961,

the impugned Order dated 27.08.2024 under section 148A(d) of the Income Tax Act, 1961 and the subsequent proceedings and orders, are quashed.

15. Accordingly, the writ petitions stand disposed of along with all other pending interlocutory applications.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes**
Internet : **Yes**
bp/