CONUNDRUM POST SC DECISION IN CASE OF ASHSIH AGARWAL -WAY FORWARD

LATEST DEVELOPMENTS ON SEC. 147/148

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ON LATEST AND IMPORTANT /LANDMARK RULINGS ON SEC 147/148 (REOPENING) SPL. OF 2024

1. Hon'ble apex court in case of Mangalam Publications vs CIT (2024 SCConline SC 62) (perennial question confronting hon'ble SC was validity of impugned reopening proceedings old law prior to 01.04.2021)

Aspect	Brief description
Assessee/ status and business	Partnership firm Engaged in business of publishing news periodicals and magzines etc
Years involved	AY 1990-91 ; 1991-92 & 1992-93 (three AY's involved)
143(3) assessment	All years assessed u/s 143(3) with income determined after consideration of incoming and outgoings
Search event	03.12.1995 (books etc were sized by department)
Impugned Reopening basis Done on 29.03.2000	During ay 1993-1994 proper balance sheet filed capital a/c on 31.03.1993 compared with 31.12.1985 and inference drawn that income in interregnum/intervening period (firm/partners) not commensurate so reopening done for firm and partners Also balance-sheet etc filed before south Indian bank for obtaining loan etc also made as basis to reassess assessee's income Total escaped income Rs 50,96,041 Reasons recorded in instant cases, is reproduced by SC in its order
Reassessment orders	Passed on 21.03.2002 with additional income which got further enhanced in first appeal by CIT-A (assessee *ALL* grounds on validity of reopening jettisoned by CIT-A) (balance sheet filed before bank to obtain loan held not reliable)
Cochin ITAT	Assessee appeal allowed (reopening quashed u/s 148 being marred by proviso to section 147 of 1961 Act; lack of any fresh /tangible material and on "disclosure" aspect) Revenue cross objection dismissed / assessee appeal "allowed"
Kerala high court	Revenue filed appeal before high court u/s 260A High court reversed impugned ITAT order on issue of validity of reopening that "finding of the tribunal that the assessee has disclosed fully and truly all material facts necessary for completion of the original assessments was not tenable" SLP filed by assessee turned into Civil appeal; Also partners filed SLP/Civil appeal before "SC"
Assessee's (appellant) case before SC	Instant reopening is totally unjustified as rightly held by ITAT and wrongly reversed by high court a) Assessee maintained "primary" books and prepared "profit and loss" account on basis of same; b) Statement of source and application of funds was duly maintained in support of returned income c) Assessee being member of audit bureau of circulation filed/maintained exhaustive details regarding printing and sale of newspaper; d) More than eight to ten years after expiry of present AY's reopening notice issued

	e) Balance sheet made on provisional and estimate basis for mere credit facility as furnished to "south Indian bank" sans actual and current accounts carry no weight; f) Reopening made on purported comparison of capital a/c of partner with two balance sheet is totally incorrect g) Section 139(9)(f) is wrongly invoked in extant case (also same can not justify impugned reopening otherwise invalid) h) All relevant details required to compute income of assessee placed during original assessment from side of assessee (cash flow statement , p&l account and statement of source and application funds) i) There is total lack of specific information so as to justify impugned reopening j) Reopening is based on mere change of view sans any fresh material (clear case of impermissible change of opinion)
Revenue case before SC	Instant reopening actions are justified a) High court decision is correct; b) Assessee has not complete accounts for its advertising income etc; (assessee shown income on estimation basis) c) Probable escapement of income arises from subsequent balance sheet filed for AY 1993-1994 from comparison of partner capital balances d) Balance sheet given to south Indian bank for loan was pressed to justify impugned reopening e) Facts available in reassessment vis a vis facts available at time of original assessment were different f) Sec 139(9) (f) made assessee's return defective and invalid and dented assessee disclosure g) Comparative drawn of pre 01.4.1989 and post 01.04.1989 provisions drawn and shown
SC analysis and reasoning	a) Provisions under 1961 Act chapter IX section 139 to 158 – delaing with procedure for assessment outlined/discussed in brief; (special reference made to sec 139(9) (f) – defective return – no accounts case clause) b) Comparative provisions of section 147 pre 01.04.1989 and post 01.04.1989 highlighted (after 01.04.1989 ; power of reopening is observed to be "wider") ***c)*** Significance of insertion of words "reasons to believe" is highlighted vide direct tax laws amendment act 1989 based on representations etc (***on omission of words "reasons to believe" and word "opinion" being inserted)*** d) Word disclose meaning analysed e) Full disclosure in context of financial statements means that all the material or significant information should be disclosed; f) Earlier /landmark SC decisions in cases of i) Calcutta discount co. Ltd vs ITO 41 ITR 191; b) ITO vs lakhmani mewal dass 103 ITR 437 c) phool chand Bajrang lal vs ITO 203 ITR 456 and d) Srisrishna Pvt Ltd vs ITO 221 ITR538 AND e) CIT vs Kelvinator of India 320 ITR 561 f) ITO vs techspan india pvtltd 404 ITR 10 referred at length g) CBDT circular 549 dated 31.10.1989 epochal circular explaining change of reopening provisions referred
Important ratio/principle	It is categorically held by SC that balance sheet filed by assessee to south Indian bank for obtaining credit has no evidentiary value and dehors that no valid material is left to infer escapement of income u/s 147/148 in assessee's hands; Subsequent "subjective" analysis by revenue to infer "higher" income in hands of assessee is change of opinion only and same is held to be no ground for reopening of assessment as in original/initial (143(3)) assessment , AO made independent analysis of assessee's incoming and outgoings; ***Assessment u/s 143(3) is preceded by notice ,inquiry and hearing u/s 142(1); (2);(3) and sec 143(2);*** ***When there is no false declaration and primary disclosure is made, reopening can not be made;***

	To treat any return as defective u/s 139(9) , AO has discretion which has to be used as per law (burden is on the "AO") If AO do not exercise said discretion , return can not be treated as defective; (no accounts case, filing of details by assessee like statement of source/application of funds, cash flow statement ,P&L Account etc held as adequate compliance to law)
Final conclusion	Impugned reopening held to be invalid and High court order reversed and ITAT order restored

2. Other important high court decisions (2024)

2.1 Hon'ble Jharkhand high court in case of M/s. Pasari Casting and Rolling Mills Private Ltd., through its Director Shri Shambhu Kumar Pasari ...Petitioner Versus

Income-tax Department through its National Faceless Assessment Centre, having its office at NFAC Delhi, P.O., P.S. and District-Delhi.

W.P. (T) No. 1850 of 2022 (25.01.2024)

REASONS RECORDED IN INSTANT CASE:

3. In the case at hand; the relevant portions of the recorded reasons reads as follows-

"2. The reason for reopening of the assessee is as follows- Information has been received in Insight module that during the course of action in the case of Shri Ajay Kuamr Sharma, PAN:CIBPS1382J, it was gathered that shri Sharma is used to provide accommodation entry through his bank accounts to certain beneficiaries This was also confirmed in his statement on oath taken. The copy of banks statements
provided also reveals that the asseseee has done bogus financial transaction worth Rs. Rs.155442417/- with Shri Ajay Kumar Sharma.
In view of the above, provisions of clause (a) of 147 of the Income Tax Act, 1961 is applicable to facts of this case and I have reason to believe that the income of Rs.155442417/- has escaped of assessment for the F.Y. 2014-15 relevant to the A.Y. 2015-16. Hence, this is a fit case for issue of Notice U/s. 148 of the Income Tax Act, 1961."

Held (important & notable propositions)

PROPOSITION 1) "at the outset it is clarified that the formation of reasonable belief that the income of an Assesseein the particular assessment year has escaped assessment is condition precedent for acquiring jurisdiction under Section 147/Section 148 for re-opening assessment."

PROPOSITION 2) "From the record of reasons communicated to the Petitioner it appears that there is no nexus between the material before the assessing authority and the formation of belief by him. There is no direct nexus or live link between the material on record and formation of belief and no tangible or cogent material on record
leading to formation of such belief. In the instant case, solely on the basis of statement of Sri Ajay Kumar Sharma, who is claimed to be accommodation entry provider by the Respondent, the purported reasonable belief is formed that the Petitioner has done "bogus financial transaction" with said third party during the AY 2015-16."

PROPOSITION 3) "9. In the instant case it is not the case of the department that Sri Ajay Kumar Sharma took name of the Petitioner that he has provided accommodation entry to him. As per the recorded reasons, Sri Sharma has stated that he provided accommodation entries to "certain persons"; however, the name of the Petitionerhas never been taken by him. The date

on which statement of Sri Sharma is recorded is not known to Assessing Officer and also whether it relates to the assessment year in question is also not known"

PROPOSITION 4) "Furthermore, the recorded reason is also silent under which provision of the Act the additions are sought to be made i.e. whether Section 68, Section 69A, Section 69B, Section 69C or any other provisions of the Act. It is not the case of the Revenue that the Petitioner has paid any cash to the so-called
accommodation entry provider to obtain the accommodation entry to plough back own funds, hence, there is no ground/material to form reasonable belief of any accommodation entry"

PROPOSITION 5)"12. The law is now no more res integra that the recorded reasons for reopening assessment cannot be supplemented as held by this Court in the case of Naveen Kumar Jaiswal Vs. Income Tax
Department in W.P.(T) No.675 of 2022 (Ranchi) reported in 2022 SCC Online Jhar 189 (Para 11) followed by another judgment of this Court in the PCIT Vs. Maheswari Devi reported in 2022-VIL-
254-Jhar-DT and in the case of Sabh Infrastructure Ltd. Vs. ACIT reported in (2017) 398 ITR 198 (Del.)."

PROPOSITION 6) "By bare perusal of the recorded reasons and aforesaid part of the impugned order it could be noticed that the recorded reasons have been supplemented by using the word "for bill purchase" which means amount has flown-out of books, not a case receipt of accommodation entry. Further, the said finding
says that the Petitioner is provider of accommodation entry, which is opposite of the recorded reasons. Further the recorded reasons reveals that the proceeding is initiated on the basis of information gathered from "Insight Module" while in the Order dated 16-03-2022 disposing objection it is held that the assessment is reopened on the basis of information received from Director of Income Tax (I & CI), Ahmedabad. 14. It further transpires that from the recorded reasons and the impugned assessment Order, it is not clear whether the Petitioner is recipient of any accommodation entry/bogus financial
transaction. The recorded reasons and findings in the impugned Order are also silent about the provisions under which addition are sought to be made as the assessing officer himself is not sure
whether financial transactions sought to be added are debit entries or credit entries in the books of the Petitioner."

PROPOSITION 7) "In the impugned Order the assessing authority has simply made additions in the returned income without stating whether it is a case of cash credit, unexplained investments, unexplained money, amount of investment, etc. not fully disclosed in books of account, unexplained expenditure, etc. The impugned Order is therefore without authority of law and bad in law. The impugned order is thus unreasoned, non-speaking and therefore not sustainable in law"

PROPOSITION 8) "18. As stated herein above that the recorded reason/impugned Assessment Order is silent under which provision of the Act the additions are sought to be made. It is well settled that the reasons cannot be supplemented by assessment Order or Affidavit. The recorded reason is totally silent whether the amount sought to be taxed is 'income' of the Petitioner and whether the addition is sought to be made on account of Cash Credit (Section 68), Unexplained Investments (Section 69), Unexplained Money (Section 69A), Amount of Investment, etc. not fully disclosed in books of account (Section 69B), Unexplained Expenditure, etc. (Section 69C). The requirement of each of the aforesaid sections are different and the rules of evidence and burden of proof are also different, hence,

unless the Petitioner to put the notice as to the exact contravention or provisions of law under which assessment or additions are sought to be made, the Petitioner cannot defend his case."

PROPOSITION 9) "19. In view of the aforesaid discussions and several judicial pronouncements in the facts and circumstances of this case we are having no hesitation in holding that in the instant case the
belief formed by the Assessing Officer suffers from lack of bona fides, is vague, far-fetched, irrelevant, based on conjecture and surmises and also arbitrary and irrational. Further, since the very
initiation of the proceedings is bad in law and attracts jurisdictional issue which goes to the root of the case; thus we are having no hesitation in holding that the writ is maintainable and the judgments cited by the Revenue has no application in the facts and circumstances of this case."

FINAL Conclusion

"20. Having regards to the above, Impugned Notice issued under section 147 dated 31.03.2021, impugned Assessment Order dated 31.03.2022, Notice of Demand dated 31.03.2022 & Notice for Penalty under Section 274 read with Section 271(1)(c) of the Income-Tax Act, 1961, dated 31.03.2022, Penalty Order &
Demand Notice, both dated 28.09.2022 and order disposing of objection dated 16.03.2022, are hereby, quashed and set aside."

2.2 **Hon'ble Karnataka high court landmark decision in case of DCIT vs Sunil Kumar Sharma (22/01/2024) Writ Appeal 830/2022** (T-IT) host of issues relating to ***evidentiary value of loose sheets held not "good enough" for initiating proceedings u/s 153C*** and sc 127 procedure and validity of notice u/s 153C (consolidated satisfaction note held invalid) (***important reference to note: a) SC in case of Punjab national bank vs All india punjab national bank employees federation 1960 1 SCR 806 (FAIRNESS to be basis of validity of all state actions); b) ;LK Verma vs HMT Ltd (2006) 2 SCC 269 (writ remedy scope and writ appeal approach); c) Karnataka high court in case of Sri U.M.Ramesh Rao vs UOI ILR 2021 KAR 2196 (jutice BV nagarahtha 100 page order on scope of writ remedy) d) SC in case of ROMA SONKAR VS MADHYA PRADESH STATE PUBLIC SERVICE COMMISSION 2018 17 SCC 106 (intra court writ appeal approach etc) and e) SC in Brigadier Nalin kumar mehta vs UOI 2020 4 SCC 78)***

2.3 Hon'ble Bombay high court in case of New India Assurance co ltd vs ACIT 2024 SCConline Bom 146 (AY 2013-2014 reopening notice issued 28.07.2022 quashed as time barred (held time barred on 31.03.2021));

Important observations/ratio/principle:

"24 We could also note that the provisions of TOLA have no application relating to AY 2013-14" The first proviso to Section 149(1) of the Act puts a fetter on issuing of a notice under Section 148 and not Section 148A(b) of the Act beyond the stipulated period. The impugned notice under Section 148 of the Act is issued on 28th July 2022. Hence, TOLA has no application." "33 In Ganesh Dass Khanna (Supra), the Delhi High Court has already declared paragraph 6.1 and 6.2(ii) of the Instructions as bad in law. Further, this Court in Group M Media India P. Ltd. (Supra) has held that a declaration of a Board's instruction as ultra vires by a competent Court would be binding on all authorities administering the Act all over the country and accordingly, the officers implementing the Act were bound by the decision of the Delhi High Court."

Neither the provisions of TOLA nor the judgment in Ashish Agarwal (Supra) provide that any notice issued under Section 148 of the Act after 31st March 2021 will travel back to the original date.

"35 The Revenue's contention that the reopening notice was to relate back to an earlier date is entirely flawed and unacceptable. Thus, the reassessment notices issued for AY 2013-14 are patently barred by

limitation as the six years limitation period under the Act (as extended by Section 3 of TOLA) expired by 31st March 2021. However, even on the Revenue's demurrer and assuming that such reopening notices could travel back in time and that the provisions of TOLA protected such reopening notices (we do not agree), even then, in so far as the notices issued for AY 2013-14 is concerned, would in any case be barred by limitation. As stated earlier, under the erstwhile Section 149, a notice under Section 148 could have been issued within a period of six years from the end of the relevant assessment year. The Notifications issued under TOLA, viz., Notification No.20/2021, which is relied upon by the Revenue, only cover those cases where 31st March, 2021 was the end date of the period during which the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Income Tax Act, 1961 (erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31st March 2020. Hence, Notification No.20/2021 did not apply to the facts of the present case, viz., reopening notice for the AY 2013-14. Therefore, the Revenue could not issue any notice under Section 148 beyond 31st March 2021 and hence, even the relate back theory of the Revenue could not safeguard the reassessment proceedings initiated after 1st April 2021 for AY 2013-14

36 Therefore, in the present case, as the foundation of the entire reassessment proceeding, viz., the notice issued in June 2021 itself was barred by limitation in view of non-applicability of Notification No.20/2021, the superstructure sitting thereon, viz., the reassessment proceedings initiated pursuant to judgment in Ashish Agarwal will also be regarded as beyond time limit. Therefore, on this ground as well, the impugned reopening notice dated 28th July 2022 issued for AY 2013-14 in petitioner's case is barred by limitation and deserves to be quashed and set aside. Alternatively, it is well settled that a notice under Section 148 of the Act cannot be issued in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was already barred under the pre-amended Act on the date when the new legislation came into force. In CIT V/s. Onkarmal Meghraj (HUF)[14] the Hon'ble Apex Court held : "That raises the question whether that proviso could be applied without reference to any period of limitation. It is a well-settled principle that no action can be commenced has expired. It is unnecessary to cite authorities in support of this position. Does the fact that the second proviso says that there is no period of limitation make a difference? xxxxxxxxxx. xxxxxxxxxx In J.P. Jani, Income-tax Officer v. Induprasad Devshanker Bhatt (1969) 72 I.T.R. 595; (1969) 1 S.C.R. 714 (S.C.) this court held that the Income-tax Officer cannot issue anotice under section 148 of the Income Tax Act, 1961, in order to reopen the assessment of an assessee in a case where the right ti reopen the assessment was barred under the 1922 Act at the date when the new Act camne into force. It was held that section 297(2)(d)(ii) of the 1961 Act was applicable only to this cases where the right of the Income-tax Officer to reopen an assessment was not barred under the repealed Act. This decision is broadly in line with the opinion of Das and Kapur JJ. in Prashar's case (1963) 49 I.T.R. (S.C.) 1; (1964) 1 S.C.R. 29 (S.C.) xxxxxxxxxx.

For AY 2013-14, the time limit to issue a notice under Section 148 of the Act had already expired on 1st April 2021. On the said date, the assessee had a vested right, which de hors the 1st proviso to the amended Section 149 of the Act, could not be taken away and thus, based on the well settled principles of law, the reopening of the AY 2013-14 after 31st March 2021 is invalid, without jurisdiction and barred by limitation.

2.4 Hon'ble Bombay high court decision in case of Godrej Projects Development Pvt Ltd vs ITO WRIT PETITION NO. 804 OF 2015 **2024:BHC-OS:1729-DB**
(order dated 01 feb 2024)
On issue of validity of impugned reopening u/s 148 for AY 2009-10 on basis of stated excessive share premium
Held quashing the same

"11 Even in the case at hand, the reasons recorded for reopening does not dispute that during the year assessee had issued 16730 shares of face value of Rs.10/- at premium of Rs.12842/- per share. The AO is only questioning the excessive share premium but not doubting the transaction itself whereby the share premium had been received. On this ground alone, the impugned notice and order on objections have to be quashed and set aside. 12 In any event, the amendments incorporated in the definition of income under section 2(24)(xvi) and Section 56(2)(viib) of the Act were amendments which were to apply only from 1st April, 2013, i.e., assessment year 2013-14. The amendment to Section 68 of the Act by incorporation of the first proviso also came into effect by virtue of the Finance Act, 2012 w.e.f. 1st April, 2019 and was to apply for the assessment year 2013-14 and onwards. Therefore, since the amendments were not applicable to the assessment year in question,i.e., 2009-10, there would be no basis for the AO to form a reason to believe that income had escaped assessment for the said assessment year. 13 Moreover, if one considers the reasons recorded, the AO simply says how a company with no proven track record incorporated on 15th March 2007 command such a huge share premium. The AO has not bothered to read the balance sheet or the valuation report. AO's reason to believe, therefore, is purely hypothetical and a matter of conjecture. That cannot be a tangible material for arriving at reason to believe escapement of income. In view thereof, the jurisdictional requirement of Section 147 of the Act also is not fulfilled and hence, the proposed reopening is without jurisdiction. 14 Further, as held in Shodiman Investments (P) Ltd. (Supra) there is clear breach to the settled position in the law that reopening notice has to be issued by the AO on his own satisfaction and not on borrowed satisfaction. Admittedly, notice has been issued in view of a communication received from his superior officer. It is rather obvious that the AO has not applied his mind and arrived at his own satisfaction but on borrowed satisfaction."

2.5 Hon'ble Bombay high court in case of Aruna Surulkar …Petitioner Versus Income Tax Officer, Ward-19(2)(4), Mumbai & Ors. …Respondents
WRIT PETITION NO. 3503 OF 2023 2024:BHC-OS:1324-DB (22.01.2024)
" 3. Admittedly, Petitioner did not reply to the initial notice dated 23rd March 2022 that Petitioner received under Section 148A(b) of the Act. At the same time, Mr. Basu refers to the order passed under Section 148A(d) of the Act, whereby in paragraph 3 it is stated as under : "3. From the details of transactions as mentioned above, it is seen that there is violation of the provisions of section 50C of the Income Tax Act, 1961. Due to noncompliance, assessee also failed to explain the transaction. Further, on verification of assessee's return of income for AY 2018-2019, it is seen that differential amount of Rs. 26,44,500/- is not offered for taxation." 4. Mr. Basu states, and rightly so, that provisions of Section 50C of the Act would apply only to a seller and not the assessee in this case, who is the buyer of the property. Mr. Basu submits that Section 50C(1) of the Act provides, "where the

consideration received or accruing as a result of the transfer by an assessee of a capital asset…..". Therefore, it is Mr. Basu's case that there has been total nonapplication of mind while issuing this order under Section 148A(d) of the Act. Mr. Basu states that in the order also it is mentioned that the assessee is buyer of the property and if only the sanctioning authority had read the order, he would not have granted the sanction because Section 50C of the Act does not apply to buyers. We would agree with Mr. Basu. 5. Mr. Chandrashekhar relies on an affidavit-in-reply filed by one Manish and submits that it was a human error. ….6. ***Mr. Chandrashekher further submits that the reopening was to provide an opportunity to the assessee of being heard and thus, thoroughly analyze the facts of the case with documentary evidence and the sufficiency or correctness of the material cannot be considered at the stage of reopening. The questions of fact and law are left open to be investigated and decided by the Assessing Authority and therefore, reopening is valid. We do not accept this stand of Respondents in as much as the Assessing Officer before issuing a notice must have satisfied himself that what he writes makes sense. Even the Principal Commissioner, who granted sanction should have also applied his mind and satisfied himself that the order passed under Section 148A(d) of the Act was being issued correctlyby applying mind. It cannot be a mechanical sanction. On these grounds alone, the petition should be allowed."***

2.6 **Hon'ble kerala high court in case of ITO vs Asamanoor Service Cooerative Bank Ltd (W.A. 34/2024 order dated 12.01.2024** (on serious importance of "oral hearing" in sec 148A regime)

"5. The appeal by the Revenue is premised on the contention that the express provisions of Section 148A speak of providing an opportunity of being heard by serving upon the assessee a notice to show cause within such time as may be specified in the notice being not less than seven days. The contention, in other words, is that so long as the show cause notice envisaged in Section 148A is issued to the assessee, the opportunity of being heard is to be seen as provided. Reliance is placed on the decisions in ***Union of India (UOI) v. Jyoti Prakash Mitter - [(1971) 1 SCC 396]*** *and* ***Union of India (UOI) and Ors. v. Jesus Sales Corporation - [(1996) 4 SCC 69]****. 6. Per contra, it is the submission of the respondent/writ petitioner that the object of Section 148A of the IT Act was to enable the assessee to have an effective opportunity of clarifying its position vis-a-vis the allegations in the show cause notice before the authority that issued the said notice, and hence, the providing of a personal hearing was necessary to comply with the object of the*
statutory provision. 8. On a consideration of the rival submissions, we find
ourselves unable to accept the contentions of the appellant. It is clear from a reading of the statutory provision that while there is an obligation on the Revenue to provide an opportunity of being heard to the assessee by serving upon the assessee a show cause notice specifying the time by which he should prefer a reply, the service of the show cause notice by itself does not tantamount to a discharge of the obligation to provide the assessee with an opportunity of being heard, as contended by the Revenue. On the contrary, the service of show cause notice is only the first step in the process of extending an opportunity of being heard to the assessee and the purpose of the show cause notice is to confine the deliberations that are to follow to only those matters that are specified in the notice. If the obligation of the Revenue to provide an opportunity of being heard was to come to an end with the mere issuance of the show cause notice, then there would be no meaning in the assessee filing a reply to the show cause notice for theRevenue would then contend that the consideration of the reply of the assessee was not contemplated under the statutory provisions. Such a contention, if accepted, would tantamount to doing violence to the language of the statutory provision as well as its averred object of ensuring fairness in action. 10. In our view, the opportunity of hearing to be effective must involve a consideration of the reply to the show cause notice by the Income Tax Officer and also permitting the assessee to persuade the Income Tax Officer to see his point of view in the matter through the grant of a personal hearing where the assessee would be in a position to do so. In other words, a personal

hearing would be required for an assessee to try and convince the Income Tax Officer of his point of view in regard to the issue flagged in the show cause notice. 11. The merit of an oral hearing lies in that the assessee can discern on what aspects of the controversy more light is needed. Thus, if an oral hearing can complement and perfect the written submissions in a case that can be decided in a myriad ways depending on the perspective that the adjudicator chooses to adopt, then it should not be dispensed with. It may be profitable in this context to refer to the off-quoted passage from the judgment of Tucker L.J. in ***Russel v. Duke of Nortfolk – [(1949) 1 All ER 109 (CA)]*** *where it was observed that: "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case." 12. Thus, while deciding whether or not a statutory provision mandates the grant of a personal hearing, the approach of the court must be "pragmatic rather than pedantic; realistic rather than doctrinaire, functional rather than formal and practical rather than precedential." [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India – [(1990) 1 SCC 613]]."*

2.7 Hon'ble Jharkhand high court in case of Ratan Bej vs PCIT Ranchi W.P.(T) No. 3589 of 2023 (24.01.2024)

"8. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein, it appears that mainly two issues are involved in this case. So far as first issue is concerned; in terms of Section 148A(c) of the Income Tax Act, 1961, the Assessing Officer is mandatorily required to consider the reply/objections furnished by the Assessee. Non consideration of reply or objection furnished by the Assessee not only amounts to violation of principles of natural justice but is also contravention of mandatory modalities which are to be followed during the course of enquiry proceedings under Section 148A of the Act*. In the instant case, the Respondents have not disputed the fact that the Petitioner has not filed any reply, but have categorically accepted the fact in Para- 13 at Page-6, Para-13 (G) at Page-12, Para-13 (L) at Page-17- 18, Para-13 (O), 13(P) at Page-19 of the Counter Affidavit that the reply-cum-objection furnished by the Petitioner has not been considered by the concerned Respondent. It is rather immaterial for whatever reason the reply-cumobjection furnished by the Petitioner has not been considered. The Assessing Officer ought to have considered the objections raised by the Petitioner and should have disposed the same in terms of judgment rendered by the Hon'ble Apex Court in the matter of GKN Driveshafts (India) Limited v. ITO wherein the Hon'ble Apex Court has laid down an elaborate procedure as to the manner of dealing with objections raised against a notice under Section-148 of the Act. The Hon'ble Supreme Court in the said judgment clarified that when a notice under section148 of the Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The following points may be noted with respect to supply of copy of reasons: (i) The Assessing Officer is bound to furnish reasons within a reasonable time; (ii) On receipt of reason, the noticee is entitled to file objections to issuance of notice; and (iii) The Assessing Officer is bound to dispose of the same by passing a speaking order. 9. At this stage, it would be pertinent to indicate that Section 148 and 148A which have been introduced by way of the Finance Act, 2021, has been codified following the judgment rendered by the Apex Court in the matter of GKN Driveshafts (India) Limited (supra). The provisions mandate that, before making any assessment under Section 147, the Assessing Officer must serve a notice to the Assessee requiring him to file his return of income within specified time and before such notice, the Assessing Officer shall record his reasons for the same* ***While the earlier provision required the Assessing Officer to have reason to believe that there is escapement of income, the new provision required any information as specified under Explanation 1 to Section 148 to be present for there to be a reopening of the case.***

10. So far as second issue is concerned; apart from the codification of Sections 148 and 148A, Section 149 was further modified by the Finance Act, 2021 to the effect that any case can be reopened within three years from the time of end of relevant assessment year as under clause (a) of Section 149(1), if there is information with the Assessing Officer that suggests that there is escapement of income as

provided under Explanation 1 to Section 148, and upto 10 years as provided in Clause (b) of Section 149(1) in certain exceptional cases, defined as circumstances where income chargeable to tax, within the meaning of "asset" that has escaped assessment amounts to or is likely to amount to fifty lakh rupees (50,00,000/-) or more in that year. In the instant case, the property under consideration has been obtained by the Petitioner and his brother by the law of inheritance and succession, that too, after the demise of their father. A perusal of the deed (Annexure-1) would transpire that the Petitioner and his brother upon demise of their father became joint owners of the property under consideration with respective share of 50% each and both being joint vendors in the said transaction are entitled to equal share of the consideration amount, viz., 32,68,000/- each. Since, the income escaping assessment is less than 50 lakhs, Section 149(1)(b) of the Act could not have been invoked. The said contention of the Petitioner has also been backed up by the Respondents in Para-13(W) of the Counter Affidavit (quoted herein above) which is a specific admission by the Respondents that only one half of the consideration is chargeable to tax in the instant case i.e., 32,68,000/- which is certainly less than the monetary limit of Rs, 50,00,000/- as prescribed in Section 149(1)(b) of the Act and the said fact was not available by the Assessing Officer.

13. Having regard to the aforesaid discussion, it can be construed that the assessment proceeding initiated by the Department is barred by limitation, as also, is beyond jurisdiction"

2.8 Hon'ble Orissa high court in case of Biju Janta Dal vs CCIT (2023 SCCONLINE ori 6956) ay 2014-2015 HELD time barred and reopening u/ 148 also quashed

"By way of W.P.(C) No.20219 of 2022, the Petitioners challenge the notices dated 24.05.2022 and 25.07.2022 issued by the Opposite Party No.2 under Section 148A(b) and under Section 148A(d) of the Income Tax Act (hereinafter in short referred to as "the Act") respectively and also seek a direction from this Court for restraining the Opposite Parties from taking any further steps pursuant to the order dated 25.07.2022. The same Petitioners through W.P.(C) No.18149 of 2021 not only challenge the notice dated 06.05.2021 and 20.05.2021 issued by the Opposite Party No.2 but also challenge the notifications dated 31.03.2021 and 27.04.2021 issued by the Opposite Party No.4. The Petitioners also seek a direction from this Court for restraining the Opposite Parties from taking any further steps pursuant to the notices dated 06.05.
2021 and 20.05.2021 ..
*IV**. COURT'S REASONING AND ANALYSIS**: **38. It is pertinent to make it clear that the Opposite Party No. 3 had challenged the notice dated 31.03.2015 before the Bombay High Court in Writ Petition No. 1155 of 2016. The Bombay High Court, on 20.07.2016, held that prima facie, the notice was without jurisdiction, and directed stay of operation of the notice dated 31.03.2015. Further, notices under Section 148 of the IT Act were issued to the Opposite Party No. 3 for the Assessment Years 2009-10, 2010-11, 2012-13, 2013- 14, and 2014-15, all of which have been stayed by the Hon'ble Bombay High Court as may been seen in order dated 15.12.2017 in Writ Petition (L) No. 3497 of 2017, and are pending adjudication. 39. The impugned notice does not, directly or indirectly, allege the violation of any provision/ requirement/ obligations cast upon the Petitioner in terms of Section 13A of the IT Act (i.e., the provision applicable for receipts by registered political parties) in relation to the receipt of the said amount of donation. 40. Similar issues have been dealt by the Delhi High Court in Divya Capital One Private Limited v. Assistant Commissioner of Income Tax4 wherein it is held as follows**: *"7. This Court is of the view that the new reassessment scheme (vide amended Sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business. In fact, the legislature brought in safeguards in the amended re-assessment scheme in accordance with the judgment of the Supreme Court in GKN Driveshafts (India) Ltd. ITO, MANU/SC/1053/2002: (2003) 259 ITR 19 (SC) before any exercise of jurisdiction to initiate re-assessment proceedings under Section 148 of the Act. 8. This Court is further of the view that under the amended provisions, the term "information" in Explanation 1 to Section 148 cannot be lightly resorted to so as to re-open assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "information to suggest" under amended law or "reason*

to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act. Merely because the Revenue- respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under Section 148A(b) but would certainly not vest it with the power to issue a re- assessment notice under Section 148 post an order under Section 148A(d)." ***41. Additionally, the present reassessment proceedings are clearly time barred in terms of the first proviso to the amended Section 149 of the Income Tax Act, in as much as, the initial notices which were issued on 06.05.2021 and 20.05.2021 under Section 148 were clearly beyond the time limit specified under the provisions of Section 149(1) as it stood immediately before the commencement of the Finance Act, 2021. This is because as per the said earlier provision, the outer limit of period of limitation provided was 6 years from the end of the relevant Assessment Year 2014-15, i.e., 6 years from 31.03.2015, which indisputably expired on 31.03.2021***. ***42. In the context of non-consideration of the explanation of the Assessee by the Assessing Officer, the Supreme Court in the case of CIT v. K.S. Kannan Kunhi5 , has held as follows: "5.*** *Before going into the questions formulated by Mr B. Sen, it is necessary to examine whether the justice of the case requires our interference with the judgment of the High Court in exercise of discretionary jurisdiction under Article 136 of the Constitution. It may be noted that the assessee had explained that Rupees 46,563 invested for the purposes of toddy business in Kerala was partly made up from the income from the immovable property possessed by the assessee and partly from the remittances made by Kannan Kunhi from Ceylon. The ITO did not examine the merits of those explanations. He rejected them by merely observing that they were not satisfactory. The explanations offered by the assessee are not prima facie absurd. They were capable of being examined by the ITO. It was possible for the ITO to go into the extent of the immovable property owned by the H.U.F. and its income. He did not care to do so. It was also possible for the ITO to go into the question of remittances made by Kannan Kunhi from Ceylon. Here again the ITO did not choose to do so. It was not even suggested by the ITO that the assessee was having any business activity in India prior to August 17, 1950, or any other source of income taxable under the Act. If the explanation given by the assessee that part of the initial business capital was supplied by Kannan Kunhi is correct then the same is a good explanation. That explanation has not been examined at all. Similarly the assessee's explanation that he was having income from the agricultural property has not been examined. The Appellate Assistant Commissioner also did not choose to examine the explanation given nor did the Tribunal care to go into that explanation. It just brushed aside that explanation with the observation: "that the assessee had no proper or satisfactory explanation for the source of these amounts". In our opinion the departmental authorities as well as the Tribunal had arbitrarily rejected the explanation given by the assessee. Under these circumstances we do not think that we will be justified in going into the niceties of the law whether the High Court was justified in going into the merits of the findings reached by the Tribunal. All that we need say is that this is not a fit nd proper case where we should exercise our discretionary jurisdiction."* ***43. Section 148A(b) lays down that the Assessing Officer shall, before issuing any notice under Section 148, "provide an opportunity of being heard to the assessee. In the present case, the Assessing Officer did not grant the Petitioners any opportunity of being heard. The Petitioners were allowed to submit their written objections only on 06.06.2022 through the e-proceeding facility of the Department. In the circumstances, the impugned order has been issued in violation of Section 148A(b). 44. With respect to the aforesaid discussion, this Court is inclined to quash the notices dated 24.05.2022 and 25.07.2022 issued by the Opposite Party No.2 under Section 148A(b) and under Section 148A(d) of the Income Tax Act. Additionally, the notice dated 06.05.2021 and 20.05.2021 issued by the Opposite Party No.2 are also quashed***."

2.9 hon'ble telanganna high court in case of Kankanala Ravindra Redyy vs ITO &ors WP(C) 25903/2022 order dated 14.09.2023 where hon'ble high court after considering entire conspectus of revenue argument has jettisoned revenue all argument on aspect of section 151A (faceless mode of income

escaping assessment); also refer CBDT notification dated 28.03.2022 & 29.03.2022

2.10Also refer CBDT Circular 1/2024 dated 23 January 2024 (explanatory circular to finance act 2023 specially for reopening related changes) AND CBDT circular no 23/2022 (explaining FA 2022)

2.11Also refer:

Delhi high court in case of Saraswati Petrochem pvt Ltd vs ITO 470 ITR 47	***held that not providing relied upon material is fatal to reopening reopening u/s 148 can not be taken on mere basis of "suspicion" and "conjecture***
Delhi high court in case of Ganesh Dass Khanna vs ITO 460 ITR 546	***CBDT instruction (travel aspect) held ultra vires and reopening for AY 16-17 and 17-18 FOR LESS THAN 50 lacs quashed***
Bombay high court in case of Hasmukh estates pvt ltd vs ACIT 2023 459 ITR 524	On issue of change of opinion in new law u/s 148A & reopening on mere "internal" audit objection held impermissible
Patna high court Alkem Laboratories Ltd vs PCIT (2023) 459 ITR 551 Anju Singh vs CCIT (2023) 459 ITR 705	Section 148A different approaches Alkem (assessee fav) and anju singh (rev fav)
Bombay high court in Knight riders sports pvt ltd vs ACIT 2023 459 ITR 16	Change of opinion new reopening regime sec 148/148A
Bombay high court in Gandhibag sahkari bank ltd vs ACIT (2023) 458 ITR 157 (ALSO SEE ARVIND SAHDEO GUPTA VS ITO (2023) 334 CTR 294 (Mere verification made as basis Non disposal of objections etc)	Host of propositions Writ remedy scope vs alternate remedy Borrowed satisfaction Non application of mind Incorrect facts for reopening (also refer delhi high court in case of SAHU EXPORTS VS ACIT IN WP(C) 13883/2018 order dated 21.12.2023 allegation of accommodation entry from SK Jain group) *2023 SCCONLINE DEL 8497* (also refer delhi high court in case of ANGELANTONI TEST TECHNOLOGIES SRL VS ACIT WP(c) 15928/2023 order dated 19.12.2023 ON ISSUE OF REOPENING ON MERE "INVESTMENT" BY FOREIGN COMPANIES IN SHARES OF INDIAN SUBSIDIARIES etc
Bombay high court in Anwar Mohammed Shaikh vs ACIT 2023 459 itr 534	Host of propositions Mechanical reopening /incorrect facts

	Sanction also without application of mind etc How to deal with "objections"
Madras high court in IDFC ltd vs DCIT (2023) 459 ITR 169 ***"""32. The respondents argue that the new scheme, with the omission of the phrase 'reason to believe' has done away with the requirement that the officer must establish 'escapement of tax', prima facie, at the stage of assumption of jurisdiction. I do not agree. Such requirement continues in light of the proviso under section 148 that casts a statutory burden upon the officer to be in possession of 'information' suggesting that income chargeable to tax has escaped assessment for the concerned year. If the existence of such information is not established even at the initial stage, the foundation of the proceedings stand vitiated in law"***	Host of propositions on reopening under new law Concept of information suggesting escapement of income; Legislature intent; Time barred reopening post sc ashish Aggarwal ; Amendment by FA 2022; Change of opinion concept in new law
Rajasthan high court in case of LMJ Services ltd vs PCIT order dated 08.01.2024	Reopening sec 148/148A quashed for lack of valid "territorial" jurisdiction
Rajasthan high court in case of Bijendra singh vs PCCIT WP WP 6852/2022 order dated 04.01.2024	Mechanical reopening (repetition/duplication) "not less than seven days" Section 148A
Gauhati high court in case of CIT vs Fortune valijya Pvt lTd 459 ITR 72	***Extended period sec 153A (REVNUE ONUS TO SHOW FULFILLMENT OF JURISDICTIONAL FACTS)*** ***Importance of filing objections and disposal of objections by revenue/AO***
Bombay high court in case of Digi1 Electronics Pvt Ltd vs ACIT 458 ITR 478	Reopening merely on insight portal information
Jharkhand high court in case of devika constructions pvt ltd vs PCCIT**2023 SCC OnLine Jhar 2166**	Reopening new law Search basis Rev fav decision Number of years to be reopened?
Delhi high court in case of Twylight infrastructure pvt ltd vs ITO WP 16524/2022 (order dated 05.01.2024) **2024 SCC online Del 330** (also see Delhi high court in case of TIA Enterprises pvt ltd Ltd vs ITO 26.09.2023 duty to supply sanction with reasons- fatal impact)	Invalid reopening based on incorrect "sanction" u/s 151 *(lead matter argued from petitioner side by Kapil Goel adv)* *Also refer Bombay high court in case of Siemens Financial services pvt ltd vs DCIT 457 ITR 647*
Jharkhand high court in case of devika constructions pvt ltd vs PCCIT**2023 SCC OnLine Jhar 2166**	Reopening new law Search basis Rev fav decision Number of years to be reopened?
Delhi high court in case of Twylight infrastructure pvt ltd vs ITO WP 16524/2022 (order dated 05.01.2024) (also see Delhi high court in case of TIA Enterprises pvt ltd Ltd vs ITO 26.09.2023 duty to supply sanction with reasons- fatal impact)	Invalid reopening based on incorrect "sanction" u/s 151 *(lead matter argued from petitioner side by Kapil Goel adv)* *Also refer Bombay high court in case of Siemens Financial services pvt ltd vs DCIT 457 ITR 647*

2.12On concept of *surrender, dictation and abdication" which is recently decided by hon'ble apex court three judge bench in epochal case of* Dr. Premachandran Keezhoth and Another … Appellant(s); *Versus* Chancellor Kannur University and Others … Respondent(s).**2023 SCC OnLine SC 1592**

"iv) Did the Chancellor abdicate or surrender his statutory power of reappointment of the Vice-Chancellor? 69. *Before we proceed to answer the question whether the Chancellor abdicated or surrendered his statutory power of reappointment, we must try to understand the stance of the Chancellor in the present litigation as discernible from the counter-affidavit filed by him. We are quite perplexed with the stance of the Chancellor. The Chancellor wants this Court to allow the appeal and declare that the reappointment of the respondent No. 4 as Vice-Chancellor is not sustainable in law. The Chancellor says so because according to him the reappointment of the respondent No. 4 is in conflict with the UGC Regulations.* ***70.*** *The UGC Regulations are enacted by the UGC in exercise of powers under Sections 26(1)(e) and 26(1)(g) of the UGC Act, 1956. The Regulations framed under the said Act, are laid before each House of the Parliament. Therefore, being a subordinate legislation, the UGC Regulations becomes a part of the Act. In case of any conflict between the State legislation and the Central Legislation, the Central Legislation shall prevail by applying the rule/principle of repugnancy as enunciated in Article 254 of the Constitution as the subject "Education" is in the Concurrent List (Entry No. 25 of List III) of the VII Schedule of the Constitution. Therefore, any appointment or reappointment as a Vice- Chancellor contrary to the provisions of the UGC Regulations could be said to be in violation of the statutory provisions. However, the moot question is whether in the present case, there is any conflict between the State Legislation and the UGC Regulations? The UGC Regulations more particularly the Regulation 7.3 which, we have referred to in the earlier part of our judgment only talks about appointment of Vice-Chancellor. The UGC Regulations provide for the procedure to be adopted for appointment of Vice-Chancellor. The UGC Regulations are silent in so far as reappointment of the Vice-Chancellor is concerned. There is no specific procedure prescribed by the UGC under its regulations for the purpose of reappointment of Vice-Chancellor. The entire focus of the Chancellor is on the aforesaid. However, nothing has been said in the counter-affidavit filed on behalf of the Chancellor as regards Chancellor's own independent satisfaction or judgment for the purpose of reappointment of the respondent No. 4 as Vice-Chancellor.* ***71.*** *It is in such circumstances that we have thought fit to pose a question whether the Chancellor abdicated his statutory power?* ***72.*** *It has been stated by Wade and Forsyth in Administrative Law, 7th Edn. at pp. 358-59 under the heading "Surrender, Abdication, Dictation" and sub-heading "Power in the wrong hands" as below: "Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with someone*

else, or may allow someone else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them…. Ministers and their departments have several times fallen foul of the same rule, no doubt equally to their surprise….” (Emphasis supplied)

***73.** It is a well settled (and indeed, bedrock) principle of administrative law that if a statute expressly confers a statutory power on a particular body or authority or imposes a statutory duty on the same, then such power must be exercised or duty performed (as the case may) by that very body or authority itself and none other. If the body or authority exercises the statutory power or performs the statutory duty acting at the behest, or on the dictate, of any other body or person, then this is regarded as an abdication of the statutory mandate and any decision taken on such basis is contrary to law and liable to be quashed. It is important to keep in mind that, in law, it matters not that the extraneous element is introduced (i.e., the advice, recommendation, approval, etc. of the person not empowered by the statute is obtained or given) in good faith or for the advancement of any goal or objection howsoever laudable or desirable. The rule of law requires that a statutory power vests in the body or authority where the statute so provides, and likewise, the discharge of the statutory duty is the responsibility of the body or authority to which it is entrusted. That body or authority cannot merely rubberstamp an action taken elsewhere or simply endorse or ratify the decision of someone else.*

***83.** The aforestated facts make it abundantly clear that there was no independent application of mind or satisfaction or judgment on the part of the Chancellor and the respondent No. 4 came to be reappointed only at the behest of the State Government. **84.** Under the scheme of the Act, 1996 and the statutes, the Chancellor plays a very important role. He is not merely a titular head. In the selection of the Vice-Chancellor, he is the sole judge and his opinion is final in all respects. In reappointing the Vice-Chancellor, the main consideration to prevail upon the Chancellor is the interest of the university.*

***85.** The Chancellor was required to discharge his statutory duties in accordance with law and guided by the dictates of his own judgment and not at the behest of anybody else. Law does not recognise any such extra constitutional interference in the exercise of statutory discretion. Any such interference amounts to dictation from political superior and has been condemned by courts on more than one occasions.*

***87.** It is the Chancellor who has been conferred with the competence under the Act, 1996 to appoint or reappoint a Vice-Chancellor. No other person even the Pro-Chancellor or any superior authority can interfere with the functioning of the statutory authority and if any decision is taken by a statutory authority at the*

behest or on a suggestion of a person who has no statutory role to play, the same would be patently illegal.
88. *Thus, it is the decision-making process, which vitiated the entire process of reappointment of the respondent No. 4 as the Vice-Chancellor. The case on hand is not one of mere irregularity.* ***89.*** *We emphasise on the decision-making process because in such a case the exercise of power is amenable to judicial review.* ***90.*** *In Chief Constable of the North Wales Police v. Evans, [1982] 1 WLR 1155 : [1982] 3 All ER 141 (HL), Lord Brightman observed thus :*
(WLR p. 1174 G)"... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made."
91. *In view of the aforesaid, we allow this appeal."*

HON'BLE RAJASTHAN HIGH COURT IN CASE OF ACIT VS JAYANTI LAL PATEL 244 ITR 500 (TEXT BOOK CASE OF SEARCH AND SEIZURE: CONCEPT OF MALICE APPLIED UNDER INCOME TAX LAW)

"4. It is high time that the Department itself came forward to fix the personal accountability of the officer who acts with mala fide intention or acts to achieve some oblique motive under the guise of judicial, quasi-judicial or even administrative orders. The higher authorities of the Income-tax Department should have taken stringent action against such erring officer against whom strictures had been passed by this court."