

**2022 LiveLaw (Del) 330**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**MANMOHAN; DINESH KUMAR SHARMA, JJ.**  
23<sup>rd</sup> March, 2022

**SAIF II MAURITIUS COMPANY LIMITED**

*versus*

**ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE INT TAX 3(1)(2) DELHI & ANR.**

**Income Tax Act, 1961 - Section 148 - Sufficiency or correctness of the material is not a thing to be considered at the stage of issue of notice for reassessment.**  
*(Para 8)*

W.P.(C) 4650/2022 & CM APPLs.13966-13967/2022; W.P.(C) 4669/2022 & CM APPLs.13994-13995/2022; W.P.(C) 4671/2022 & CM APPLs.13998-13999/2022

*Petitioner Through Mr. Ajay Vohra, Sr. Advocate with Dr. Shashwat Bajpai and Mr. Vishal Aggarwal, Adv.*

*Respondents Through Mr. Ruchir Bhatia, Advocate.*

**J U D G M E N T**

**MANMOHAN, J:**

**1.** Present writ petitions have been filed challenging the notices dated 30<sup>th</sup> March, 2021 issued under Section 148 of the Income Tax Act (hereinafter referred to as 'the Act') and the orders disposing of the objections dated 11<sup>th</sup> February, 2022 for the Assessment Years 2016-17 & 2017-18.

**2.** As per the reasons recorded, notices dated 30<sup>th</sup> March, 2021 were issued to the petitioner under Section 148 on the ground that the assessee's transactions for the Financial Years 2015-16 & 2016-17 were flagged in the Non-Filers Monitoring System (NMS). As per Form 15CA, the assessee had made a remittance to its head office without deducting TDS thereof and claimed the same to be tax free as per DTAA between India and USA.

**3.** In the impugned orders, it is stated that despite the aforesaid receipts the assessee had not filed any return of income for the Assessment Years 2016-17 & 2017-18 and the said receipts had not been offered to tax by the assessee. It is further stated in the impugned order that the plea of the petitioners'-assessee is covered under Para 1(B)(iii)(c) of the CBDT instruction regarding selection of potential cases for issue of notice under Section 148 of the Act issued vide F. No. 225/40/2021/ITA-II dated 15<sup>th</sup> March, 2021.

**4.** Learned senior counsel for the Petitioners submits that the impugned notices and orders are patently illegal, bad in law and without jurisdiction, as the same were issued based on bald assertions by the Assessing Officer which do not satisfy the requirement of law as per Section 147 of the Act.

**5.** In support of his contention, he has handed over a chart in Court today, wherein it is stated that the dividend income was exempt under Section 10(34) of the Act and

long term capital loss was in any way not chargeable to tax. It is further stated that the assessee had remitted long term capital gain of Rs.14.54 crores on the sale of listed shares of Just Dial Limited which was exempt under Section 10(38) of the Act.

6. Learned counsel for the respondents on the other hand submits that income in the present case is chargeable to tax and the petitioner has claimed exemption and therefore, the issue will have to be examined during the re-assessment proceedings.

7. In the present cases, the issue of dividend income as well as long term capital gain on the sale of shares requires a detailed consideration.

8. Further, in the present cases, Section 148 notices have been issued within four years from the end of the relevant Assessment Years. Also no scrutiny assessment has been taken place in the present cases. Consequently, the test to be applied for re-assessment in the present cases is whether there is 'reason to believe' that income chargeable to tax has escaped assessment. In ***Raymond Woollen Mills Ltd. vs. Income-tax Officer, Centre Circle XI, Range Bombay and Ors., (2008) 14 SCC 218***, the Supreme Court has held that the expression 'reason to believe' means that there is some *prima facie* material on the basis of which the Department can reopen the case. The sufficiency or correctness of the material is not a thing to be considered at the stage of issue of notice under Section 148 of the Act.

9. Consequently, this Court is of the view that the aforesaid test stipulated in ***Raymond Woollen Mills Ltd.*** (supra) is satisfied in the present case. However, the contentions and submissions raised by the petitioner are relevant and must be examined by the Assessing Officer while passing the reassessment order. It will also be open to the assessee to show in the re-assessment proceedings that the assumption of facts made in the notice is erroneous.

10. With the aforesaid direction, the present writ petitions along with pending applications stand disposed of.