

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

**D.B. Civil Writ Petition No. 13719/2021**

Micro Marbles Private Limited, having its registered office at E-5, RIICO Ind. Area, Chittorgarh 312001 Rajasthan Through Its Authorised Representative Mr. Keerti Dhiliwal S/o Sh. Roshan Lal Dhiliwal Aged About 53 Years R/o "Dhiliwal House", Chandanpura, Chittorgarh-312001.

-----Petitioner

Versus

Office of the Income Tax Officer Ward-1, Chittorgarh, Rajasthan.

-----Respondent

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For Petitioner(s)	:	Mr. Sanjay Jhanwar, Senior Advocate assisted by Mr. Prakul Khurana through VC Mr. Abhinav Mathur, Mr. Pushkar Taimni Mr. Pranav Bhardwaj
For Respondent(s)	:	Mr. Kamal Kishore Bissa, Mr. G.S. Chouhan

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**HON'BLE THE CHIEF JUSTICE MR. PANKAJ MITHAL  
(THROUGH VC JAIPUR)  
HON'BLE MS. JUSTICE REKHA BORANA**

**Order**

**Reserved on**

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**14/11/2022**

**Pronounced on**

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**04/01/2023**

**By the Court (Per Hon'ble the Chief Justice):**

1. Petitioner is a private limited company engaged in manufacturing of marble slabs and tiles. It filed its income tax return for the assessment year 2017-2018 and the same was processed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and an intimation regarding acceptance of 'nil' tax liability was issued to it on 22.06.2018 by the Centralized Processing Centre of the Income Tax Department.

2. The petitioner received a notice dated 30.03.2021 under Section 148 of the Act for reopening of its assessment for the year 2017-2018 on the ground that there are reasons to believe that its income for the relevant year has escaped assessment.

3. On petitioner's request, it was supplied with the reasons for issuing the said notice vide letter dated 24.05.2021. The said reasons stated that the petitioner had received bogus loan/sale/purchase amount of Rs.93,21,520/- (Rs.89,97,520+ Rs.3,24,000) from M/s. Sanmati Gems Private Limited as per the information received from the Deputy Director of Income Tax, Investigation, Unit-4(4), Mumbai.

4. The petitioner on receipt of the above reasons for reopening its case under Section 148 of the Act filed objections on 09.06.2021 stating that the revenue is proposing to reopen its case not for reason to believe but for reason to suspect. The petitioner also contended that it has not been provided with the necessary documents such as the account books of M/s. Sanmatri Gems Private Limited showing the alleged bogus entries in its name or the statement of Deepak Jain purported to have been recorded under Section 132(4) of the Act. The said objections were disposed of vide order dated 18.08.2021 holding that the same have no force.

5. It is in the above backdrop that the petitioner invoked the writ jurisdiction of this Court for the purposes of quashing of the notice dated 30.03.2021 issued under Section 148 of the Act and the order dated 18.08.2021 by which its objections against the said notice were disposed of.

6. The writ petition was entertained by the High Court and vide order dated 30.03.2022, it was provided that if in respect of the

assessment year 2017-2018 any reassessment order is or has been passed, the same shall remain subject to outcome of the writ petition.

7. The petitioner was furnished with the re-assessment order dated 29.03.2022 pursuant to the notice under Section 148 of the Act. Accordingly, the petitioner questioned the said assessment order by seeking necessary amendment in the writ petition which was duly allowed. Thus, in the writ petition the challenge is not only to the notice under Section 148 of the Act or the order disposing of the objections of the petitioner, but also to the re-assessment order dated 29.03.2022.

8. Shri Kamal Kishore Bissa, learned counsel for the revenue has raised a preliminary objection that against the re-assessment order the petitioner has a statutory remedy of appeal under the Act. Therefore, the writ petition is not maintainable and that the challenge to the notice under Section 148 of the Act is now meaningless in view of the re-assessment order. He has relied upon the decision rendered in **Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal [(2014) 1 SCC 603]** wherein it has been held that the Act provides for a complete machinery for assessment/re-assessment of tax and for the scrutiny thereof by means of appeal. Therefore the assessee is not supposed to surpass the mechanism provided thereunder and to invoke the extra-ordinary jurisdiction of the High Court, if no exceptional ground exists for invoking such a power.

9. It is true that where a statutory remedy is provided under the Act itself more particularly in matters of tax, the assessee is not supposed to jump the said remedy and invoke the writ jurisdiction of the Court. In the case at hand, no doubt the

petitioner has assailed the re-assessment order also by getting the writ petition amended but the thrust of its challenge is to the very basis of the said re-assessment order i.e. the notice issued under Section 148 of the Act and the order disposing of its objections thereto. In the event the challenge to the said notice or the order is accepted and either of them are quashed, the assessment order passed on their basis would automatically fall to the ground. Therefore, for the time being presuming that there is no challenge to the re-assessment which is subsequent in nature, if we focus on the validity of the notice under Section 148 of the Act and the order dated 18.08.2021, by which the objections of the petitioner were disposed of, we find that there is no remedy under the Act for challenging the above notice and the order. Therefore, a writ petition against them is certainly maintainable subject to the scope of the judicial review.

10. Additionally, the petitioner had brought the re-assessment order to the notice of the writ court by seeking amendment so as to challenge it. The Court not only permitted the amendment but vide order dated 30.03.2022 also directed that the re-assessment shall be subject to the decision of the writ petition. Therefore, the Court was conscious of the fact that if the challenge to the notice under Section 148 of the Act and to the order disposing of the objections is accepted, the assessment would obviously pale into insignificance.

11. Shri Sanjay Jhanwar, learned Senior Counsel for the petitioner in this connection referred to the decision of the Division Bench of the Allahabad High Court dated 08.09.2022 passed in a bunch of writ petitions, in which **Writ Tax No.554 of 2022- Vikas Gupta vs. Union of India & Ors.** was a leading case. In

the said case also, there was a challenge to the notice under Section 148 of the Act. Subsequently, an order of re-assessment came to be passed. The High Court in quashing the impugned notice under Section 148 of the Act further directed that the re-assessment order, if any, passed by the assessing officer and all consequential proceedings thereof would also stand quashed; meaning thereby that where the notice under Section 148 of the Act is found to be invalid, the re-assessment proceedings would not be sustainable in law.

12. A five Judge Constitution Bench of the Supreme Court in **Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I & Ors., AIR 1961 SC 372**, while dealing with a similar situation where proceedings had started on the basis of the impugned notices and subsequently assessment orders came to be passed with the understanding that those orders would be without prejudice to the rights of the petitioner in the writ petition, held that the passing of the assessment orders does not affect the right of the petitioners to obtain the relief under Article 226 and thus directed for quashing of the assessment orders also when the impugned notices were found to be bad in law. The relevant paragraph of the aforesaid decision in this regard is reproduced herein below:-

"31. We are informed that assessment orders were in fact made on March 25, 1952, by the Income-tax Officer in the proceedings started on the basis of these impugned notices. This was done with the permission of the learned Judge before whom the petition under article 226 was pending, on the distinct understanding that these orders would be without prejudice to the contentions of the parties on the several questions raised in the petition and without prejudice to the orders that may ultimately be passed by the Court. The fact that the assessment orders have already been made does not therefore

affect the company's right to obtain relief under article 226. In view however of the fact that the assessment orders have already been made we think it proper that in addition to an order directing the Income-tax Officer not to take any action on the basis of the impugned notices a further order quashing the assessment made be also issued."

13. In view of the above decision, the case law pointed out by Shri Bissa including the recent decision of the Supreme Court in **State of Madhya Pradesh & Anr. Vs. Commercial Engineers and Body Building Company Limited, 2022 0 Supreme (SC) 1053** in context with the maintainability of the writ petition as against the assessment order, are of no consequence. In all the above decisions, it has been held that when the taxing statutes provide for a complete mechanism, the said mechanism has to be followed and if there is a provision for appeal, it cannot be bypassed to invoke the writ jurisdiction against the order of assessment. The aforesaid decisions are confined to assessment orders only and where there is no challenge to any notice or any order deciding the objections thereto forming the basis for the assessment orders. The assessment orders may not be assailable in writ jurisdiction, but there is no dictum of law which provides that even the notice or order passed in pursuance thereto, against which there is no remedy, would also be barred from being assailed in the writ jurisdiction.

14. In the light of the above discussion, we are of the firm opinion that the writ petition as filed by the petitioner cannot be thrown out on the ground that the petitioner has a statutory remedy against the re-assessment order ignoring the fact that against the notice issued under Section 148 of the Act and the

order deciding objections to it, there is no remedy available to it other than the writ jurisdiction.

15. Leaving aside the re-assessment order, as there is no remedy available to the petitioner against the notice under Section 148 of the Act or the order disposing of the objections thereto, the writ petition to the extent of challenging the same is maintainable. The successful challenge to the said notice and the order being germane to the re-assessment order would automatically result in nullifying the same. Accordingly, the preliminary objection as raised by the Revenue is not tenable and stand rejected.

16. On merits, the submission of Shri Sanjay Jhanwar, learned Senior Counsel for the petitioner is that 'reason to believe' that income has escaped assessment is a mandatory condition for reopening the assessment by notice under Section 148 of the Act, but the reason to believe must not be confused with the reason to suspect. The respondents have tried to reopen the assessment proceedings on the ground of mere suspicion, that too without supplying to the petitioner proper and necessary material which formed the basis for issuing the notice. The petitioner was not supplied with the copy of the statement of Deepak Jain recorded under Section 132(4) of the Act. In fact, a search and seizure was carried out in the business premises of one Deepak Jain. It was during the investigation of his case that his statement under Section 132(4) of the Act was recorded. The petitioner was identified as one of the beneficiaries of the bogus entries, therefore, his statement becomes material and so is his books of accounts to enable the petitioner to respond to the notice in an effective manner. The petitioner being a third party was not liable to be proceeded on the basis of such investigation under Section

148 of the Act, rather the respondents ought to have, if necessary, initiated proceedings under Section 153C which provides for a complete mechanism to check evasion of tax by a party alien to search and seizure.

17. Shri Kamal Kishore Bissa, learned counsel for the Revenue in defence simply reiterated the submissions made by him while raising the preliminary objections that the assessment order is not open to challenge before the writ court and that the information furnished by the Deputy Director of Income Tax, Investigation, Unit-4(4), Mumbai is sufficient to reopen the assessment. The Court in exercise of its extraordinary jurisdiction cannot go into sufficiency of the material relied upon for reopening the case, as has been held by the Supreme Court in **Raymond Woollen Mills Limited vs. Income Tax Officer, Centre Circle XI, Range Bombay & Others [(2008) 14 SCC 218]**.

18. The notice dated 30.03.2021 served upon the petitioner under Section 148 of the Act simply states that the officer concerned has reason to believe that its income chargeable to tax for the Assessment Year 2017-18 has escaped assessment within the meaning of Section 147 of the Act and, therefore, he is called upon to file response to the notice within 30 days. The said notice in no specific terms states about any material, on the basis of which the officer may have formed the opinion that he has reasons to believe that income chargeable to tax has escaped assessment.

19. The reasons to believe dated 24.05.2021, as supplied to the petitioner, categorically state that on the information available on the Insight Portal of the Department of Information and the information received from the Deputy Director of Income Tax,



Investigation, it is gathered that a search and seizure operation was carried out in connection with one Deepak Jain and during investigation it was revealed that petitioner is one of the beneficiaries to whom entries were provided on commission basis. The said information received was verified with the material available on record. The report of the Investigation Wing and the statement of Deepak Jain recorded under Section 132 (4) of the Act had been examined and it is on such examination that the officer has reason to believe that income of the petitioner chargeable to tax has escaped assessment.

20. In the light of the reasons to believe so conveyed to the petitioner, it is implicit that the action for reopening of the petitioner's assessment has been taken, namely:-

- (i) On the information available on the Insight Portal of the Department of Information;
- (ii) Information received from the Deputy Director of Income Tax, Investigation, Mumbai;
- (iii) Investigation material covering Deepak Jain, who is said to have revealed that he was an entry provider and had provided entry of bogus loan/purchase/sale amounting to Rs.93,21,520/- to the petitioner from M/s Sanmatri Gems Pvt. Ltd.; and
- (iv) The statement of Deepak Jain recorded under Section 132 (4) of the Act.

21. The aforesaid material, which formed the basis for forming opinion that the officer has reason to believe that the income chargeable to tax has escaped assessment in the hands of the petitioner for the relevant year, do not appear to have been supplied to the petitioner to enable it to file a proper and effective reply/objections to the reasons to believe.

22. Accepting that as per the decision of the Supreme Court in **GKN Driveshafts (India) Ltd. Vs. Income-tax Officer, (2002) 125 Taxman 963 (SC), dated 25.11.2002**, the Assessing Officer is bound to furnish reasons within a reasonable time and on receipt of the same, the noticee is entitled to file objections to the issuance of such notice and the Assessing Officer is bound to consider and dispose of the objections, so filed, by a speaking order, we are of the opinion that supply of the material which forms the basis for forming such opinion becomes *sine qua non* to enable the noticee to effectively participate in the proceedings by filing objections.

23. We are also conscious of the decision rendered in **Raymond Woollen Mills Limited (supra)**, which provides that the sufficiency and correctness of the material cannot be considered at the stage of dealing with the validity of the notice, or the order passed on the objections thereon. Notwithstanding the above, the crucial aspect is whether the relevant material, on the basis of which an opinion is formed that the income chargeable to tax has escaped assessment, needs to be supplied to the noticee along with the reasons to believe or what would be the result if it is not made available.

24. A Division Bench of the High Court of Delhi in **SABH Infrastructure Ltd. Vs. Assistant Commissioner of Income Tax, (2017) 398 ITR 198 (Delhi)**, observed that large number of writ petitions are coming up before the Court challenging the reopening of assessment by the Revenue under Section 147/148 of the Act and despite numerous judgments on the point the same errors are being repeated while issuing such notices. It, therefore, laid down the guidelines *inter-alia* that where "reasons to believe"

make a reference to another document, whether as a letter or report, such document and/or relevant portion of such report should be enclosed along with the reasons and that the exercise of considering the objections to the reopening of the assessment is not a mechanical ritual but a *quasi-judicial function*.

25. In view of the above decisions and one of the guidelines laid down therein, the supply of documents referred to in the reasons to believe becomes inevitable and in the event such documents are not supplied, it would be flagrant violation of the principles of natural justice.

26. A Division Bench of the Bombay High Court in **Tata Capital Financial Services Limited Vs. Assistant Commissioner of Income Tax Circle & Ors.**, while deciding **Writ Petition No.546/2022** vide judgment and order dated 15.02.2022, reiterated the above proposition of law, as laid down by the Delhi High Court. It directed the Revenue to adhere to certain guidelines in reopening the assessment proceedings. It emphasized that the Assessing Officer shall not merely state the reasons to believe in the letter addressed to the assessee, but if the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. Therefore, in view of the aforesaid decision also, it appears to be mandatory on the part of the Assessing Officer to supply the petitioner with all relevant documents, referred to in the reasons to believe so that the petitioner may file proper objections opposing reopening of the assessment.

27. In the case at hand, as previously mentioned, reason to believe supplied to the petitioner refers to information received from the Deputy Director of Income Tax, Investigation as also to

the statement of Deepak Jain recorded under Section 132 (4) of the Act during the course of the investigation pursuant to the search and seizure carried out at his premises as also the entries in the form of bogus loan/purchase/sale of Rs.93,21,520/- appearing in the books of M/s Sanmatri Gems Pvt. Ltd. for the Assessment Year 2017-18. Neither of the above documents have allegedly been supplied to the petitioner. The petitioner in the grounds to the petition has taken a categorical stand that the respondents failed to furnish the information which formed the basis for reopening the assessment. It was not even provided with the statement of Deepak Jain, on which heavy reliance was being placed. There is no averment in the reply of the respondents anywhere that any such information or a copy of the statement was supplied to the petitioner along with the reasons to believe.

28. In view of the above, the reasons to believe, as supplied to the petitioner, on the face of it are incomplete and do not afford the petitioner due and proper opportunity to file objections against such reassessment. The non-supply of the above material is within the teeth of the directions of the Division Bench of the Delhi and Bombay High Courts.

29. The submission of Shri Bissa that reasons to believe cannot be equated with the final conclusion and as long as the Assessing Officer has sufficient material to demonstrate that he had *bonafidely* formed the opinion that the income chargeable to tax has escaped assessment, the requirement of law stands satisfied is of no avail as there are no two opinions on the above aspect. Sufficiency of material is one thing and supply of the same is another, which is mandatory in nature. Therefore, the non-supply of the material referred to in the reasons to believe would be

enough to render the proceedings bad, even though the material for forming the opinion may be sufficient.

30. The argument of Shri Bissa is that information furnished by the Deputy Director of Income Tax, Investigation, by itself is sufficient for reopening the proceedings, more particularly when the said information was confirmed from other sources. Again the sufficiency of the information is not in question, nor its confirmation. What is questionable is the effect of its non-supply, to which there is no answer.

31. Thus, in the light of the decisions of the Delhi and the Bombay High Courts, as referred to above, the non-supply of the material, especially the documents of entry in the books of M/s Sanmatri Gems Pvt. Ltd. and the statement of Deepak Jain recorded under Section 132 (4) of the Act, is sufficient to vitiate the proceedings.

32. It may be noted that the statement recorded under Section 132 (4) of the Act can be used in evidence for making the assessment only if such statement is made in context with other evidence, or material discovered during search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger the assessment.

33. In view of the aforesaid facts and circumstances, we are of the opinion that shorn of all other technical aspects which may have been raised before us, the very fact that the material referred to in the "reasons to believe" was not supplied to the petitioner, the entire proceedings for the reopening of the assessment and leading to the consequential assessment stand vitiated in law.

34. Accordingly, the impugned notice dated 30.03.2021 and the order dated 18.08.2021 dismissing the objections of the petitioner are hereby quashed and all consequential proceedings including the assessment order dated 29.03.2022 are declared to be illegal, null and void with liberty to the respondents to take up a fresh exercise for reassessment, if necessary, in accordance with law.

35. In view of the above, the writ petition is allowed. Pending application, if any, stands disposed of.

**(REKHA BORANA),J**

**(PANKAJ MITHAL),CJ**

Mohit Tak/-



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