IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (T) No. 1850 of 2022

M/s. Pasari Casting and Rolling Mills Private Ltd., through its Director Shri Shambhu Kumar Pasari ...Petitioner

Versus

1. Income-tax Department through its National Faceless Assessment Centre, having its office at NFAC Delhi, P.O., P.S. and District-Delhi.
2. Principal Commissioner of Income-tax, Jamshedpur, having its office at 47 CH Area, Jamshedpur, P.O. and P.S. Bistupur, District-East Singhbhum.
3. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer, National Faceless Assessment Centre, having its office at NFAC Delhi, P.O., P.S. and District-Delhi.
4. Deputy Commissioner of Income-tax Circle 1, Jamshedpur, having its office at 47 CH Area, Jamshedpur, P.O. and P.S. Bistupur, District-East Singhbhum.
5. Assistant Commissioner of Income-tax Circle 1, Jamshedpur, having its office at 47 CH Area, Jamshedpur, P.O. and P.S. Bistupur, District-East Singhbhum. ...Respondents

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CORAM: **HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**
HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : M/s. Kartik Kurmi, N.K.Pasari & Sidhi Jalan, Advocates
For the Respondents : Mr. R.N.Sahay, Sr.S.C
Mr. Anurag Vijay, Jr. S.C

RESERVED ON. 29/11/2023 **PRONOUNCED ON. 25/01/2024**

Per Deepak Roshan, J Heard learned counsel for the parties.

2. The instant application has been preferred by the petitioner for the following reliefs: -

(a) For quashing the Assessment Order dated 31.03.2022 bearing no. ITBA/AST/S/147/2021-22/1042312253(1) whereby an addition of Rs.15,54,42,417/- has been made to the income of the Petitioner in the reassessment proceedings for the Assessment Year 2015-2016 under Section 147 read with Section 144 read with Section 144B of the Income-tax Act, 1961;

(b) For quashing the Notice of Demand under Section 156 of the Income-Tax Act, 1961, dated 31.03.2022 bearing no. ITBA/AST/S/156/2021-22/1042313074(1) pertaining to Assessment Year 2015- 2016;

(c) For quashing the Notice for Penalty under Section 274 read with Section 271(1)(c) of the Income-Tax Act, 1961, dated 31.03.2022 bearing

ITBA/PNL/S/271(1)(c)/2021-22/1042312815(1) pertaining to Assessment Year 2015-2016;

(d) For a direction upon the Respondents to produce entire records pertaining to the reassessment proceedings of the Petitioner for the Assessment Year 2015-2016;

(e) For a declaration that the entire reassessment proceedings have been conducted in gross violation of Principles of Natural Justice and also that the entire reassessment proceedings including the Impugned Order and the consequent Demand and Penalty Notices are in contravention of the Income-Tax Act, 1961, including Sections 144, 144B, 147, 148, 151, 156 and 271(1)(c);

(f) For issuance of any other appropriate writ(s) or direction(s) or order(s) as Your Lordships may deem fit and proper in view of the facts & circumstances of the case for doing conscionable justice to the Petitioner.

During pendency of this case the petitioner had filed one interlocutory application being I.A. No. 6387 of 2022 for amendment of prayer in the main writ application for quashing the notice dated 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 (Annexure-2 of the writ petition). The said I.A. was allowed vide order dated 05.10.2023.

Subsequently, another interlocutory application being I.A. No. 2189 of 2023 was filed for amendment of the prayers for quashing the order disposing objection dated 16.03.2022 (Annexure-10) and also the penalty order dated 28.09.2022 passed by respondent nos. 3 and 4 under section 271 (1)(c) of the Income Tax Act and also for quashing notice of demand dated 28.09.2022 issued by respondent nos. 3/4 under section 156 of the Income Tax Act. The said I.A. was allowed vide order dated 05.10.2023.

3. The brief facts of the case as disclosed in the writ application is that the Petitioner-Company Pasari Casting & Rolling Mills Pvt. Ltd., is engaged in the business of manufacture of iron and steel products in the state of Jharkhand. It is the case of the petitioner that in the above assessment year, it had filed its Return of Income on time and its books of Accounts were audited duly. However, the proceeding has been initiated under Section 147/148 of the Income Tax Act, 1961.

The case of the petitioner is that without the existence of material and reasons to form a reasonable belief that the income of the petitioner has escaped assessment, the reasonable belief has been formed on the borrowed satisfaction. Also, the relied upon document leading to the formation of the purported reasonable belief is not supplied in spite of repeated requests and further, the petitioner has been extended only 24 hours' time to file its Show Cause Notice.

4. The detailed facts are that the petitioner was served notice ITBA/AST/S/147/2021-22/1042312253(1) under Section 148 dated 31.03.2021 from the respondent alleging that the income has escaped assessment for the relevant Assessment year. In the notice issued, there was no mention about the reason for reopening of the same. Later, on 27.09.2021, the respondent issued a notice under Section 142(1) whereby certain details were sought and reasons for reopening were supplied by the Revenue. The reason provided therein for reopening was: *"Information received during course of action in case of one Ajay Kumar Sharma that the same was involved in providing accommodation entry through his bank account to certain beneficiaries. This was also confirmed in his statement on oath taken. The copy of the bank Statement reveals that the assessee has done bogus financial transactions worth Rs15,54,42,417/- with Shri Ajay Kumar Sharma." (Annexure 3).*

After writing multiple letters to the Revenue during 19.10.2021 and 30.12.2021, Revenue replied via notice under Section 142(1) stating that the reasons have already been provided i.e., details about the alleged transaction with Ajay Kumar Sharma. Moreover, the Revenue has refused to provide the copy of the documents to petitioner underlying 'reasons to believe' and hence petitioner was denied an opportunity to file effective and proper objection to reassessment proceedings.

The further case of the petitioner is that the objections preferred by the petitioner to reassessment were rejected by the Revenue in vague and cryptic order dated 16.03.2022 at Annexure 10. Further, on 19.03.2022, a notice under Section 144 was

issued by the defendant to pay the escaped assessment amount to the tune of Rs. 15,54,42,417/- and also proposing to initiate penalty proceedings under Section 271(1)(c). Subsequently, the petitioner was called to show cause by 23:59 hrs of 30.03.2022.

5. Mr. Kartik Kurmi assisted by Mr. N.K.Pasari, learned counsels for the petitioner submit that there are no reasons/ materials to form a reasonable belief that the income of the Petitioner has escaped assessment, hence, the proceedings initiated under Section 147 is without jurisdiction. Sri Ajay Kumar Sharma has never taken name of the Petitioner. The date of statement of Shri Ajay Kumar Sharma which is the sole basis for reason of belief, is also not known as to which assessment year it is related. The Counter Affidavit is also silent as to the said date, hence, said reasons/materials are vague and farfetched. The reason that Shri Ajay Kumar Sharma has provided “accommodation entry” to the Petitioner and that the assessee had done “bogus financial transactions” with Shri Ajay Kumar Sharma are not “reason” but “conclusion”.

Learned counsel further contended that in the impugned Order there is not even a “scrap of material” against the Petitioner that “any accommodation entry have been provided” by Sri Ajay Kumar Sharma and that the Petitioner has handed over equivalent cash to said Sri Ajay Kumar Sharma to call it accommodation entry or cash credit. It is not clear whether statement of Sri Ajay Kumar Sharma is recorded U/s 132(4) or Section 133A.

Mr. Kurmi further submits that the statement recorded U/s 133A has no evidentiary value. He further submits that the formation of belief is based on borrowed satisfaction. There is no independent application of mind. Hence, the proceeding under Section 147 is without jurisdiction.

He also contended that the entire proceeding is carried out in gross violation of principles of natural justice. Only 24 hours’ time was extended to file objection/reply to Show Cause Notice (Draft assessment Order) and assessment Order was passed just in 24 hours. He contended that the Petitioner is entitled to a copy

of the investigation report, statement of Shri Ajay Kumar Sharma etc. on the basis of which the reasonable belief is formed and also copy of approval U/s 151.

Relying upon the aforesaid submissions, learned counsel contended that the procedure adopted by the Respondent offends Article 14 of the Constitution of India and is unreasonable, unfair and vitiated in law. The recorded reason/impugned Assessment Order is silent under which provision of the Act the additions are sought to be made. The reasons cannot be supplemented by assessment Order or Affidavit.

6. On the question of maintainability, learned counsel submitted that the writ is maintainable in view of the judgment rendered by the Hon'ble Apex Court in the following judgments;

1. *Calcutta Discount Co. Ltd. Vs. ITO reported in [1961]41 ITR 191 (SC)*
2. *CIT Vs. A. Raman & Co. reported in [1968]67 ITR 11 (SC)*
3. *ITO Vs. Lakhmani Mewal Das reported in [1976]103ITR 437 (SC)*
4. *CIV Vs. Chhabil Dass Agarwal reported in (2014) 1 SCC 603*
5. *Magadh Sugar & Energy Ltd. Vs. State of Bihar reported in 2021 SCC Online SC 801*

7. Per contra, Mr. R.N.Sahay, learned S.C. supported the impugned orders and has firstly contended that the petitioner approached this court directly where an alternate remedy to challenge the assessment order lies before statutory forum i.e., Commissioner (Appeals) under Section 246A of the Income Tax Act, 1961 and thus the writ petition should be dismissed placing reliance on following decisions:-

i. *CIT Vs. Chhabil Das Agarwal reported in (2014)1 SCC 603*
ii. *Dr. K. Nedunchezhian Versus DCIT reported in (2005) 4CTC 161*

Learned counsel further submits that the respondent nos. 3 and 4 after giving another opportunity even issued a new show cause notice under Section 144, though the respondent was under no statutory obligation to do so, which is evident from second proviso to Section 144 (1) that specifies *'provided further that it shall not be necessary to give such opportunity in a case where a notice under section 142 (1) has been issued prior to making of an assessment under this section'.*

Learned counsel further submits that notices under section 142 (1) were already issued in the past. Accordingly, as per the same proviso, no further opportunity was required to be given to the petitioner. He lastly submits that in light of decision in *GKN Driveshaft (India) Ltd.* (supra) that respondents have duly complied with procedure aid therein. The revenue is not mandatorily obligated/liable to provide the material/source on the basis of which "reason to believe" has been formed and reliance has been placed on following decisions: -

i. S.Narayanappa versus CIT [AIR 1967 SC 523]
ii. Biswanath Bhattacharya Versus UOI[(2014)4 SCC-392]
iii. PCIT versus Meenakshi Overseas (P) Ltd. (supra)
iv. Dayanidhi Maran Versus ACIT

8. Having heard the arguments advanced by respective parties and having perused the documents brought on record and the statements & averments made in the respective Counter Affidavits and materials available on record, at the outset it is clarified that the formation of reasonable belief that the income of an Assessee in the particular assessment year has escaped assessment is condition precedent for acquiring jurisdiction under Section 147/Section 148 for re-opening assessment.

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.

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 Petitioner

has 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.

Further, the date of statement of Sri Sharma is neither mentioned in the recorded reasons nor in the show cause notice nor in the Assessment Order. The Counter Affidavit is also silent, hence, on its basis no reasonable belief could be formed that the said statement relates to the assessment year in question in which the income has escaped the assessment. In the absence of date of statement, it is far-fetched to assume that it relates to the assessment year in question as held in ***ITO Vs. Lakhmani Mewal Das reported in [1976] 103 ITR 437 (SC)***.

10. It further transpires from records that the proceedings in the instant case is initiated for verifications and roving enquiry which is clearly impermissible under section 147/148 as held by this Court in the case of ***PCIT Vs. Maheswari Devi reported in 2022-VIL-254-JHR-DT.*** It is also not clear whether the statement of Sri Ajay Kumar Sharma is recorded U/s 132(4) or Section 133A, inasmuch as, a statement recorded U/s 133A has no evidentiary value.

The Petitioner relied on the judgment rendered in the case of ***CIT Vs. S.Khader Khan Son reported in (2015) 14 SCC 491***. It is also apparent from record that the recorded reason is silent whether the purported “bogus financial transactions” represents receipt or payment or investment or share capital or unsecured loan or purchase or sale, hence, no reasonable belief of escapement of assessment of income could have been formed on the basis of such vague material.

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. ***(Refer PCIT Vs. Meenakshi Overseas P. Ltd. reported in [2017] 395 ITR 677 (Del)***.

11. In the case of ***ITO Vs. Lakhmani Mewal Das reported in [1976] 103 ITR 437 (SC)***, while dealing with an almost similar situation, it is held by the Hon'ble Supreme Court that "*Mohan Singh Kanayalal against whose name there was an entry about payment of Rs.74 annas 3 as interest in the books of the assessee having made a confession that he was doing only name-lending. There is nothing to show that the above confession related to a loan to the assessee and not to someone else much less to the loan of Rs.2,500/- which was shown to have been advanced by that person to the assessee-respondent. There is also no indication as to when that confession was made and whether it relates to the period from April 01, 1957 to March 31, 1958 which is the subject matter of assessment sought to be re-opened. The report was made on February 13, 1967. In the absence of the date of alleged confession it would not be unreasonable that the confession was made a few weeks or months before the report. To infer from the confession that it relates to the period from April 01, 1957 to March 31, 1958 and that it pertains to the loan shown to have been advanced to the assessee, in our opinion would be far-fetched.*"

Further, in the case of ***PCIT Vs. M/s Coal Sale Co. Ltd., reported in 2022-VIL-185-Cal-DT***, the Calcutta High Court while dealing similar situations held in the following lines-

> ***"****Further, the CIT(A) held that .... The tribunal pointed out that the investigation wing on the strength of the admission made by Shri Jindal, jumped to the conclusion that since the assessee had transacted with M/s. Bridge & Building Construction Co. Ltd., the assessee is a beneficiary of bogus bills. The tribunal pointed out that in the reasons recorded for reopening, nowhere the assessee's name has been specifically mentioned by Shri Jindal nor there is anything adverse against the assessee. The assessee was found to have transacted with the said company through banking channel and faulted the assessing officer for reopening the assessment based on the statement of Shri Jindal which was a general statement and that the assessing officer assumed that the assessee is a beneficiary of the account. Furthermore, the tribunal pointed out that the*

just because the assessee had transaction with M/s. Bridge & Building Construction Co. Ltd. it cannot be a ground to believe that the assessee's income escaped assessment. It was further held that without any other material as discussed, the conclusion drawn by the assessing officer, merely on receipt of the aforesaid information does not master the requirement of law to validly form the reason to believe escapement of income. Accordingly, the appeal filed by the revenue was dismissed.

After considering the submissions made on either side and carefully perusing the materials placed before us, we find that the entire matter is factual and the reopening itself was made on wrong presumption of facts."

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.).*

13. 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."

The relevant portions of the impugned Assessment Order reads as follows-

> *"4.4 Bank accounts show that the assessee is involved in providing accommodation entries for bills of purchase Bank account show entries for transactions with the assessee company which during the year are net Rs.15,54,42,417/- Above facts show that the assessee could not substantiate financial transaction worth Rs.15,54,42,417/-with Shri Ajay kumar sharma by furnishing relevant documents. Also, the bank statements provided were revealed that the assessee has done financial transaction worth Rs.15,54,42,417/- with Shri Ajay Kumar Sharma. In view of these facts, it can be concluded that the assessee has done bogus financial transaction worth Rs.15,54,42,417/- in form of accommodation entry with Shri Ajay Kumar Sharma. Hence, in view of non-submission of any details amount of Rs.15,54,42,417/- is added to the total income of the assessee. Penalty proceeding u/s. 271(1)(c) are initiated for concealment of income."*

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.

In the case of ***Lakhmani Mewal Das*** *(supra)* it is held by the Hon'ble Apex Court that "*the reasons for formation of belief must have a rational connection with or relevant bearing on the*

formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the income tax officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts…………. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to the escapement of the income of the assessee from the assessment……….. The reason for formation of the belief must be held in good faith and should not be a mere pretence. The powers of the Income Tax Officer to re-open assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". The re-opening of assessment after lapse of many years is a serious matter. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence.

In the said case of ***Lakhmani Mewal Das*** it is further held by the Hon'ble Supreme Court that *"It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purposes of the section. To this limited extent the action of the Income Tax Officer in respect of income escaping assessment is open to challenge in the court of law.*"

15. Way back in the case of ***Ganga Saran & Sons P. Ltd. Vs. ITO reported in [1981] 130 ITR 1 (SC)*** it has been held by the Hon'ble Apex Court that "*the important words under Section 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or in other words, it must be based on reasons which are relevant and material.*

In the said case *it is further held by the Hon'ble Supreme Court that "The court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the*

ITO in coming to the belief but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under Section 147(a). If there is no rationale and intelligible nexus between the reasons and the belief, so that on such reasons no one, properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment……………."

16. In the instant case there is no material on the basis of which a reasonable belief could be formed that the cash has been deposited by the Assessee into the bank of the accommodation entry provider. Hence, it cannot be presumed to be an accommodation entry. There is no material that the Petitioner has paid cash to the accommodation entry provider to obtain the accommodation entry to tax the same in his hands.

The expression "accommodation entry" and "bogus financial transactions" used in the recorded reasons are not reasons but conclusions. The expression "accommodation entry" and "bogus financial transaction" in the recorded reasons are not reason for formation of reasonable belief but are conclusions. In the case of ***PCIT Vs. Meenakshi Overseas P. Ltd. reported in [2017] 395 ITR 677 (Del.)*** under Para 22, the Delhi High Court held that *"As rightly pointed out by the Income Tax Tribunal, the "reason to believe" are not in fact reasons but conclusions, one after the other. The expression "accommodation entry" is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the assessee on his paying "unaccounted cash" is another conclusion the basis of which is not disclosed. Who is the accommodation entry giver is not mentioned. How can he be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after another, is the report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusion therefrom ………"*

In the case of ***CIT Vs. Chandball Rice Mills Pvt. Ltd. reported in [1993] 203 ITR 368 (Cal)***, the Calcutta High Court held that "*even assuming that the loan creditor made a confessional statement that he made bogus entries to accommodate others, it has to be established that the confessional statement by the loan creditor relates to the transaction in question as laid down by the Hon'ble Supreme Court in the case of ITO Vs. Lakhmani Mewal Das reported in [1976] 103 ITR 437 (SC).*".

In the case of ***Raunaq and Co. Pvt. Ltd. Vs. ITO reported in [1986] 158 ITR 30 (Del)***, the Delhi High Court following the judgment of the Hon'ble Apex Court in the case of ***ITO Vs. Lakhmani Mewal Das reported in [1976] 103 ITR 437 (SC)*** held that "*that the persons are name-lenders and that the transactions on that count are bogus, there is no further material or information available with the income tax officer when he formed the belief that. There is no indication that the name-lending was in connection with loans involved in the assessment under consideration, therefore the belief of the income tax officer was based on no material............There is therefore no direct nexus or live link between the material which was before the income tax officer and the formation of belief of the income tax officer that the income has escaped assessment. In the absence of a direct nexus or live link, that will not constitute a relevant material for the purpose of re-opening of the assessment.*"

17. It further transpires that the impugned Assessment Order is passed on pure guess work without any relevant material which is contrary to mandates of Section 144 dealing with Best Judgment Assessment.

From a perusal of the findings recorded in the impugned Order it is clear that there is not even a scrap of material to hold that any accommodation entry have been provided to the Petitioner by Sri Ajay Kumar Sharma. There is no whisper that Sri Sharma in his statement has ever stated that he has provided any accommodation entry to the Petitioner. The findings in the impugned Order are based totally on guess-work and not on any

relevant materials hence, the impugned Order is passed contrary to mandates of Section 144 and is thus without authority of law.

In the case of ***Dhakeswari Cotton Mills Ltd. Vs. CIT reported in AIR 1955 SC 65***, a five-Judge Constitution Bench of the Hon'ble Supreme Court has held as under:

> **"8.** *As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income-tax Officer is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but there the agreement ends;* ***because it is equally clear in making the assessment under sub-section (3) of Section 23 of the Act, the Income-tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must he something more than bare suspicion to support the assessment under Section 23(3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by theSC70 Lahore High Court in the case of AIR 1944 Lah 353 (2) (FB) (A)*****."**
>
> **(emphasis added)**

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.

At this stage, it is also profitable to refer that judgment rendered in the case of ***Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan*** reported in ***2011 (273) ELT 345 (SC);*** wherein it has been held by the Hon'ble Apex Court that recording of reasons is necessary in both administrative and quasi-judicial orders affecting rights of parties prejudicially. Reasons give appearance that justice is being done, to prevent arbitrary exercise of power and to ensure that discretion has been exercised on relevant grounds and to facilitate judicial review and accountability and transparency. The reasons in support of decisions must be cogent, clear and succinct. Pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

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.

In the case of ***Oryx Fisheries Pvt. Ltd. Vs. UOI*** reported in ***(2010) 13 SCC 427***, it is held by the Hon'ble Supreme Court that the show cause notice should give the noticee a reasonable opportunity of making objections against proposed charges indicated in the notice and the person proceeded against must be told the charges against him so that he can make his defense and prove his innocence. In the entire course of the proceeding, at no stage the Petitioner is made aware of the provisions of law which have been contravened and/or under which the additions are sought to be made which is in gross violation of the principles of natural justice and the procedure adopted by the Department is not fair or proper.

In the case of ***New Delhi Television Ltd. Vs. DCIT reported in [2020] 424 ITR 607 (SC)***, it is held by the Hon'ble Apex Court that the Assessee must be put to notice of all the provisions on which the Department relies.

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.

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.

21. As a result, the instant writ application is allowed and pending I.A., if any, is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Jharkhand High Court
Dated/25 /01/ 2024
Amardeep/AFR