

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**WP No. 19516 of 2022**

*(M/S SPACE ENCLAVE PRIVATE LIMITED THROUGH ITS DIRECTOR SHRI RAJEEV SHRIVASTAVA Vs  
INCOME TAX DEPARTMENT AND OTHERS)*

WP/13065/2022, WP/19717/2022, WP/19718/2022, WP/20194/2022, WP/20195/2022,  
WP/20248/2022, WP/20285/2022, WP/20788/2022, WP/20790/2022, WP/21637/2022,  
WP/21640/2022, WP/24660/2022, WP/24661/2022, WP/24926/2022, WP/25081/2022,  
WP/28417/2022

**Dated : 01-03-2023**

Shri Yatish Kumar Laad, Advocate for the petitioner(WP No. 13065/2022, WP No. 24660/2022 & WP no. 24661/2022)

Shri P. M. Choudhary, Sr. Advocate with Shri Anand Prabhawalkar, & Shri Madhav Khandelwal, learned counsels for the petitioner (WP No. 19516/2022).

Shri V.N. Dubey, Advocate with Shri Ibrahim Kannodwala and Ms Nisha Lahoti, Advocates for the petitioners.(WP/19717/2022, WP/19718/2022, WP/20194/2022, WP/20195/2022, WP/20248/2022, WP/20285/2022, WP/20788/2022, WP/20790/2022, WP/21637/2022, WP/21640/2022 & WP/24926/2022, WP/25081/2022)

Shri Sujeet Deshmukh, Advocate for the petitioner (WP No. 28417/2022)

Ms Veena Mandlik, learned counsel for the Respondent .

The question of fact and law is common in all these writ petitions, hence, it is governed by this common order.

2. In this batch of petitions under Article 226 of the Constitution of India, the petitioners have assailed the impugned order passed u/S 148A(d) of the Income Tax Act(hereinafter referred to as 'the Act') as also the notice issued u/S 148 of the said Act for initiating re-

assessment proceedings u/S 147 of the Act for the Assessment Year 2013-14.

3. The learned counsel for Revenue has raised a preliminary objection with regard to maintainability of the writ petition in view of the alternative remedy available u/S 246 of the Act of filing an appeal. Since the objections have been raised in all the writ petitions mentioned hereinabove, facts of W.P. No. 19516/2022 are taken for the purpose of deciding the objection.

4. In these writ petitions, jurisdictional issue has been raised by the petitioners, therefore, in our *prima-facie* view, the question which is required to be considered is :

*“ Whether under what circumstances, a challenge can be entertained to an order passed u/S 148A(d) of the Act, as it stood amended? ”*

5. Since the jurisdictional issue has been raised before this Court, even assuming an alternative remedy u/S 246 of the Act of filing an appeal is available, it will not operate as an absolute bar for entertaining the writ petition as jurisdictional issues goes to the root of matter and it is one of the exceptional factors carved out by the Hon'ble Supreme Court for exercise of jurisdiction under Article 226 of the Constitution of India.

6. The learned counsel for the Revenue relying on the judgment of Apex Court in the case of **Union of India Vs. Ashish Agrawal reported in 2022 SCC Online SC 543** contended that new law relating to assessment shall operate and that all defence u/S 149 of the new law shall be available to the assessee. Therefore, the writ petitions are not maintainable and liable to be dismissed.

7. Heard, learned counsel for parties and perused the record.
8. Since the Assessing Officer while passing the order has given an interpretation and held against the petitioners, therefore, necessity arises for this Court to consider the correctness of such finding, which finding cannot be agitated before the Assessing Officer for re-assessment proceedings.
9. The Allahbad High Court in the case of **Rajeev Bansal Vs. Union of India & Others in Writ Tax No. 1086/2022** as well as the Gujarat High Court in the case of **Keenara Industries Pvt. Ltd Vs. Income Tax Officer in R/Special Civil Application No. 17321/2022** have entertained the writ petitions where alternative remedy was available. The Calcutta High Court in the case of **Aashiyana Housing Ltd. Vs. Union of India in Case No. APOT 185/2022** has held that “*the alternative remedy will not operate as an absolute bar for entertaining the writ petition as jurisdictional issue goes to the root of the matter. Therefore, we are of the view that appellant has made out a case for entertaining this appeal*” and had also stayed the further re-assessment proceedings.
10. The Apex Court in the case of **Red Chilli International Sales Vs. Income Tax Officer & Anr reported in 2023 Livelaw (SC) 16** has held that “*the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice u/S 148 of the Act. The provisions of reopening under the act of 1961 has undergone an amendment by the Finance Act, 2021 and consequently, the matter would require deeper*

*and indepth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petitions would not be maintainable in view of the alternative remedy. We do deem it open to examine this issue in the present case after having examined the notice u/S 148A(b), including annexure thereto, reply filed by the petitioner and the order under Section 148A(d) of the Income Tax Act, 1961.”*

**11.** Accordingly, this batch of writ petitions is *admitted* for final hearing.

**12.** In the meanwhile, there shall be interim stay of the order passed u/S 148A(d) of the Act as well as consequential notice u/S 148 of the Act, until further orders.

**13.** The respondent revenue is free to file detailed reply on merits, if not already filed.

Let a copy of this order be placed in all the connected writ petitions.

Certified copy as per rules.

**(S. A. DHARMADHIKARI)**

**JUDGE**

**01.03.2023**

**(PRAKASH CHANDRA GUPTA)**

**JUDGE**

**01.03.2023**