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(Judgment reserved on 05.08.2022)

(Judgment delivered on 11.08.2022)

Court No. - 03

Case :- WRIT TAX No. - 723 of 2022

Petitioner :- S R Cold Storage
Respondent :- Union Of India And 3 Others
Counsel for Petitioner :- Abhinav Mehrotra,Satya Vrata Mehrotra
Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani,J.
Hon'ble Jayant Banerji,J.

(**Per: Hon. Surya Prakash Kesarwani, J.**)

1. Heard Sri Abhinav Mehrotra, learned counsel for the petitioner, Sri S.P. Singh, learned Additional Solicitor General of India, assisted by Sri Anant Kuma Tiwari, learned counsel for the respondent no.1 and Sri Gaurav Mahajan, learned Senior Standing Counsel for the Income Tax Department-Respondent Nos. 2,3, and 4.

2. This writ petition has been filed praying for the following relief:

> ***"I.*** *To issue a writ, order or direction in the nature of CERTIORARI quashing the Impugned Notice issued under Section 148 of the Income Tax Act Dated 31.03.2021 [Annexure No. 2 (coll)] r/w Order Dt. 24.03.2022 [Annexure No. 9] issued by the Respondent No.2 and the connected proceedings for Reassessment of Income for A.Y. 2017-18.*
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> ***II.*** *To issue a writ, order or direction in the nature of Certiorari Quashing the Re-Assessment Order for the Assessment Year 2017-18, Dt. 31.03.2022 [Annexure No.13] which is made in gross violation of law and principles of Natural justice.*
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> ***III.*** *To issue a writ, order or direction in the nature of MANDAMUS declaring that Amendment caused to the Income Tax Act, 1961, vide Section 42 of the Finance Act, 2022, OMITTING Sub-Section 9 of Section 144B of the Income Tax Act, is wholly unconstitutional and bad in law.*
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> ***IV.*** *To issue a writ, order or direction in the nature of CERTIORARI quashing the Order Dt. 30.03.2021 issued under Section 151 of the Income Tax Act, by Respondent No.3 [Annexure No.2 (coll)] and the connected proceedings for Reassessment of Income for A.Y. 2017-18."*

3. By order dated 26.05.2022, the relief No.**III** has been deleted on the statement made by the petitioner's counsel that the Relief No.**III** is not being pressed.

4. This writ petition was heard at length on 18.05.2022, 26.05.2022, 30.05.2022, 05.07.2022, 14.07.2022 and 05.08.2022 and the judgment was reserved on 05.08.2022.

Submissions on behalf of the petitioner:-

5. Learned counsel for the petitioner submits that according to own admission of the respondents, information on the basis of which proceeding under Sections 147/148 of the Income Tax Act, 1961 was sought to be initiated was totally unfounded and yet the misleading counter affidavits have been filed by them. The assessee has been harassed continuously by the respondents. The National Faceless Assessment Center is total failure and insight portal of the department has been made to cause harassment to the assessees. The information collected on the insight portal of the department is not correct. Even reply of the assessee has not been considered at all by the Assessing Officer. In the re-assessment order, despite every material placed by the assessee before the Assessing Officer-respondent no.4, there is no whisper in the re-assessment order about consideration of the reply. The entire proceedings under Sections 147/148 of the Income Tax Act, 1961 against the assessee is wholly without jurisdiction and the result of arbitrary exercise of power and gross abuse of power. In fact the initation of the proceedings and passing of the impugned reassessment order, is a glaring example of conscious and deliberate abuse of the powers by the respondents in the name of faceless assessment procedure. Practically the assessees are not being heard at all and they are not in a position to place and demonstrate their stand and to support it by documentary evidences, as available with them. This Court passed a detailed order dated 26.05.2022 and yet the respondents-authorities have no fear of law and are still trying to justify their action while at the same time admitting the information to be not correct. By

order dated 30.05.2022 this Court required the respondents to show cause as to why exemplary cost may not be imposed upon them and yet no cause has been shown in their respective counter affidavits filed before this Court. He submits that the writ petition may be allowed with exemplary cost and accountability of the officer may be fixed so that there may be some check on arbitrary exercise of power and abuse of power by the respondents and transparency in the assessment process may be ensured.

6. Learned counsel for the petitioner has referred paragraph Nos. 6,7,8,9, and 10 of the counter affidavit dated 24.07.2022 filed on behalf of the respondent no.1 and submits that the averments made therein show complete collapse of the system in the Income Tax Department. The deponent of the counter affidavit dated 24.07.2022 filed on behalf of Union of India-respondent no.1 is the Principal Chief Commissioner and he does even know basic principles of assessment and quasi judicial function of the assessing officer. If the averments made in paragraph Nos. 6,7,8,9, and 10 of the counter affidavit filed on behalf of the respondent no.1 are accepted, then entire assessment process would be an empty formality. From the state of affairs as are prevailing presently as reflected from the paragraph Nos. 6,7,8,9, and 10 of the counter affidavit filed on behalf of the respondent no.1, it is evident that even basic principles of Rule of law have been given complete goby and assessing officer are under threat of the top level or higher authorities that if they want to do justice or want to discharge quasi judicial function, they may face disciplinary action.

Submissions on behalf of respondent Nos.2, 3 and 4:-

7. Sri Gaurav Mahajan, learned Senior Standing Counsel for the respondent Nos. 2,3 and 4-Income Tax Department submits that against the impugned reassessment order, appeal lie under Section 246A of the Income Tax Act, 1961 and therefore, writ petition may be dismissed on the ground of alternative remedy. He relied upon judgment dated 09.05.2022 in Writ Tax No. 202 of 2022 (Katiyar Cold Storage Private Limited Versus Union of

India and 2 others). He referred to paragraph nos. 4 and 5 of the counter affidavit dated 25.07.2022 filed on behalf of the respondent Nos. 2 and 3 and submits that in insight portal the **cash deposited by the petitioner was shown as Rs.13,67,24,000/- in the bank account of the Bank of Baroda, Kanpur,** which was 4 times of the actual cash deposit of Rs.3,41,81,000/- in Union Bank of India. In Insight portal it was shown as Rs. 13,67,24,000/-, which information was uploaded by the Deputy Director Income Tax (Inv.), Unit-III, Kanpur.

Submissions on behalf of Respondent No.1:-

8. Learned Additional Solicitor General of India submits that the information received and used against the assessee which was made basis to initiate reassessment proceeding and to pass the impugned reassessment order was the result of mistake on the part of the respondents. He referred to paragraph Nos.6,7,8,9 and 10 of the counter affidavit dated 24.07.2022 filed on behalf of the respondent no.1 and sworn by Shishir Jha, Principal Chief Commissioner of Income Tax, U.P (West) and Uttarakhand Region at Kanpur.

Discussion and Findings:-

9. Briefly stated facts of the present case are that the petitioner is a partnership firm engaged in the business of running a cold-storage. It filed its return of income on 17.10.2017 for the **Assessment Year 2017-18** declaring a total income of Rs.11,55,016/-. **The assessment of the petitioner was completed by the Assessing Officer under Section 143(3)** of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961') accepting the total income as declared by the petitioner. On 31.03.2021, the Assessing officer issued a notice to initiate proceedings under Section 147/148 of the Act, 1961 alleging that **an information has been received that the petitioner has deposited a sum of Rs.13,67,24,000/- in its bank account which is undisclosed income and escaped assessment to tax**. The

petitioner repeatedly requested the Assessing Officer to supply the reasons recorded but instead of supplying the reasons the respondent No.2 issued notice dated 11.11.2021 under Section 143(2) read with Section 147 of the Act, 1961 which was followed by his letter dated 18.11.2021. In paragraphs 4 and 6 in the aforesaid letter dated 18.11.2021, the respondent No.2 has stated as under:

> *"4.* ***Enquiries made by the A.O. as sequel to information collected/received****:*
>
> *Information uploaded by the DDIT(Inv.), Unit-3, Kanpur regarding unexplained cash deposits of Rs.13,67,24,000/- in this case, has been examined.*
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> *Necessary verification was made from the entire details available in the ITR, on the database of ITBA and ITD and therefore, I have sufficient form of 'Reason to believe' to frame my opinion. The Information available with this office has been analyzed and I have framed my opinion after due application of all the facts and mind.*
>
> *6.* ***Basis of forming reason to believe escapement of Income:***
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> *In light of the details available on records and on the basis of above facts and findings, I have reason to believe that income of Rs.13,67,24,000/- which is chargeable to tax, has escaped the assessment. Thus, I have reasons to believe that this is a fit case for reopening and there is an escapement of income within the meaning of Explanation 2(a) to Section 147 of the Income Tax Act, 1961."*

10. The petitioner filed its detailed objections before the respondent No.2 vide letter dated 26.11.2021 in which it submitted that the reasons recorded are neither correct nor proper nor honest which may give jurisdiction to the Assessing Officer to issue notice under Section 148 of the Act, 1961. However, without disposing of the objection of the petitioner, the respondent No.4 (National Faceless Assessment Centre, New Delhi) issued a notice under Section 142(1) of the Act, 1961. Subsequently, the objection dated 26.11.2021 filed by the petitioner was rejected by the respondent No.4 by order dated 24.03.2022 and a show cause notice/ draft assessment order dated 25.03.2022 was issued requiring the petitioner as to why addition of Rs.13,67,24,000/- be not made. **Paragraph 4.1 and 5 of the show cause notice/ draft assessment order, is reproduceced below**:

> *"4.1 As per record / information available with the Department it is seen that during the financial year 2016-17 relevant to A.Y. 2017-18* ***there are cash deposits of Rs.13,67,24,000/- made by the assessee firm at Bank of Baroda, Kanpur,*** *which is not commensurate with turnover and return of income filed by*

the assessee, firm. Hence cash deposits of Rs. 13,67,24,000/- made by the assessee is added to the total income of the assessee as income u/s. 68 of the Income lax Act, 1961 as unexplained cash credit. Penalty u/s 271AAC(1) of the I.T. Act, 1961 is initiated in respect of certain income.

[Addition: Rs. 13,67,24,000/-]

5. Subject to the above discussion, total income of the assessee is computed as under:

Total Income declared as per return	*:*	*Rs. 11,55,020*
As discussed in para 4.1	*:*	*Rs.* ***13,67,24,000/-***
Total Assessed Income	*:*	***Rs. 13,78,79,020/-****"*

11. The petitioner submitted a reply to the aforesaid show cause notice dated 25.03.2022. **In paragraphs 2, 3 and 4 of his reply, the petitioner has stated as under:**

"2.That regards cash deposited in bank amounting to Rs. 13,67,24,000/- in Bank of Baroda during the year under consideration, we would like to inform you that ***we have not deposited any amount in cash in Bank of Baroda. The allegation levied by your honour regarding deposit of cash with Bank of Baroda is totally baseless and against the facts hence all the proceedings on the basis of this issue are illegal, unconstitutional and unjustified.***

3. That ***the assesse has deposited following sums in cash*** *with other banks:*

(i)	*Union Bank of India*	*Rs. 3,41,81,000/-*
(ii)	*State Bank of India*	*Rs. 24,000/-*

The figure of ***deposit of Rs. 3,41,81,000/- is shown in 26AS and insight portal of the department. 26AS is attached as ANNEXURE-F. Hence the story of deposit of Rs.13,67,24,000/-*** *is baseless and incorrect and all the proceedings on the basis of this information are liable to be quashed.*

Datewise details of cash deposited with Union Bank of India is attached as ANNEXURE-G.

In this connection ***it is humbly requested that the source and details of cash deposit as per insight postal as referred to in the reasons recorded for initiating the proceedings U/S 148 should be provided to the assesse along with the documentary evidence.***

4. That during the year under consideration the assesse has received following cash from different sources:

(i)	*Storage Rent*	*Rs. 1,51,35,495/-*
(ii)	*Refund of loan from farmers*	*Rs. 3,15,75,650/-*
(iii)	*Interest on farmers loan*	*Rs. 18,94,539/-*
	TOTAL	***Rs. 4,86,05,684/-***

Against the total receipt of cash amounting to Rs.4,86,05,684/- the assesse has deposited an amount of Rs.3,42,05,000/- only in different bank accounts.*"*

12. Thereafter, **without any whisper as to consideration of the reply** of the petitioner and the documentary evidences filed along with the aforesaid reply, **the respondent No.4 passed the impunged reassessment order dated 31.03.2022** under Section 147 read with Section 144B of the Act, 1961 for the Assessment Year 2017-18, **as under**:-

"Return of Income for the Assessment Year 2017-18 was filed by the assessee, firm on 17.10.2017 u/s. 139 declaring total income of Rs. 11,55,016/-

2. Subsequently, the case was re-opened after obtaining prior approval of competent authority by issuing notice u/s.148 dated 31.03.2021 which was duly served after recording reasons to believe that Income had escaped assessment on account of non-disclosure of fully and truly all material facts available on record.

3. In response, the assessee filed return of income u/s. 148 on 28.04.2021 declaring total income of Rs. 11,55,020/-. Subsequently notice u/s. 143(2) and 142(1) of the Income-tax Act, 1961 is issued and duly served upon the assessee.

4. The assessee furnished details and submitted explanation which are considered.

4. FACTS OF THE CASE:

4.1 As per record / information available with the Department it is seen that during the financial year 2016-17 relevant to A.Y. 2017-18 there are cash deposits of Rs13,67,24,000/- made by the assessee firm at Bank of Baroda, Kanpur, which is not commensurate with turnover and return of income filed by the assessee, firm. Hence cash deposits of Rs13,67,24,000/- made by the assessee is added to the total income of the assessee as income u/s. 68 of the Income Tax Act, 1961 as unexplained cash credit.

Penalty u/s 271AAC(1) of the I.T. Act, 1961 is initiated in respect of certain income.

[Addition: Rs. 13,67,24,000/-]

5. Subject to the above discussion, total income of the assessee is computed as under:

Total Income declared as per return	*:*	*Rs. 11,55,020*
As discussed in para 4.1	*:*	*Rs.* ***13,67,24,000/-***
Total Assessed Income	*:*	***Rs. 13,78,79,020/-***

6. Subject to the above, the total income of the assessee for the assessment year 2017-18 and tax liability thereon are computed on ITBA module. Copy of calculation sheet and notice of demand are annexed herewith forms part of this order.

Penalty u/s 271AAC of the I.T. Act, 1961 is initiated for penalty in respect of certain income.

7. The Assessment is hereby made u/s. 147 read with Sec. 144B of the Income-tax Act, 1961 as above and the sum payable or refund of any amount on the basis of the assessment is determined as per the notice of demand.

Copy of Assessment Order along with Income Tax Computation sheet from ITBA module, Penalty Notices and Notice of Demand u/s. 156 of the Income-tax Act, 1961 being issued to the assessee."

13. Aggrieved with notice under Section 148 dated 31.03.2021, the order dated 24.03.2022 rejecting the objection and the reassessment order dated 31.03.2022, the petitioner has filed the present writ petition on the ground that these are wholly without jurisdiction.

14. It is undisputed that the figure of cash deposit by the petitioner in its bank account with Union Bank of India is shown in Form 26AS to be Rs.3,41,81,000/-. It had made cash deposit of Rs.24,000/- in its bank account with State Bank of India. Thus, total cash deposit made by the petitioner in its bank-accounts was Rs.3,42,05,000/-. Along with his reply dated 25.03.2022, **the petitioner has filed various documents as Annexures A, B, C, D, E, F, G and H including its copy of Form 26AS, details of cash deposit in Union Bank of India and copy of statement of bank account with Bank of Baroda etc. for the Financial Year 2016-17**. However, perusal of the aforequoted impugned reassessment order dated 31.03.2022 and rejection of objection of the petitioner by order dated 24.03.2022 shows that there is not a word of consideration of the reply or objections submitted by the petitioner.

15. On these facts, this Court passed a detailed order dated 26.05.2022. Paragraphs 7 and 8 of the **order of this Court dated 26.05.2022** is reproduced below:

"7. From the show cause notice and the reply to it by the petitioner, it prima facie appears that the assessee has completely denied deposit of any cash in Bank of Baroda. He has disclosed information about cash deposit in his bank account in Union Bank of India and State Bank of India. ***Prima facie, it appears that the respondent No.4 has very casually made addition without any discussion or without reference to any evidence in respect of the alleged cash deposit of of Rs.13,67,24,000/- of the assessee in his bank account in Bank of Baroda.***

8.Learned ASGI and learned counsel for the respondent Nos.2, 3 and 4 pray for and are granted three days time to obtain instructions. ***The petitioner shall also***

file a supplementary affidavit annexing therewith copy of his bank account in Bank of Baroda for the Financial Year 2016-17.*"*

16. The aforesaid order passed by this Court dated 26.05.2022 was followed by order dated 30.05.2022, as under:-

"Heard Sri Abhinav Mehrotra, learned counsel for the petitioner, Sri S.P. Singh, learned Additional Solicitor General of India, learned counsel for the respondent no.1 and Sri Manu Ghildiyal, learned counsel for the respondent nos. 2, 3 and 4.
Learned counsel for the petitioner has filed today supplementary affidavit, which is taken on record.
This case prima facie shows high handedness and arbitrary exercises of powers by the respondents including the National Faceless Assessment Centre who are not ready to adhere to the basic principles of law and justice. An addition of Rs.13,67,24,000/- has been made in the income of the petitioner for the A.Y. 2017-18 without there being any material disclosing escapement of income by the petitioner. The petitioner has been continuously bringing it to the notice of the respondents that he has not deposited any amount in his bank account i.e. Bank of Baroda and also filed copy of the bank account, a copy of which has also been filed along with supplementary affidavit; and yet the respondents have made addition of Rs. 13,67,24,000/-.
Basic principles of rule of law and justice has been deliberately denied to the assessee by the respondents. *This prima facie shows conscious attempt to cause serious harassment to the assessee for reasons best known to the respondents.*
We are frequently coming across orders passed by the respondents including the National Faceless Assessment Centre which show that the respondents have made up their mind to act arbitrarily and not to adhere to the settled principles of law including natural justice and are passing reassessment orders in a whimsical manner. *Such prevailing situation causing serious prejudice to the assessees and flagrant violation of basic principles of law by the respondents, needs to be arrested at the earliest.*
Under the circumstances ***we direct the respondents to file a counter affidavit and show cause as to why exemplary cost*** *in view of the law laid down by the Hon'ble Supreme Court in the case of* ***Assistant Commissioner (ST) & Ors. vs. M/s Satyam Shivam Papers Pvt. Limited & Anr. (Special Leave to Appeal No.21132 of 2021, decided on 12.01.2022****, be not imposed. The respondent no.1 shall also file counter affidavit by means of his personal affidavit within three weeks. All the respondents, besides submitting reply to paragraph of the writ petition, shall also submit reply within one week with respect to the facts noted and the observations made in the order dated 26.05.2022, passed by this Court.*
Put up as a fresh case for further hearing at 10 AM. on 05.07.2022.
Considering the facts and circumstances, as an interim measure, it is provided that no coercive action shall be taken against the petitioner pursuant to the impugned reassessment order/demand, till the next date fixed.
This order shall be informed by learned counsels to the respondents within 48 hours, for compliance."

17. **Despite the aforequoted two orders dated 26.05.2022 and 30.05.2022, the respondents have merely filed a short-counter affidavit and not a detailed counter affiadvit. Therefore, on 14.07.2022, this Court passed a detailed order granting ten days and no more time to the respondent Nos.1, 2, 3 and 4 to file counter affidavit and further**

directed the respondent No.1 to state the action it proposes to take against the respondent Nos.2, 3 and 4 in case, he finds that there was absolutely no valid material before the Assessing Officer for reason to believe that income of the petitioner has escaped assessment to tax. **Paragraphs 5 to 13 of the order dated 14.07.2022** passed by this Court, **is reproduced below**:

> *"5. The sole ground of the respondent nos. 2,3 and 4 for initiation of the proceeding under Sections 148 and for passing order under section 147 of the Income Tax Act, 1961 making addition in income of Rs. 13,67,24,000/- is that the petitioner has deposited cash in the Bank account with Bank of Baroda, Shivrajpur Branch, Kanpur. Despite clear denial of the petitioner that no such cash deposit was made by him in the aforesaid Bank, the respondents have not even taken pain to examine his stand and in a most arbitrary and illegal manner, the reassessment order dated 31.03.2022 was passed making addition to Rs. 13,67,24,000/- in the income of the petitioner. The petitioner has filed copy of his Bank account with the Bank of Baroda, Shivrajpur Branch, Kanpur for the F.Y. 2016-17 relevant to the A.Y. 2017-18 which shows that there is no such cash deposit in the aforesaid Bank. Copy of the bank account has already been filed along with certificate of Chartered Accountant with supplementary affidavit dated 30.05.2022, yet the respondents have neither replied the contents of the writ petition nor the contents of the supplementary affidavit.*
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> *6. A short counter affidavit has been filed by the respondents. Even in the short counter affidavit, the respondents have not filed any evidences which may even indicate remotely that any cash was deposit by the petitioner in his Bank account with Bank of Baroda, Shivrajpur Branch, Kanpur. Thus, the initiation of re assessment proceedings and the impugned assessment order are not only without jurisdiction and perverse but also, the impugned reassessment order and re assessment proceeding violate fundamental right of the petitioner guaranteed under Article 14 and 21 of the Constitution of India.*
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> *7. Since despite time granted for the last more than one month, no counter affidavit has been filed by the respondent nos. 2,3 and 4, therefore, we direct the respondent no.1 to file counter affidavit by means of his personal affidavit along with copies of the evidences of cash deposit of Rs.13,67,24,000/- by the petitioner in his bank account. The respondent no.1. shall also clearly state in his affidavit justification, if any, for initiation of the reassessment proceedings against the petitioner under the facts and circumstances of the case. Respondent No.1 shall further state the action he proposes to take against the respondent Nos. 2, 3 and 4 in case he finds that there was absolutely no valid material before the Assessing Officer for reason to believe that income of the petitioner has escaped assessment to tax.*
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> *8. The respondent Nos.2, 3 and 4 shall also file a detailed counter affidavit annexing therewith the evidence of cash deposit by the petitioner in his bank account.*
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> *9. The counter affidavit shall be filed by the respondent Nos.1, 2, 3 and 4, as directed above, within ten days and no more time.*
>
> *10. On the next date fixed, the respondents shall also produce records before this court relating to the petitioner showing cash deposit of Rs. 13,67,24,000/- by the petitioner in his bank account.*
>
> *11. In the event the counter affidavit is not filed, the respondent Nos.2 and 3 personally and the respondent No.4 through a responsible officer, shall remain present before this Court.*
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> *12. P**ut up on 26.07.2022 for further hearing at 10:00 A.M.***

13. Interim order shall continue till the next date fixed."

18. **Thereafter, the respondent No.1 has filed a notarized counter affidavit dated 24.07.2022** sworn by Shishir Jha, Principal Chief Commissioner of Income Tax, U.P. (West) and Uttarkhand Region at Kanpur. Contents of paragraph-1 sworn on personal knowledge and contents of paragraphs-3, 4, 5, 6, 7, 8, 10 and 13 sworn on the basis of records, are reproduced below:

> *"3. That in light of the above it is respectfully submitted that the amount of* ***Rs.13,67,24,000/-*** *was reported in Insight Portal of the Department, which uses Data Analytics to collate information gathered in the data- base using various algorithms,* ***and this information was inter alia the basis for reopening the assessment, issuance of notice u/s 148, and re-assessment of the case of the petitioner for Assessment Year 2017-18.***
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> *4. That it is further most respectfully submitted that in the case of the petitioner, the amount showing in Insight portal was Rs.13,67,24,000/, which was reported as "Cash Deposits in one or more accounts (other than a current accounts or time deposit) of a person" and does not specify the Bank name. This clearly indicated that cash deposits had been detected by the algorithm in the various accounts of the petitioner, and other linked entities, totalling the aforesaid amount.*
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> *5. That it is further most respectfully submitted that the amount of Rs.3,41,81,000/- appears to have been taken as Rs.13,67,24,000/-, which is exactly four times the said amount, as there is reporting error in the PAN of the account relations, the aggregation for the same value of Rs.3,41,81,000/- is happening multiple times because the account relations are having same reported PAN.*
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> *6. That it is further most respectfully submitted that* ***this possibility was not known to any officers of the Department and they proceeded in good faith and without any malafide intention or otherwise that the data reported on Insight Portal was correct. This has now been detected subsequent to the observations made by this Hon'ble Court in its order dated 14.07.2022 by the Directorate of Income Tax,*** *Systems, New Delhi and necessary and immediate steps have been initiated to rectify the mistake by refining the data further.*
>
> *7. That it is most respectfully submitted that the officers of the* ***Department are bound by the information provided on the data-base / portal of the Department and it is not for them to question its authenticity and veracity.*** *In case they ignore this data, there will be initiation of revision action u/s 263 of the Act by the Principal Commissioner of Income Tax, either on own motion or based on internal audit of the Department, or external audit by Comptroller & Auditor General of India who subjects each scrutiny assessment to its audit.*

8. That it is further most respectfully submitted that the ***officers found to omit or ignore such data are also liable to explain the reasons and may be subjected to Departmental action.*** *The Parliamentary Committees on Accounts, and the Department-Related Parliamentary Committee on Finance, keep raising the issue of action taken against the* ***officers found to commit omissions detected by receipt audits conducted by C&AG, and monitor the action taken by the Government.***

10. That it is further most respectfully submitted that the Faceless Assessment Scheme and the Faceless Appeal Scheme introduced recently is in its evolution stage and all possible steps, checks and balances are being put in place so that the situation faced by the present petitioner is not repeated and the deponent with all humility at his command submits that the higher authorities and the Board are taking all remedial measures / steps so that similar situation does not reoccur and a mechanism is being put in place in consultation with all the stake holders.

13 That on the one hand the petitioner assessee has shown receipts at Rs. 1,73,09,104/- in his Profit and Loss Account while on the other hand the petitioner assessee in response to the Show Cause Notice dated 25.03.2022 has admitted cash deposits of Rs. 3,41,81,000/ which reflects in Form 26-AS of the petitioner also. ***Thus, this admission of the petitioner reflects that there was escapement of income to the tune of Rs. 1,68,71,896/- which was required to be examined.****"*

19. A counter affidavit on behalf of the respondent Nos.2 and 3 sworn by Arun Kumar Bhatia, Joint Commissioner of Income Tax, Range-1(1), Kanpur dated 25.07.2022 has been filed in which in paragraphs 10, 28 and 31, he stated on the basis of records, as under:-

"10. That in order to examine the issue of cash deposit of Rs. 13,67,24,000/- in the bank account maintained with ***Bank of Baroda, Kanpur, the JDIT*** *(Inv.), Unit-III, Kanpur,* ***from where the information pertaining to the said cash deposit was first originated****, was requested to furnish detailed/complete investigation report in the matter. The JDIT (Inv.), Unit-1, Kanpur vide letter dated 31.05.2022 has submitted his report in this regard. As per report of the JDIT (Inv.),* ***a Tax Evasion Petition in this case was received which was allotted a Unique Identification Number after categorization as per guidelines of the CBDT. Subsequently, enquiries were conducted in this case after obtaining approval from the prescribed authority. The Departmental database in this case was perused and from the information profile of the assessee [SFT-04] it was found that there are cash deposits amounting to Rs. 13,67,24,000/- [other than in current account] in F/Y - 2016-17 relevant to AY 2017-18.*** *A photocopy of the report submitted by the Jt.DIT (Inv.), Unit-III, Kanpur is enclosed herewith as Annexure CA-2.*

28. That the contents of paragraph nos. 14, 15, 16, 17 and 18 of the Writ Petition in the manner as stated therein are not admitted and hence denied. In reply it is respectfully submitted that the proceedings u/s 147 of the Act were initiated in the instant case on the basis of the information available on Insight Portal of the department under High Risk CRIU/VRU uploaded by

DDIT (Inv.) Unit-III, Kanpur after obtaining prior approval of the competent authority u/s 151 of the Act and accordingly notice u/s 148 of the Act, was issued to the petitioner on 31.03.2021 through e-mail/ by speed post on same day vide speed post no. EUO72169125IN. ***The information uploaded on the Insight Portal is based on the inquiry conducted by the then Deputy Director of Income Tax (Inv.), Unit-3, Kanpur now Joint Director of Income Tax (Inv), Unit-3, Kanpur after getting prior approval of the Joint Director of Income Tax (Inv.) on two separate Tax Evasion Petitions*** *bearing Unique Identification Number (UIN): 180980823-B and 18057074-B respectively. Thus the proceedings u/s 147 was initiated after recording reasonable belief.*

31.That in reply to the contents of paragraph no. 26 of the Writ Petition in the manner as stated therein, it is respectfully submitted that the cash deposit in Bank was supported by the data of Central Information Branch (CIB), Income Tax Department. Normally, the assessment is done to check and ascertain assessee's income after proper verification and enquiries and after obtaining details/documents/ clarifications from the assessee. However in the present case the assessee failed to produce the evidences and did not cooperate in providing or making available the details called for since December, 2021.

It is further most respectfully submitted that it transpired that the assessee had cash deposit of Rs.13,67,24,000/- during the financial year 2016-17 relevant to A.Y. 2017-18 which is not commensurate with the gross receipts shown by the petitioner in its return of Income [ITR-5] filed for A.Y. 2017-18...Thereafter, the assessee/petitioner was asked to explain the source of cash deposit of Rs.13,67,24,000/- and the same was added to the income of the assessee under section 68 of the Act, as unexplained cash credits vide order passed u/s.147 r.w.s. 144B of the Act by the NaFAC."

20. In the aforesaid paragraph-10 of the counter affidavit, the respondent Nos.2 and 3 has admitted that information of cash deposit of Rs.13,67,24,000/- was with respect to bank account of the petitioner with Bank of Baroda which first originated from the Joint Director of Income Tax (Inv.) Unit-III, Kanpur who, on request, submitted a verification report vide letter dated 31.05.2022 informing the said cash deposit. In paragrphs 5 and 6 of his counter affidavit, the respondent No.1 has admitted that the information of cash deposit of Rs.13,67,24,000/- is incorrect and the correct figure is Rs.3,41,81,000/-. He stated in paragraph-13 of the counter affidavit that cash deposit of Rs.3,41,81,000/- is reflected in Form 26AS of the petitioner. Perusal of the aforesaid Form 26AS appearing at page-124 of the writ petition, shows that cash deposit by the petitioner is Rs.3,41,81,000/- in the Union Bank of India. **Thus, as per own admitted case of the respondents, the cash deposit of Rs.3,41,81,000/- was made by the**

petitioner in its bank account with Union Bank of India and there was absolutely no cash deposit by the petitioner in Bank of Baroda whereas the entire reassessment proceedings under Section 147/148 of the Act, 1961 against the petitioner, was initiated on the alleged information of cash deposit of Rs.13,67,24,000/- by the petitioner in its bank account with Bank of Baroda. Thus, the reason to believe for initiating proceedings under Section 147/148 was totally unfounded and false. In fact initiation of proceedings and passing the impugned reassessment order dated 31.03.2022 is a glaring example of highhandedness, arbitrary actions and abuse of power by the respondents on the one hand and on the other hand, flagrant violation of principles of natural justice by them.

21. In **WRIT TAX No. - 518 of 2022 (Uphill Farms Private Limited vs. Union Of India And Another), decided on 25.04.2022**, this Court referred various judgments of Hon'ble Supreme Court and summarized the law of limitations and exercise of powers by the Income Tax authorities under Section 147/148 of the Act, 1961 in paragraph-15 of the judgment as under:

> *"(a) The assessing officer under Section 147 of the Act, 1961 has the power to re-assess any income which escaped assessment to tax for any assessment year subject to the provisions of Sections 148 to 153. The power to reassess under* ***Section 147 of the Act, 1961 has been incorporated so as to empower the Assessing Authorities to re-assess any income on the ground which escaped his knowledge.***
>
> *(b) Reassessment of income under Section 147 of the Act, 1961 cannot be made on* ***change of opinion****. The words "change of opinion" implies formulation of opinion and then a change thereof. If the Assessing Officer has earlier made assessment for the same Assessment Year expressing an opinion of a matter either expressly or by necessary implication then on the same matter, a reassessment proceedings for the alleged escapement of income from assessment to tax, cannot be initiated as it would be a case of "change of opinion". If the assessment order is non-speaking, cryptic or perfunctory in nature, then it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings. If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it would tantamount to "change of opinion". If the assessing Authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous; it is not a valid reason under the law for re-assessment.*
>
> *(c) The words "****reason to believe****" suggest that the* ***belief must be bona fide and must be that of an honest and reasonable person based upon reasonable***

grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. His vague feeling that there might have been some escapement of income from assessment is not sufficient. *The reasons for the formation of the belief* ***must be based on tangible material*** *and must be based on 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 assessment year.* ***In other words, such material on which the assessing Authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. If the grounds for formation of "reason to believe" are of an extraneous character, the same would not warrant initiation of proceedings under Section 147 of the Act, 1961.***

(d) If, there are, in fact, some reasonable grounds for the assessing authority to believe that the whole or any part of income of the assessee has escaped assessment, it can take action under Section 147 of the Act, 1961. If the grounds taken for initiating reassessment proceedings under Section 147 of the Act, 1961 are relevant and have a nexus with the formation of belief regarding escaped assessment, the assessing authority would be clothed with jurisdiction to take action under the section. Whether the grounds are adequate or not is not a matter which would be gone into by the High Court for the sufficiency of the grounds which induced the assessing authority to act is not a justiciable issue. What can be challenged is the existence of the belief but not the sufficiency of reasons for the belief. The belief must be held in good faith and should not be a mere pretence.

(e) The question as to whether the material on the basis of which the assessing authority has formed the belief for "reason to believe" is sufficient, for making assessment or reassessment under Section 47 of the Act, 1961, would be gone into after the notice is issued to the assessee and he is heard or given an opportunity for that purpose. The assessing authority would then decide the matter in the light of material already in his possession as well as fresh material procured as a result of inquiry, if any, which may be considered necessary."

(Emphasis supplied by us)

22. On the facts admitted by the respondents in their counter affidavit as quoted above and for the reasons given in preceding paragraphs of this judgment, the impugned notice under Section 148 and the reassessment order under Section 147 of the Act, 1961 is completely in conflict with the aforequoted principles, powers and limitations on exercise of powers under Section 147/148 by Income Tax Officers/ Authorities under the Act, 1961. The impugned reassessment order has been passed by the respondent No.4 in complete breach of principles of natural justice.

Natural Justice:-

23. In paragraphs 27 and 28 of the writ petition, the petitioner has specifically stated that it exercised its right to be heard in the matter by

requesting for a hearing through video conferencing within the time stipulated by the respondents-authorities yet even opportunity of hearing through video conferencing was denied. In support of its submissions, it also filed a screen shot asking for hearing through video conferencing which has been annexed as Annexure 12 of the writ petition. **The respondent No.4 has not denied the contents of paragraphs 27 and 28 while replying it in paragraph 15 of his counter affidavit dated 23.07.2022.** The reasons assigned by him is that the limitation was going to expire on 31.03.2022. **The show cause notice was issued by the respondent No.4 on 25.03.2022, the assessee submitted its reply on 25.03.2022 itself and requested for hearing on 26.03.2022. Therefore, by no stretch of imagination, the respondent No.4 can be permitted to take the stand that it denied the opportunity of personal hearing through video conferencing for reason that the limitation was going on to expire on 31.03.2022.** In fact, the approach of the respondent No.4 itself proves arbitrary exercise of powers and denial of principles of natural justice by him.

24. In the case of **Uma Nath Pandey & Ors. vs State of U.P.& Anr. [(2009) 12 SCC page 40 para 3]**, Hon'ble Supreme Court noted the concept of natural justice and observed that it is another name of common sense justice. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when **a quasi-judicial body** embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue.

25. **The first** and foremost principle of natural justice is commonly known as **audi alteram partem rule**. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. **In the absence of a notice of the kind and reasonable opportunity, the order passed becomes wholly vitiated.** Thus, it is but essential that a party should be put on notice of the

case before any adverse order is passed against him. It is an approved rule of fair play.

26. The principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.

27. Expression **`civil consequences'** encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

28. **Natural justice** has been variously defined by different Judges, for instance a duty to act fairly, the substantial requirements of justice, the natural sense of what is right and wrong, fundamental justice and fair-play in action. Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The **first rule** is `nemo judex in causa sua' or `nemo debet esse judex in propria causa sua' that is no man shall be a judge in his own cause. The **second rule** is `audi alteram partem', that is, `hear the other side'. **A corollary has been deduced from the above two rules and particularly the audi alteram partem rule i.e. 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' or in other words, as it is now expressed, `justice should not only be done but should manifestly be seen to be done'. Natural justice is the essence of fair adjudication, deeply rooted in tradition and**

conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

Order without valid reasons - unsustainable:-

29. In the case of **M/s. Hindustan Steels Ltd. Rourkela Vs. A.K. Roy and others, (1969) 3 SCC 513**, Hon'ble Supreme Court held in para 16 as under :

> *"12. On a consideration of all the circumstances, the present case, in our view, was one such case. The Tribunal exercised its discretion mechanically without weighing the circumstances of the case. That was no exercise of discretion -at all. There is ample authority to the effect that* ***if a statutory tribunal exercises its discretion on the basis of irrelevant considerations or without regard to relevant considerations, certiorari may properly issue to quash its order.*** *[See S.A. de Smith, Judicial Review of Administrative Action, (2nd ed.) 324-325]. One such relevant consideration, the disregard of which would render its order amenable to interference, would be the well- settled principles laid down in decisions binding on the tribunal to whom the discretion is entrusted. The refusal by the High Court to interfere was equally mechanical and amounted to refusal to exercise, its jurisdiction. Its order, therefore, becomes liable to interference."*
>
> *(Emphasis supplied by us)*

30. In the case of **Omar Salay Mohd. Sait Vs. Commissioner of Income Tax, Madras, AIR 1959 SC 1238**, Hon'ble Supreme Court held in para 42 as under :

> *"42. We are aware that the Income-tax Appellate Tribunal is a fact finding Tribunal and if it arrives at its own conclusions of fact after due consideration of the evidence before it this court will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were was the reached on the evidence on record before it. The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicions, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this court."*

31. In the case of **Udhav Das Kewat Ram Vs. CIT 1967 (66) ITR 462**, Hon'ble Supreme Court held that Tribunal must consider with due care all material facts and record its findings on all contentions raised before it and the relevant law.

32. **An order without valid reasons cannot be sustained.** To give reasons is the rule of natural justice. Highlighting this rule, Hon'ble Supreme Court held in the case of **The Secretary & Curator, Victoria Memorial v. Howrah Ganatantrik Nagrik Samity and ors., JT 2010(2)SC 566** para 31 to 33 as under :

> *"31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it.* ***Thus, while deciding an issue, the Court is bound to give reasons for its conclusion.*** *It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice.* ***The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind.*** *" " [Vide State of Orissa Vs. Dhaniram Luhar (JT 2004(2) SC 172 and State of Rajasthan Vs. Sohan Lal & Ors. JT 2004 (5) SCC 338:2004 (5) SCC 573].*
>
> *32.* ***Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless.*** *Reasons substitute subjectivity by objectivity.* ***Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum.*** *[Vide Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faij Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].*
>
> *33.Thus, it is evident that the* ***recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing.*** *It ensures transparency and fairness in decision making. The person 23 who is adversely affected may know, as why his application has been rejected."*

(Emphasis supplied by us)

33. Non recording of reasons, non consideration of admissible evidence or consideration of inadmissible evidence renders the order to be unsustainable. Hon'ble Supreme Court in the case of **Chandana Impex Pvt.**

Ltd. Vs. Commissioner of Customs, New Delhi , 2011(269)E.L.T. 433 (S.C.)(para 8) held as under :

> *"8. Having bestowed our anxious consideration on the facts at hand, we are of the opinion that there is some merit in the submission of learned counsel for the appellant that while dealing with an appeal under Section 130 of the Act, the High Court should have examined each question formulated in the appeal with reference to the material taken into consideration by the Tribunal in support of its finding thereon and given its reasons for holding that question is not a substantial question of law. It needs to be emphasised that* ***every litigant, who approaches the court for relief is entitled to know the reason for acceptance or rejection of his prayer,*** *particularly when either of the parties to the lis has a right of further appeal. Unless the litigant is made aware of the reasons which weighed with the court in denying him the relief prayed for, the remedy of appeal will not be meaningful. It is that reasoning, which can be subjected to examination at the higher forums. In State of Orissa Vs. Dhaniram Luhar2 this Court, while reiterating that reason is the heart beat of every conclusion and without the same, it becomes lifeless, observed thus :*
> *"8.....****Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court.*** *Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;....."*
>
> *(Emphasis supplied by us)*

34. In the present set of facts, we find that despite that material disclosed by the assessee before the respondent Nos.2 and 4 and despite specific stand taken by him that he has not deposited any cash amount in his bank account with Bank of Baroda what to say of Rs.13,67,24,000/-, the aforesaid respondents have neither considered the objection/ reply nor recorded any reasons for its rejection. Thus, right to reason which is an indispensable part of a judicial system, has been deliberately violated by the respondents.

<u>Objection as to alternative remedy of appeal:-</u>

35. Objection raised by the learned senior standing counsel for the respondent Nos.2, 3 and 4 regarding maintainability of the writ petition on the ground of alternative remedy, is not tenable on the facts of the present case. In the present set of facts, in the absence of any valid information for invoking jurisdiction under Section 147/ 148 of the Act, 1961, the **entire proceedings are without jurisdiction**.

Alternative remedy – when not bar:-

36. Article 226 of the Constitution of India confers very vide powers on High Courts to issue writs but this power is discretionary and the High Court may refuse to exercise the discretion if it is satisfied that the aggrieved person has adequate or suitable remedy elsewhere. It is a rule of discretion and not rule of compulsion or the rule of law. Even though there may be an alternative remedy, yet the High Court may entertain a writ petition depending upon the facts of each case. It is neither possible nor desirable to lay down inflexible rule to be applied rigidly for entertaining a writ petition. Some exceptions to the rule of alternative remedy as settled by Hon'ble Supreme Court are as under:-

> *"(i) Where there is complete lack of jurisdiction in the officer or authority to take the action or to pass the order impugned.*
> *(ii) Where vires of an Act, Rules, Notification or any of its provisions has been challenged.*
> *(iii) Where an order prejudicial to the writ petitioner has been passed in violation of principles of natural justice.*
> *(iv) Where enforcement of any fundamental right is sought by the petitioner.*
> *(v) Where procedure required for decision has not been adopted.*
> *(vi) Where Tax is levied without authority of law.*
> *(vii) Where decision is an abuse of process of law.*
> *(viii) Where palpable injustice shall be caused to the petitioner, if he is forced to adopt remedies under the statute for enforcement of any fundamental rights guaranteed under the Constitution of India.*
> *(ix) Where a decision or policy decision has already been taken by the Government rendering the remedy of appeal to be an empty formality or futile attempt.*
> *(x) Where there is no factual dispute but merely a pure question of law or interpretation is involved."*

37. The above principles are supported by law laid down by Hon'ble Supreme Court in the case of **Himmatlal Harilal Mehta v. State of Madhya Pradesh, AIR 1954 SC 403, Collector of Customs v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506, Collector Of Customs & Excise ,Cochin & Ors. vs A. S. Bava, AIR 1968 SC 13, Dr. Smt. Kuntesh Gupta vs Management Of Hindu Kanya Mahavidyalaya, L.K. Verma v. HMT Ltd. and anr., (2006) 2 SCC 269, Paras 13 and 20, M.P. State Agro Industries Development Corpn. Ltd. & Anr. vs. Jahan Khan (2007) 10 SCC 88 para 12, Dhampur Sugar Mills Ltd. v. State of U.P. and others**

(2007) 8 SCC 338, BCPP Mazdoor Sangh Vs. NTPC (2007) 14 SCC 234 (para 19), Rajasthan State Electricity Board v. Union of India, (2008) 5 SCC 632 (para 3), Mumtaz Post Graduate Degree College Vs. University of Lucknow,(2009) 2 SCC 630 (para 22 and 23), Godrej Sara Lee Limited v. Assistant Commissioner (AA), (2009) 14 SCC 338. 14, Union of India v. Mangal Textile Mills (I) (P) Ltd., (2010) 14 SCC 553 (paras 6,7,10 and 12), Union of India v. Tantia Construction (P) Ltd., (2011) 5 SCC 697, Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108 (paras 79,80,81,82,86,87 and 88), State of M.P. Vs. Sanjay Nagaich (2013) 7 SCC 25 (para 34,35,38,39), State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499 (para 11 to 19), Star Paper Mills Ltd. Vs. State of U.P. and others, JT (2006) 12 SC 92, State of Tripura vs. Manoranjan Chakraborty, (2001) 10 SCC 740 para 4; Paradip Port Trust vs Sales Tax Officer and Ors. (1998) 4 SCC 90, Feldohf Auto & Gas Industries Ltd. Vs. Union of India (1998) 9 SCC 710; Isha Beebi Vs. Tax Recovery Officer (1976) 1 SCC 70 (para 5); Whirlpool Corporation Vs. Registrar of Trademarks (1998) 8 SCC 1; Guruvayur Devasworn Managing Committee Vs C.K. Rajan (2003) 7 SCC 546 (para 67,68) .

38. In the case of **State of Tripura vs. Manoranjan Chakraborty, (2001) 10 SCC 740**, Hon'ble Supreme Court held as under:

> *"4. For the reasons contained in the said decisions, we hold that the impugned provisions are valid. It is, of course, clear that if gross injustice is done and it can be shown that for good reason the court should interfere, then notwithstanding the alternative remedy which may be available by way of an appeal under Section 20 or revision under Section 21,* ***a writ court can in an appropriate case exercise its jurisdiction to do substantive justice.*** *Normally of course the provisions of the Act would have to be complied with, but the* ***availability of the writ jurisdiction should dispel any doubt which a citizen has against a high-handed or palpable illegal order which may be passed by the assessing authority."***
>
> *(Emphasis supplied by us)*

<u>No Factual Dispute:-</u>

39. That apart, we find that there is no factual dispute involved in the present writ petition that the information which was made basis for

recording reasons to believe for escapement of income of the petitioner to tax, was unfounded and the cash deposit which has been shown by the petitioner in its bank account with Union Bank of India has not been disputed at all. That apart, the original assessment of the petitioner was made under Section 143(3) of the Act, 1961 in which Form 26AS as it existed at all relevant point of time, reflects the cash deposit by the petitioner in the Union Bank of India amounting to Rs.3,41,81,000/- which the petitioner assessee has always admitted and has shown in its books of accounts and a copy of statement of deposit was also filed by the petitioner before the respnodent No.4 during reassessment proceedings but arbitrarily the respondent No.4 baselessly assumed cash deposit in the bank account with Bank of Baroda amounting to Rs.13,67,24,000/- whereas as per bank statement of Bank of Baroda, there was no cash deposit.

Abuse of Power:-

40. It is settled law that if a public functionary acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. Harassment by public authorities is socially abhorring and legally impermissible which causes more serious injury to society. In modern society no authority can arrogate to itself the power to act in a manner which is arbitrary.

41. In a recent judgment dated 03.08.2022 in Writ Tax No.997 of 2022, this Court noticing **increasing tendency amongst Assessing Officers, particularly the respondent No.4, i.e. National Faceless Assessment Centre to violate principles of natural justice, non-consideration of replies of assessees under one pretext or the other or rejecting it without recording reasons for rejection and thus expressed the need for evolving an effective system of accountability of erreing officers** and held in paragraphs 6 and 7, as under:

> *"6. We are frequently coming across cases where Income Tax Authorities are giving complete go by to the principles of natural justice. The excuse orally being set up usually by the departmental counsels is that there is some problem in the computerisation system which is solely controlled by the respondent no.1*

i.e. the Central Board of Direct Taxes, New Delhi, and they can not, at their own, correct the system.

7. Be as it may, ***the system has been introduced and is being implemented by the respondents and, therefore, it is their primary duty to immediately remove short comings, if any, in the system. For own wrongs of the respondents, the assessee can not be allowed to suffer and put to harassment. Prevailing state of affairs clearly reflects that in the absence of any effective system of accountability of the erring officers, the harassment of the assessees and breach of principles of natural justice by the Officers is resulting in uncontrolled situation.*** *The practice of frequently violating principles of natural justice, non consideration of replies of assessees under one pretext or the other or rejecting it with one or two lines orders without recording reasons for rejection, is gradually increasing which* ***needs to be taken care of immediately by the respondents at the highest level, otherwise prevailing situation of arbitrary approach and breach of principles of natural justice may not only adversely affect the assessees who pay revenue to the Government, but also may develop a perception amongst people/assessees that it is difficult to get justice from the authorities in statutory proceedings.****"*

(Emphasis supplied by us)

Respondents' Stand – Whether complete go-bye to Quashi-Judicial Function provided under the Act, 1961:-

42. The respondent No.1 has filed the counter affiavit dated 24.07.2022. In paragraph-1 sworn on personal knowledge, it has been stated that the deponent of the counter affiavit has stated that he has read the writ petition, its annexures, stay application, affidavit and the orders dated 18.05.2022, 26.05.2022, 30.05.2022 and the order dated 14.07.2022 passed by this Court and is acquianted with the facts deposed and has been authrorised by the Central Board of Direct Taxes, New Delhi to file the counter affidavit on behalf of the respondent No.1. Paragraphs-7, 8 and 9 of the counter affiadvit filed on behalf of the respondent No.1, i.e. Union of India have been sworn on the basis of records. Paragraphs-7, 8 and 9 of the aforesaid counter affidavit has been quoted above in paragraph-18 of this judgment. **In the aforequoted paragraphs-7, 8 and 9 of the counter affidavit, the respondent No.1 has taken a clear stand that the officers of the department are bound by the information provided on the data-base/ portal of the department and it is not for them to question its authencity and varacity. In case they ignore this data, there will be initiation of revision action under Section 263 of the Act** by the Principal Commissioner of Income Tax either on own ommission or based on internal

audit of the Department, or external audit by Comptroller & Autditor General of India subject to each scruitiny assessment to its audit and **if the officers are found to omit or ignore such data, they shall be liable to explain the reasons and may be subjected to Departmental action.** It has further been stated that the Parliamentary Committees on Accounts and the Department-Related Parliamentary Committee on Finance, **keep raising issue on action taken against the officers found to comit omission detected by receipt audits conducted by C&AG, and monitor the action taken by the Government.**

43. These clear stands taken by the reaspondent No.1 may leave nothing in the hands of the Assessing Officer and the authorities under the Act, 1961 to adjudicate issue except to impose tax on the basis of information fed on the data-base/ portal of the department. Such a situation is indicative of creation of a chaos in discharge of quasi judicial function by the Assessing officers and other authorities under the Act, 1961.

44. In view of the aforequoted averments of paragraphs 7 and 8 of the counter affidavit of the respondent No.1, i.e. Union of India, no Assessing Officer would take the risk to discharge his quasi-judicial function and to adjudicate cases/ show cause notices in accordance with the provisions of Section 148A, 148 and 147 of the Act, 1961 as they would not like to take risk of initiation of disciplinary proceedings against them.

45. Thus, from the stands taken by the respondent No.1 in the aforequoted paragraphs 7, 8 and 9 of the counter affidavit, **it is evident that all settled principles of law, duty to discharge quasi-judicial function and observance of statutory provisions of the Act, 1961 have been given complete go-bye and participation of assessees in proceedings under Section 148A or 148 or 147 of the Act, 1961 would remain an empty formality, inasmuch as the Assessing Officer would create liability on assessees only on the basis of data fed in the data base/ portal of the department and would not like to adjudicate the matter in accordance**

with law so as to take risk of initiation of disciplinary proceedings against himself.

46. **By no stretch of imagination or the provisions of the Constitution or the law evolved so far by judicial decisions, the stand so taken by the respondent No.1 in paragraphs 7 and 8 of the counter affidavit can be justified or conceived. It appears that either** the deponent of the aforesaid counter affidavit namely Sri Shishir Kuamr Jha, **Principal Chief Commissioner of Income Tax, U.P. (West) and Uttarakhand Region at Kanpur has stated the real state of affairs prevailing in the income tax department or has shown extreme negligence while making statement on oath on record in paragraphs 7 and 8 of the aforeaid counter affidavit.**

Quasi-Judicial Function:-

47. In **State of H.P. vs. Raja Mahendra Pal and others, (1999) 4 SCC 43 (Paras-8 and 9),** Hon'ble Supreme Court explained the **quasi-judicial acts** and observed that these acts are such acts which mandate an officer the duty of looking into certain facts not in a way which it specially directs but after a discretion, in its nature justicial. **The exercise of power by such tribunal** or authority contemplates the adjudication of rival claims of the persons by an act of the mind or judgment upon the proposed course of official action. **A quasi-judicial function has been termed to be one which stands midway a judicial and an administrative function.** The primary test is as to whether the authority alleged to be a quasi-judicial, has any express statutory duty to act judicially in arriving at the decision in question. If the reply is in affirmative, the authority would be deemed to be quasi-judicial, and if the reply is in the negative, it would not be. Therefore, an authority is described as a quasi-judicial when it has some of the attributes or trappings of judicial functions, but not all. In **Province of Bombay vs. Khusaldas S. Advani, AIR 1950 SC 222,** Hon'ble Supreme Court dealt with the actions of the statutory body and laid down tests for ascertaining

whether the action taken by such body was a quasi-judicial act or an administrative act. The Court approved the celebrated definition of the quasi-judicial body given by Atkin L.J,, as he then was in **R. Vs. Electricity Commissioners (1924) 1 KB 171 : (1924) 130 LT 164.** The principles deducible from the various judicial decisions considered by the Hon'ble Supreme Court were summarized in the case of **Raja Mahendra Pal (supra)**, as under:-

> *"(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a lis and prima fade and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi judicial act; and*
>
> *(ii) that if a statutory authority has power to do any act, which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi judicial act provided the authority is required by the statute to act judicially."*

48. In the case of **Orient Paper Mills Ltd. vs. Union of India, (1970) 3 SCC 76 (paras-4 and 5),** Hon'ble Supreme Court explained the duty cast upon an authority while exercising quasi-judicial function and held as under:

> *"It is apparent from the judgment referred to above and numerous other decisions of this Court delivered in respect of various taxation laws that **the assessing authorities** exercise quasi-judicial function and they have duty cast on them **to act in a judicial and independent manner**. If their judgment is controlled by the directions given by the Collector it cannot be said to be their independent judgment in any sense of the word. ....."*
>
> *(Emphasis supplied by us)*

49. In the case of **Nareshbhai Bhagubhai and others vs. Union of India and others, (2019) 15 SCC 1,** Hon'ble Supreme Court held that necessary requirement of quasi-judicial function is to pass a reasoned order after due application of mind. It further held as under:

> *"21. In the present case, it is the undisputed position that no order as contemplated in the eyes of law was passed by the Competent Authority in deciding the objections raised by the Appellants. A statutory authority discharging a quasi-judicial function is required to pass a reasoned order after due application of mind. In **Laxmi Devi v. State of Bihar**, **(2015) 10 SCC 241**, this Court held that:*

> *"9. The importance of Section 5-A cannot be overemphasised. It is conceived from natural justice and has matured into manhood in the maxim of audi alteram partem i.e. every person likely to be adversely affected by a decision must be granted a meaningful opportunity of being heard. This right cannot be taken away by a side wind, as so powerfully and pellucidly stated in* ***Nandeshwar Prasad v. State of U.P. [AIR 1964 SC 1217]****. So stringent is this right that it mandates that the person who heard and considered the objections can alone decide them; and not even his successor is competent to do so even on the basis of the materials collected by his predecessor. Furthermore, the decision on the objections should be available in a self-contained, speaking and reasoned order; reasons cannot be added to it later as that would be akin to putting old wine in new bottles. We can do no better than commend a careful perusal of* ***Union of India v. Shiv Raj, (2014) 6 SCC 564****, on these as well as cognate considerations."*

50. In **Union of India and others vs. Karvy Stock Broking Limited, (2019) 11 SCC 631,** Hon'ble Supreme Court held as under:-

> *"2. This Circular dated 5-11-2003 has been set aside by the High Court in the impugned judgment, Karvy Securities Ltd. v. Union of India, 2004 SCC OnLine AP 1313 on the ground that it amounts to foreclosing discretion or judgment that may be exercised by the quasi-judicial authority while deciding a particular lis under particular circumstances. The High Court referred to the proviso to Section 37-B of the Central Excise Act, 1944, which categorically states that such kind of circulars cannot be issued. We, thus, do not find any error in the impugned judgment. This appeal is accordingly dismissed."*

51. In **Commissioner of Income Tax, Shimla vs. Greenworld Corporation Parwanoo, (2009) 7 SCC 69,** Hon'ble Supreme Court held that an order passed by quasi-judicial authorities on the dictates of the higher authority is illegal and being without jurisdiction, is a nullity. Hon'ble Supreme Court further held that an Income Tax Officer while passing an order of assessment, performs a quasi-judicial function. Hon'ble Supreme Court further held that it is one thing to say that while making the orders of assessment the Assessing Officer shall be bound by the statutory circulars issued by CBDT but it is another thing to say that the assessing authority exercising quasi-judicial function keeping in view the scheme contained in the Act, would lose its independence to pass an independent order of assessment. If the Assessing Officer passes an order at the instance or dictate of the higher authority, it shall be illegal.

52. For all the reasons aforestated, the stand so taken by the respondent No.1 in paragraphs-7 and 8 of the counter affidavit deserves to be rejected

and is hereby rejected and **it is directed that the respondent No.1 or other authorities under the Act, 1961 shall not interfere with the quasi-judicial function and discharge of statutory duties by the Assessing Officers unless permitted by the Act, 1961. Let a circular be issued by the rspondent No.1 forthwith clarifying the position.**

53. In view of the statement made by the respondent No.1 in paragraph-10 of the counter affidavit, we direct as under:

(i) The respondent No.1 shall ensure that all necessary steps are taken within one month and a mechanism is developed and is put in place within one month so that assessees may not be harassed and may not suffer on account of own fault of the department in its data-base/ portal.

(ii) The Respondent No.1 shall provide a mechanism and put it in place within one month from today that the information fed on data-base/ portal is verified in reality and not as an empty formality as has been done in this case by the Deputy Director of Income Tax (Inv.), Unit-III, Kanpur, before initiating proceedings under Section 148A/ 148/147 of the Act, 1961 so that on one hand bona fide assessees may not face harassment and on the other hand tax evadors may not escape due to lapses of departmental officers.

(iii) The respondent No.1 shall consider to develop a mechanism of accountability of the officers who either do not observe the stautory provisions under the Act, 1961 or fail to discharge their quasi-judicial function or act in complete breach of principles of natural justice.

Accountability:-

54. In the case of **Lucknow Development Authority vs M.K. Gupta, 1994 SCC (1) 243 (para-8),** Hon'ble Supreme Court observed that:

> "*The administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now accepted both by this Court and English Courts that the State is liable to compensate for loss or in' jury suffered by a citizen due to arbitrary actions of its employees. …….. **Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented.** No functionary in exercise of statutory power can claim immunity, except to the*

extent protected by the statute itself. ***Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour*** *before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law.*

(Emphasis supplied by us)

55. In the aforesaid judgment in the case of **Lucknow Development Authority (supra), vide Paragraph-10 and 11,** Hon'ble Supreme Court considered the question of **abuse of power by public authorities** and held as under:-

"10. ..... The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd. v. Broome13 on the principle that, an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. ***An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities.*** *That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In Rookes v. Barnard14 it was observed by Lord Devlin,* ***'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance.***

Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. *……*

11. …….. ***In a modem society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system.*** *Public administration, no doubt involves a vast amount of*

administrative discretion which shields the action of administrative authority. ***But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover.*** *When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers.* ***The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society.*** *When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man.* ***It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law.*** *It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly,* ***then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."***

(Emphasis supplied by us)

56. 'Sovereignty' and "acts of State" are two different concepts. The former vests in a person or body which is independent and supreme both externally and internally whereas latter may be act done by a delegate of sovereign within the limits of power vested in him. **No civilised system can permit an executive to play with the people of its country** and claim that it is entitled to act in any manner as it is sovereign. **No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State.** The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people **the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligent.** Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a Welfare State is not

shaken. Principles as stated finds support from the law laid down by Hon'ble Surpeme Court in **N. Nagendra Rao & Co. vs. State of A.P., AIR 1994 SC 2663.**

57. In a recent **judgment dated 03.08.2022 in Writ Tax No.997 of 2022 (Nabco Products Private Limited vs. Union of India and 2 others)**, this Court considered the prevailing state of affairs in assessment matters and in Paragraphs 6 and 7 obsrved that **prevailing state of affairs clearly reflects that in the absence of any effective system of accountability of the erring officers, the harassment of the assessees and breach of principles of natural justice by the Officers is resulting in uncontrolled situation. The practice of frequently violating principles of natural justice, non consideration of replies of assessees under one pretext or the other or rejecting it with one or two lines orders without recording reasons for rejection, is gradually increasing which needs to be taken care of immediately by the respondents at the highest level, otherwise prevailing situation of arbitrary approach and breach of principles of natural justice may not only adversely affect the assessees who pay revenue to the Government, but also may develop a perception amongst people/assessees that it is difficult to get justice from the authorities in statutory proceedings.**

Imposition of Cost:-

58. By the impugned reassessment order, the income of the petitioner has been assessed under Section 147/148 of the Act, 1961 at Rs.13,78,79,020/- by making an **addition of Rs.13,67,24,000/- on account of alleged cash deposit** by the petitioner in bank account with the Bank of Baroda representing unexplained cash credit under Section 68 of the Act, 1961 and **thus created a demand to the tune of Rs.16,90,61,731/-** and initiated penalty proceedings under Section 271AAC(1) of the Act, 1961. For detailed reasons recorded by us in forgoing paragraphs of this judgment, it is evident that the respondents have acted arbitrarily, without jurisdiction, in breach of

principles of natural justice and abused the power conferred under the Act, 1961 and thus created a huge demand of income tax of Rs.16,90,61,731/-. We have also found that the reassessment proceedings were without jurisdiction. The information on the basis of which the reassessment proceeding was initiated against the petitioner, has been admitted by the respondent to be incorrect. Despite every effort made by the petitioner and the evidences filed by it to establish that there has been no escapement of income to tax and the information on the basis of which reassessment proceeding has been initiated is unfounded, respondents have not even looked into the reply and evidences filed by the petitioner and even his request for personal hearing through video conferencing was denied. Only a day's time was granted to the petitioner to submit reply to the show cause notice in reassessment proceedings which the petitioner submitted within time and yet his request for hearing through video conferencing was declined by the respondent No.4. **This shows a complete failure to the observance of rule of law on the part of the respondents.** A huge demand of Rs.16,90,61,731/- has been created by the resopndents against the petitioner on totally non-existent and baseless ground and that too without any fault or breach by the petitioner. In the case of **Punjab State Power Corporation Ltd. vs. Atma Singh Grewal, (2014) 13 SCC 666 (para 14),** Hon'ble Supreme Court stressed that cost should be in real and compensatory terms and not mrely symbolic. It further expressed the need to recover the cost from erring officers. Paragraph-14 of the Punjab State Power Corporation Ltd. (supra) is reproducecd below:

> *"14. No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour.* ***It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic.*** *There can be exemplary costs as well when the appeal is completely devoid of any merit. [See Rameshwari Devi v. Nirmala Devi (2011) 8 SCC 249]. However, the moot question is as to whether imposition of costs alone will prove deterrent? We do not think so.* ***We are of the firm opinion that imposition of cost on the State/PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers. Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals.*** *We clarify that such an order of recovery of cost from the officer concerned be passed only in those cases where appeal is found to*

be ex-facie frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for."

(Emphasis supplied by us)

59. In a recent judgment dated 12.01.2022 in **Special Leave to Appeal (C) No.21132 of 2021 {Assistant Commissioner (ST) & others vs. M/s Satyam Shivam Papers Pvt. Limited & another}**, Hon'ble Supreme Court, in the matter of Goods and Services tax; **imposed cost upon the authority by enhancing the cost equivalent to the tax and penalty levied.** Relevent portion of the aforesaid judgment of Hon'ble Supreme Court is reproduced below:

*"**The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. However, as commented at the outset, the amount of costs as awarded by the High Court in this matter is rather on the lower side. Considering the overall conduct of the petitioner No.2 and the corresponding harassment faced by the writ petitioner we find it rather necessary to enhance the amount of costs.***

Upon our having made these observations, learned counsel for the petitioners has attempted to submit that the questions of law in this case, as regards the operation and effect of Section 129 of Telangana Goods and Services Tax Act, 2017 and violation by the writ petitioner, may be kept open. The submissions sought to be made do not give rise to even a question of fact what to say of a question of law. As noticed hereinabove, on the facts of this case, it has precisely been found that there was no intent on the part of the writ petitioner to evade tax and rather, the goods in question could not be taken to the destination within time for the reasons beyond the control of the writ petitioner. When the undeniable facts, including the traffic blockage due to agitation, are taken into consideration, the State alone remains responsible for not providing smooth passage of traffic.

Having said so; having found no question of law being involved; and having found this petition itself being rather mis-conceived , we are constrained to enhance the amount of costs imposed in this matter by the High Court.

***The High Court has awarded costs to the writ petitioner in the sum of Rs. 10,000/- (Rupees Ten Thousand) in relation to tax and penalty of Rs.69,000/- (Rupees Sixty-nine Thousand) that was sought to be imposed by the petitioner No.2. In the given circumstances, a further sum of Rs. 59,000/- (Rupees Fifty-nine Thousand) is imposed on the petitioners toward costs, which shall be payable to the writ petitioner within four weeks from today.** This would be over and above the sum of Rs. 10,000/- (Rupees Ten Thousand) already awarded by the High Court.*

Having regard to the circumstances, we also make it clear that the State would be entitled to recover the amount of costs, after making payment to the writ petitioner, directly from the person/s responsible for this entirely unnecessary litigation.

This petition stands dismissed, subject to the requirements foregoing. Compliance to be reported by the petitioners."

(Emphasis supplied by us)

60. In view of the detailed findings recorded by us in forgoing paragraphs of this judgment and our conclusion that the respondents have acted arbitrarily, illegally without jurisdiction, caused harrassment to the petitioner and abused power conferred under the Act, 1961, which resulted in creation of illegal demand of income Tax of Rs.16,90,61,731/-, we find it a fit case to impose cost of Rs.50,00,000/- (Rupees Fifty Lakhs) upon the respondents which shall be deposited by the respondents in the Prime Minister National Relief Fund within three weeks from today.

61. In result, **the writ petition is allowed with cost of Rs.50,00,000/- on the respondents, which shall be disposited in** Prime Minister National Relief Fund **within three weeks from today.** The impugned notice dated 31.03.2021 under Section 148, the impugned order dated 24.03.2022 and the impugned reassessment order dated 31.03.2022 for the Assessment Year 2017-18 under Section 147 read with Section 144B of the Act, 1961 and all consequential proceedings are hereby quashed and following directions are issued:-

(i) The respondent No.1 shall ensure that all necessary steps are taken within one month and a mechanism is developed and is put in place within one month so that assessees may not be harassed and may not suffer on account of own fault of the department in its data-base/ portal.

(ii) The Respondent No.1 shall provide a mechanism and put it in place within one month from today that the information fed on data-base/ portal is verified in reality and not as an empty formality as has been done in this case by the Deputy Director of Income Tax (Inv.), Unit-III, Kanpur, before initiating proceedings under Section 148A/ 148/147 of the Act, 1961 so that on one hand bona fide assessees may

not face harassment and on the other hand tax evaders may not escape due to lapses of departmental officers.

(iii) The respondent No.1 shall consider to develop a mechanism of the accountability of the officers who either do not observe stautory provisions of the Act, 1961 or fail to discharge their quasi-judicial function or act in complete breach of principles of natural justice.

(iv) A circular be issued forthwith by the respondent No.1 in the light of the direction given in paragraph-52 above.

62. Let a copy of this order be sent by the Registrar General of this Court to the Finance Secretary to the Government of India for compliance.

63. After this judgment was delivered in open court, the learned Additional Solicitor General of India and the learned Senior Standing Counsel requested that the cost may be deferred today and **they may be heard only on the question of quantum of cost.**

Request is accepted. Payment of cost is deferred till the next date. Let the matter be **put up on 01.09.2022 at 02:00 P.M. for arguments only on the quantum of costs.**

Order Date :- 11.08.2022
NLY