

2024:BHC-AS:29679-DB

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.8594 of 2024**

Benaifer Vispi Patel  
Occupation : Employed and Agriculturist,  
an Individual having her address :  
T.C.Patel Wadi, Dhunabad,  
Near Railway Station, Holwad,  
District Palghar – 401 702,  
Maharashtra India. ....Petitioner

Vs.

1. The Income Tax Officer Ward 1,  
Palghar, Bidco Road, Palghar,  
Palghar, Maharashtra – 401 404.
2. The Principal Commissioner of  
Income Tax, Thane-1,  
Room No.B Wing,  
Ashar IT Park, 6<sup>th</sup> Floor,  
Road No.16Z, Wagle Industrial Estate,  
Thane (West), Thane,  
Maharashtra – 400 604. ....Respondents

Mr. Dharen V. Gandhi for the Petitioner.

Mr. Akhileshwar Sharma for the Respondents.

**CORAM : G. S. KULKARNI &  
SOMASEKHAR SUNDARESAN, JJ.**

**DATE : 15 JULY, 2024**

**Oral Judgment :- (Per G.S. Kulkarni, J.)**

1. Rule. Rule made returnable forthwith. Respondents waive

service. By consent of the parties, heard finally.

2. This Petition under Article 226 of the Constitution of India challenges a Notice dated 26<sup>th</sup> March 2024 issued by respondent No.1 under Section 148 of the Income Tax Act, 1961 ("**the Act**").

3. At the outset, it is required to be noted that the impugned notice has been issued dispensing with the provisions of Section 148A of the Act, on the ground that respondent No.1 was in receipt of certain information as per the scheme notified under Section 135A of the Act, which provides for faceless collection of information. On the basis of such information an opinion is formed to issue the impugned notice. It would be appropriate to note the relevant extract of the impugned notice, which reads thus:-

"

PAN: AJJPP6942Q	A.Y: 2021-21	Dated: 26/03/2024	DIN & Notice No: ITBA/AST/S/148_1/2023-24/ 1063365129(1)
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Notice under Section 148 of the Income-tax Act, 1961

Sir/Madam/M/s.

1. I have received information under the scheme notified u/s 135A pertaining to income chargeable to tax escaping assessment for the Assessment Year under consideration in your case.

*This notice is being issued after obtaining the prior approval of the PCIT, Thane-1 accorded on date 22-MAR-*

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15 July, 2024

Aarti Palkar

24 vide Reference No. 100000049055947.

2. *I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2020-21 and I, hereby, require you to furnish, within 90 days from the issue of this notice, a return in the prescribed form for the Assessment Year 2020-21.”*

4. In the context of the challenge as raised by the petitioner, the relevant facts are:-

The Assessment Year in question is Assessment Year 2020-21. The petitioner filed her return of income for the said Assessment Year on 22<sup>nd</sup> December, 2020. Subsequent thereto, on 16<sup>th</sup> January, 2021, an intimation was issued to the petitioner under Section 143(1) of the Act without any addition, accepting the total income disclosed by the petitioner in her return of income.

5. Thereafter, on 2<sup>nd</sup> April, 2021, “information” was received on the Insight Portal, intimating the petitioner of discrepancies in regard to the “interest income” set out in the return filed for the assessment year in question. Such information indicated that the income of the petitioner from other sources was of Rs.26,41,234.65/-. The petitioner replied to the said information on 3<sup>rd</sup> April, 2021 stating that an amount of Rs.8,88,577/- as

disclosed in the return was the correct income from interest as earned by the petitioner and the balance amount of Rs.17,52,657.65 alleged to be received by the petitioner was an incorrect information, received by respondent No.1 from the portal. Thereafter, for a period of almost two years, no steps were taken by respondent No.1.

6. On 7<sup>th</sup> January, 2023, the petitioner in such context received an email from the Insight Portal. On 14<sup>th</sup> January, 2023 the petitioner replied to as same, *inter alia* referring in the remarks column as under:-

<i>“Remark</i>	<i>Their is duplication of Interest from Canara Bank Amounting Rs. 872799.65. In Form 26AS Bank has deducted TDS on Interest amounting to Rs. 872799.65 as against which I have shown Income of Rs. 963127 including Kotak Bank fixed deposit Interest. It seems Bank has given you information of individual Fixed deposit Interest as well as total of Fixed deposit Interest which you are showing in your notice dated 07-01-2023. We have already given reply on 03-04-2021 under DIN no : INSIGHT/CMP/01/2020-21/12200003500060001.”</i>
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7. Hence, the case of the petitioner was to the effect that the information which was referred by respondent No.1 was not the correct information, as respondent No.1 in issuing such notice failed to consider that the petitioner had already informed the Assessing Officer the correct position qua the interest amount by

her email dated 3<sup>rd</sup> April, 2021.

8. Respondent No.1 however without dealing with the remarks and explanation offered by the petitioner in her reply dated 14<sup>th</sup> January, 2023, almost after a period of more than one year, issued to the petitioner, the impugned notice under Section 148 of the Act along with the approval of respondent No.2 and the Preliminary Verification Report (“PVR”). The approval under Section 151 of the Act records that a notice under Section 148 of the Act be issued, without the requirement to follow the pre-issuance procedure under Section 148A of the Act. The reasons for forming an opinion that income has escaped assessment, were set out in the “Annexure”. In regard to the approval in Column 19 thereof under the caption recommendations of the Additional/Joint CIT, the following remarks were made:-

*“I have gone through the facts of the case, material on records and proposal submitted by the AO and I recommend this as a fit case for issue of notice u/s.148 of the Income Tax Act, 1961, if approved.”*

9. Further in Column No.22 in regard to the reasons for according approval/rejection by the specified authority for issuance of notice under Section 148, the following was recorded:-

*“I have perused proposal and found the case to be a fit case for issuance of notice u/s. 148 of the Act 1961. In view of e-verification instruction no.2 of 2024 dtd.01.03.2024 issued by*

*the DIT (SVS), New Delhi, the case is approved for issue of notice u/s. 148 of the I.T.Act, 1961.”*

10. The Annexure to the approval under Section 151 of the Act reads thus :-

“ANNEXURE

*The income escaped is Rs.16,29,014/- as per Preliminary Verification Report (PVR) uploaded on Insight Portal under E-Verification Scheme 2021 formulated by the Central Govt. in accordance with the Provisions of Section 135A of the IT Act, 1961. This is a fit case to take action u/s.147 of the Act and to issue notice u/s.148 in view of the Clause (iv) of Explanation 1 of Section 148 of the IT Act as per E-Verification Instruction No.2 of 2024 dated 01/03/2024 issued by the DIT (SVS), New Delhi. In view of the above, the proposal is submitted to obtain prior approval of the PCIT-1, Thane u/s.151(1) of the IT Act, 1961, if approved. The information available on Insight Portal are attached herewith.”*

11. The petitioner has also placed on record the PVR, which records that the Commissioner of Income Tax (e-Verification) obtained information from the e-Verification mechanism for the Assessment Year 2020-21, from the database i.e. from the Insight Portal. The relevant column of the PVR reads thus:-

“

<i>Verification description &amp; Information value</i>	<i>1. TDS-194A- Interest other than “Interest on Securities” received (TDS Form 26Q, Section 194A) Rs. 8,72,800/- 2. INT19-001- Total interest payable by a banking company (SPP) Rs. 17,68,435/-</i>
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*1. On the basis of information made available by the CIT (e-verification) and the information available in the data base, notice*

*u/s 133(6) of the Act is issued vide DIN INSIGHT/VER/02/133(6)/2022-23/7620000939150002 dated 07/01/2023 calling for*

*specific information related to the information under verification by registered post. The assessee made submission on 12.01.2023.*

- 2. A notice u/s 133(6) of the Act was also issued to Reporting Entity CANARA BANK (AAACC6106G.AB985) dated 07.11.2022 calling for information, but no submission made till date.*
- 3. Verification of return of income filed vide acknowledgment Number 868777130221220 the assessee has declared Total of head wise income of Rs 13,09,859/. As per E-verification, information value is Rs. 26.41,235/- (TDS- 194A- Rs. 8,72,800/- and INT19-001- Rs. 17,68,435/-). Assessee has offered the interest income of Rs. 9,67,607/-. Assessee has not offered correct interest income.*

*Findings :*

*Assessee while filing the return of income has offered interest income of Rs. 1012221/-.*

*As per e-verification data assessee has received interest income of Rs.3641113/-.*

*The assessee has submitted that there are duplicate entries reported by the bank.*

*To substantiate his claim assessee has not provided any documentary evidences. Thus this case requires further action as per IT Act.”*

12. It is on the above backdrop, the petitioner is before the Court *inter alia* contending that the impugned notice issued under Section 148 of the Act is issued without application of mind hence it is arbitrary. It is the petitioner's case that in issuing the impugned notice, respondent No.1 has not taken into consideration, the correct facts, which infact were pointed out by the petitioner in her letter dated 3 April, 2021, as what was disclosed by the petitioner were the correct figures of the interest

income. It hence submitted that no case was made out for the notice to be issued under Section 148 of the Act, and that too, without complying with the mandatory requirements of Section 148A of the Act. It is contended that all the details of interest paid to the petitioner and the TDS deducted by the Canara Bank were available in Form No.26AS, a copy of which is annexed to the Petition. Hence, it is the petitioner's case that such relevant information has been completely glossed over, and erroneous and defective information, under the faceless mechanism as set up under Section 135A of the Act, had formed the basis for issuance of the impugned notice.

13. Learned Counsel for the petitioner has submitted that this is a case where the respondents have proceeded purely on an erroneous basis merely on information derived from the e-portal, and under the mechanism operating under the provisions of Section 135A, and as incorporated under Section 148A of the Act, in issuance of the impugned notice, so as to form a *prima facie* opinion that income has escaped assessment. It is submitted that the first proviso under Section 148 read with Explanation 1(iv) implicitly incorporates the provisions of Section 135A of the Act, so



as to dispense with the issuance of a notice under Section 148A(b), and/or to dispense with the procedure to be followed under Section 148A of the Act. It is submitted that when the information received from the portal in the electronic form itself is defective as in the present case, such information cannot form the basis for issuance of a notice under Section 148 of the Act, by dispensing with the requirement of Section 148A of the Act, which requires a notice and an order to be passed, under sub-section (b) & (d) of Section 148A. It is submitted that this has caused unwarranted prejudice to the petitioner/assessee. It is hence submitted that the petitioner is also aggrieved by such provisions, which confer unfettered powers on the authorities to dispense with the requirement of the procedure under Section 148A of the Act. The petitioner in these circumstances has also assailed the constitutional validity of the provisions of clause (d) of proviso to Section 148A of the Act as the Assessing Officer has resorted to initiate action under Section 148 of the Act, merely on the information derived under the faceless scheme notified under Section 135A of the Act, namely from the mechanism of faceless collection of information. The prayers as made in the Petition are required to be noted as under:-

*“(a) that this Hon’ble Court be pleased to declare the impugned amendment that is, insertion of clause (d) of the Proviso to section 148A as unconstitutional and ultra vires Article 14, 19(1)(g), 265 and 300A of the Constitution of India.*

*(c) that this Hon’ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the notice issued under section 148 dated 26.03.2024 ("Exhibit D");*

14. The respondents have filed a counter-affidavit of Mr. Raj Kumar Meena, Income Tax Officer, Ward-1, Palghar. The reply-affidavit narrates the relevant facts to contend that the petitioner, who is an individual assessee filed her Return of Income for the Assessment Year 2020-21 on 22<sup>nd</sup> December, 2020 declaring total income of Rs.11,27,800/- (after claiming deduction under Chapter VI A of Rs.1,82,058/-), out of which, the income from other sources is shown at Rs.9,67,607/-. It is stated that as per the PVR, the Commissioner of Income Tax (e-Verification) had assigned the case under e-verification Scheme, for e-verification of the information, in regard to the income not disclosed by the petitioner. It is stated that as per the PVR, as uploaded on the Insight Portal, the interest income received by the petitioner during the year under consideration was indicated at Rs.26,41,235/-. It is

stated that the assessee had however offered the interest income at Rs.9,67,607/-, in the return of income filed for the assessment year. The reply affidavit further refers to the steps taken by the department under Section 133(6) of the Act, namely of a notice being issued to the Canara Bank for e-verification, however, there was no response to the same from the Canara Bank, as per the details reflected on Insight Portal. The affidavit also refers to the notice under Section 133(6) of the Act calling for the relevant details, to which partial information is stated to have been submitted by the petitioner on 12<sup>th</sup> January, 2023, wherein the petitioner contended that there were duplicate entries reported by the Canara Bank, however, documentary evidence was not provided. It is further stated that as per details uploaded by the bank, and the limited submission made by the petitioner/assessee on such material, on the PVR, a Final Verification Report ("**the FVR**") was uploaded by the e-verification unit. It is stated that thereafter the system assigned the case to ITO Ward-1, Palghar, on the Insight Portal and as per the PVR uploaded on the Insight Portal and details available on the system, it is contended that the interest of Rs. 16,29,014/- had escaped assessment as reflected under the e-Verification Scheme, 2021, formulated by the Central

Government, in accordance with the provisions of Section 135A of the Act. On such facts, the affidavit has stated that as per e-Verification Instruction No.2 of 2024 issued by the Directorate of Income Tax (Systems) dated 1<sup>st</sup> March, 2024, to the Assessing Officers, for initiating proceedings under Section 147 of the Act, under the e-verification cases, the Assessing Officer proceeded and obtained approval of the Principal Commissioner of Income-tax-1, Thane, under Section 151 of the Act on 22<sup>nd</sup> March, 2024, in issuing the impugned notice under Section 148 of the Act, dated 26<sup>th</sup> March, 2024, as issued to the Petitioner as per the first proviso to Section 148 of the Act.

15. The reply affidavit further states that thereafter the case of the assessee was taken up by the National Faceless Assessment Center ("**NFAC**") as per the procedure for faceless assessment proceedings. However, what is significant in the reply affidavit is that the respondents have fairly stated, that the contents and the exhibits of the Writ Petition on being carefully examined in regard to the actual interest accrued to the Petitioner, the information was re-verified from the system, and it was found that as on date, the amount of interest reflected on the system was Rs.8,72,800/-, received by the petitioner from the Canara Bank and not

Rs.26,41,235/- as reflected previously by the system. It is hence stated, that the Petitioner had correctly disclosed her interest income, in her return of income. It is however, stated that once a notice under Section 148 of the Act was issued, the NFAC had assumed jurisdiction to proceed further in pursuance of such notice and such facts will be taken into consideration during the course of pending assessment proceedings. It is, therefore, prayed that in these circumstances, the Court may dispose of this Petition on merits.

16. Learned Counsel for the Petitioner in support of the reliefs as prayed for in the petition has made two fold submissions – firstly, that this is a case wherein incorrect information was received under the electronic portal, being a system as set into motion, as a consequence of Section 135A of the Act. It is submitted that once the basis of such information itself was incorrect, it was the duty of the Assessing Officer, to examine the responses, as received from the petitioner, and only after an appropriate satisfaction was reached after examining the comparative material, a notice under Section 148, by following the necessary procedure could be issued. It is submitted that such

cause of action has not been followed in the present case. Secondly, the reply affidavit has now clearly stated that the basis for issuance of the impugned notice was factually not correct, as the Petitioner had disclosed correct particulars of the interest income in the return. It is hence submitted that despite this clear position, the contention of the respondents in reply affidavit that impugned notice would nonetheless be proceeded under the NFAC is wholly arbitrary and illegal. It is submitted that the petitioner for no fault of her, is suffering a serious prejudice, due to the non-application of mind on the part of respondent-revenue. The learned Counsel for the petitioner hence submits that the impugned notice issued to the petitioner under Section 148 of the Act be quashed and set aside.

17. On the other hand, Mr. Sharma, Learned Counsel for the respondents has made submissions referring to the contentions as urged on behalf of the respondents as set out in the reply-affidavit, to which we have made a reference in some detail. He would submit that the information which was supplied by the Petitioner in the return of income, is now revealed to be the correct information, as the interest income as disclosed in the return of the

petitioner is now correctly reflected in the system, namely the interest income of Rs.8,72,799.65/-. It is submitted that for such reason, this is not a case wherein the Court needs to examine the legality and validity of the impugned provisions. It is submitted that the Petition hence can be disposed of considering the affidavit as filed on behalf of the department.

18. We have heard learned counsel for the parties. We have also perused the record.

19. At the outset, we may refer to the contents of Paragraphs 12 and 13 of the reply affidavit, in which the respondents have fairly stated that there is no discrepancy in the interest income as disclosed by the petitioner in her return, which read thus :-

*12. The contents and the exhibits of the Writ Petition was carefully examined. The actual interest accrued by the petitioner is re-verified from System and it is found that as on date the amount of interest reflected on the system is Rs. 8,72,800/- only from Canara Bank and not Rs. 26,41,235/- as was reflecting in the system previously.*

*13. In view of the facts as verified and obtained as on date, the Petitioner has correctly disclosed her interest income in her Return of Income. However, once a notice u/s 148 of the Act is issued, the NFAC assumes the jurisdiction to proceed further in pursuance of the said notice. The above facts will be taken into consideration during the course of the pending assessment proceedings.*

*(emphasis Supplied)*

20. As the case involves the applicability of the provisions of Section 135A of the Act, as applied by the respondents in the context of impugned notice issued to the petitioner under Section 148 of the Act, it would be necessary to note the relevant provisions, namely, provisions of Section 135A, Section 148 and Section 148A of the Act which reads thus :-

*“Faceless collection of information*

*135A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of calling for information under section 133, collecting certain information under section 133B, or calling for information by prescribed income-tax authority under section 133C, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 so as to impart greater efficiency, transparency and accountability by-*

- (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;*
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;*
- (c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.*

*(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:*

*Provided that no direction shall be issued after the 31st day of March, 2022:*

*[Provided further that the Central Government may amend any direction, issued under this sub-section on or before the 31st day of March, 2022, by notification in the Official Gazette.]*



(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

### **Issue of notice where income has escaped assessment**

148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve

on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within [a period of three months from the end of the month in which such notice is issued or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee], a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

*Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:*

*[Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section:]*

*[Provided also that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.]*

### **Conducting inquiry providing opportunity before issue of notice under section 148.**

148A. The Assessing Officer shall, before issuing any notice under section 148,-

(a) conduct any enquiry, if required, with the prior

*approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*

*(b) provide an opportunity of being heard to the assessee, [\*\*\*] by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by*

*him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*

*(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*

*(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:*

*Provided that the provisions of this section shall not apply in a case where,-*

*(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or*

*(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*

*(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein,*

*[relate to, the assessee; or*

*(d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]*

*(emphasis supplied)*

21. On a plain reading of Section 135A of the Act, it is clear that the Central Government is empowered to make a scheme by a notification in the Official Gazette, for the purposes of calling information under Section 133 of the Act, for collecting information under Section 133B or calling for information under Section 133C of the Act, or exercise power to inspect register of companies under Section 134, or for exercise of powers of Assessing Officer under Section 135 of the Act, so as to empower transparency and accountability by eliminating the interface between the income tax authority and the assessee, or any other person to the extent technologically feasible; optimizing utilization of the resources, through economies of scale and functional specialization and by introducing a team based exercise of powers, so as to call for, or collect, or process, or utilize the information with dynamic jurisdiction. The provisions of Section 135A of the Act become relevant as seen in the context of the present case, when the Assessing Authority has relied on information

gathered/collected under the faceless mechanism, for the purpose of issuing to the petitioner a notice under Section 148 of the Act.

22. An implicit reference to such information can be seen and gathered from the first proviso of Section 148 of the Act, which provides that no notice under the said provisions shall be issued unless there is “information” with the Assessing Officer, which suggests that income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year, and the Assessing Officer has obtained prior approval from the specified authority to issue such notice. It may, however, be observed that in the normal course, before issuing any notice under Section 148 of the Act, the provisions of Section 148A of the Act become applicable, which provide for conducting an enquiry by providing an opportunity to the assessee before issuance of the show-cause notice under Section 148 of the Act. However, the applicability of Section 148A of the Act is dispensed with, by virtue of the proviso below Section 148A of the Act, under the situations as specified in clauses (a), (b), (c) & (d) of the proviso incorporated in Section 148A of the Act. As far as the present case is concerned, what has been applied is clause (d) of the proviso to dispense with the applicability of Section 148A, on the ground that the Assessing

Officer had received information under the scheme notified under Section 135A of the Act, pertaining to income chargeable to tax escaping assessment.

23. It cannot be conceived that at all material times, the information available in the electronic mechanism/system, would be free from errors and defects, inasmuch as the basic information which is being fed into the system would certainly be filed by the manual method and thereafter such information is converted and disseminated as an electronic data.

24. In the above circumstances, it is of utmost necessity that before any action prejudicial to the assessee, like in the nature of issuance of a show-cause notice under Section 148 of the Act is resorted, it would be the duty and obligation of the respondents to verify or to have a basic scrutiny whether such information when cross checked with the materials furnished by the assessee, in the returns or otherwise would lead to a *prima facie* conclusion that income has escaped assessment, for further action to be taken under Section 148 of the Act. Thus, necessarily when electronic information is available under the faceless mechanism and there is other material available, as may be gathered by the Assessing

Officer or furnished by the assessee, it would be incumbent on the Assessing Officer to apply his mind to all such materials and only thereafter take a well considered view of the matter to issue a notice under Section 148 of the Act by dispensing the provisions of Section 148A of the Act. Any failure or overlooking of these considerations in a given situation, may result in the assessee, being put to an unwarranted prejudice, by a defective action being resorted to by the respondents resulting into the assessee facing an ordeal of a notice under Section 148 of the Act. It is hence the duty of the Assessing Officer to ensure that the assessee is not confronted with such undesirable situations on account of defective data being applied to initiate proceedings under Section 148 of the Act, failing which the first proviso below Section 148 would be rendered negatory.

25. We thus find substance in the contentions as urged on behalf of the Petitioner that merely because a faceless collection of information is provided under Section 148A of the Act, and the entire information is electronically generated on the electronic portal being required to be answered by the assessee, as in the present case, the operation of such electronic regime cannot create

arbitrary consequences. To prevent such situation, the department needs to have a mechanism of having some safeguards. Even if any defective information is generated, the provisions of Section 135A of the Act as incorporated under the provisions of Section 148A of the Act, ought not to lead to a situation that the Assessing Officer receiving such defective information under Section 135A of the Act or any such information as may be gathered under Section 133(6) of the Act, he is not required to apply his mind to the other information and the comments received from the assessee. These circumstances necessarily require application of mind by the concerned officer to the relevant and necessary facts and documents, which may be either pointed out by the assessee in response to any intimation as may be demanded or a notice for providing such information as may be received from the electronic portal, or by virtue of any notice received under Section 133(6) of the Act.

26. Thus, to presume that the scheme of Section 148 read with Section 148A and Section 135A of the Act in all cases would operate on defect-free information cannot be accepted, even when information under Section 135A of the Act is available and the

electronic mechanism requiring it to be processed further, for any action to be taken under Section 148 of the Act. It is difficult to accept that in every case “any information” which is derived from Section 135A of the Act would be sacrosanct and/or would be free of defects. Hence, once a defect is pointed out on such information as available on the portal, it would be certainly the duty of the Assessing Officer to examine whether the version of the assessee in pointing out that the information is not correct, would require due consideration for any further action to be taken to issue notice under Section 148 of the Act.

27. We observe so, as we find that in the present case, the assessee in fact had pointed out in her remarks that what has been disclosed by the assessee in the return of income was the correct income derived by the Petitioner in regard to the interest earned by the petitioner on deposits with the Canara Bank. Thus, such remarks or explanation as offered by the assessee necessarily was required to be considered, before the Assessing Officer could proceed to obtain approval from the Commissioner of Income-tax and for the purpose of issuance of impugned notice under Section 148 of the Act.



28. It appears that it is only after the Petitioner knocked the doors of the Court in the present proceedings, the Assessing Officer has come across such information which indicates that what has been disclosed by the Petitioner in her return of income was the correct figure of income derived by the Petitioner as interest income received from the Canara Bank. Thus, in the present case, in our opinion, an exercise for verification of the correctness of the electronic information with the other information furnished by the assessee, was required to be undertaken by the Assessing Officer before issuance of notice under Section 148 of the Act, and not after the Petitioner was put to an ordeal of facing a notice and on being required to approach this Court, to seek redressal of her grievances and protection of her rights guaranteed under Article 14 read with Article 300A of the Constitution of India.

29. We find merit in the Petitioner's case that such actions could have been avoided by the Assessing Officer if an application of mind to this effect was to be shown on the earlier occasion. We would, therefore, certainly accept the Petitioner's contention that the impugned notice issued under Section 148 of the Act is arbitrary and vitiated by non-application of mind and consequently

it being required to be quashed and set aside.

30. As we intend to dispose of the Petition on the aforesaid observations, we do not delve on the challenge of the petitioner to the constitutional validity of the provisions of clause (d) of proviso to Sections 148A of the Act as challenged by the petitioner. In such context we keep open all such contentions, to be agitated in appropriate proceedings and at the appropriate time.

31. Before parting, we may however, sound a note of caution to the respondents, so that the respondent in the circumstances as in the present case act in a manner, that such issues do not reach the Court. The Assessing Officers needs to bear in mind that when the Assessing Officer intends to resort to an action under Section 148 of the Act on the basis of information, which is derived under Section 135A of the Act, that is in the electronic form, unless the Assessing Officer has verified such other relevant materials gathered either form the assessee or otherwise available, he ought not to proceed to issue a notice under Section 148 of the Act, without undertaking an exercise of appropriate verification of such materials so as to form an opinion, that it would be permissible in a given case to dispense with the procedure under Section 148A to

be followed, for issuance of a notice under Section 148 of the Act.

32. In the light of the above discussions, we dispose of this Petition by passing following order:-

(i) The impugned notice dated 26<sup>th</sup> March, 2024 issued under Section 148 of the Act is quashed and set aside.

33. We may clarify that as we have allowed the petition on the aforesaid limited issue, we have not delved on the other issues including to consider the validity of the impugned provisions as assailed by the Petition.

34. Rule is made absolute in the above terms. No order as to costs.



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[ SOMASEKHAR SUNDARESAN, J. ]

[ G. S. KULKARNI, J. ]