
(2016) 02 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 4531 and 4532/2015

Kiran Kanwar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 5
Constitution of India, 1950 — Article 226, Article 227
Income Tax Act, 1922 — Section 24(1)(a), Section 34, Section 34(1), Section 34(1)(a), Section 34(1)(b)
Inc

Citation : (2016) 286 CurTR 262 : (2016) 2 WLC 683

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : N.M. Ranka, Senior Advocate assisted by Sanjeev Johari and N.K. Jain, for the Appellant; A.K. Rajvanshy, Assistant Solicitor General of India, for the Respondent

Final Decision : Disposed Off

Judgement

Pratap Krishna Lohra, J.—1. These two writ petitions under Article 226 & 227 of the Constitution of India are preferred by petitioner-assessee seeking annulment of notices issued to the petitioner-assessee by the Income-tax Department under Section 148 of the Income-tax Act, 1961 (for short, "Act") for Assessment Years 2007-08 & 2008-09 respectively. In S.B. Civil Writ Petition No. 4532/2015, the petitioner-assessee has also assailed re-assessment order dated 27th of March, 2015 (Annex.9) passed under Section 147/143(3) of the Act.

2. The facts in both the writ petitions are almost pari materia and the questions of law involved are also identical, therefore, both these writ petitions are heard together and disposed of by this common order.

3. Succinctly stated the facts, giving rise to both these writ petitions, are that after death of original assessee, Shri Rajendra Singh Khetasar, being his widow

and legal heir, petitioner's income was assessed by the Deputy Commissioner of Income-tax, Circle-2, Jodhpur under Section 143(3) of the Act for Assessment Year 2007-08 vide assessment order dated 30th December, 2009 (Annex.1) and for Assessment Year 2008-09, assessment order was passed under Section 148/143(3) of the Act on 10th of November, 2010. Pertaining to Assessment Year 2007-08, petitioner's income was assessed to the tune of Rs. 7,68,55,600/- and interest was charged under Sections 234A, 234B and 234C, whereas for Assessment Year 2008-09 income was assessed to the tune of Rs. 6,41,29,650/- and interest was charged under Section 234A/B/C of the Act. Feeling contended with the assessment of income for both the assessment years, petitioner assailed both assessment orders, only to the extent of charging of interest under Section 234A/B/C of the Act, before the Commissioner of Income-tax (Appeals) and the learned appellate authority, while accepting appeals of the petitioner-assessee, waived the interest chargeable under aforesaid sections. Feeling dismayed with the aforesaid orders of CIT(A), the Income-tax Department went in appeal before the Income-tax Appellate Tribunal (ITAT), but effort of Department proved abortive and the learned ITAT affirmed the orders passed by CIT(A). As no challenge was laid against the orders passed by learned ITAT for both the assessment years, the said orders attained finality by efflux of time. After successful completion of assessment proceedings by ITAT, the Assessing Officer made endeavour to initiate proceedings under Section 147/148 of the Act presumably on the anvil of income escaping assessment for both the assessment years and, consequently, the petitioner-assessee was served with notices under Section 148 of the Act. Notice under Section 148 of the Act, with respect to Assessment Year 2007-08, was served on the assessee vide Annex.2 dated 28th March, 2014, whereas for the Assessment Year 2008-09 vide notice dated 5th of March, 2015. In response to the notices for both the assessment years, petitioner-assessee submitted objections under sub-section (2) of Section 148 of the Act and craved for dropping the proceedings.

4. In the alternative, the petitioner-assessee also craved for supplying reasons to the aforesaid notices. As per version of the petitioner-assessee, despite furnishing requisite materials and elucidating legal precedents pointing out facts and circumstances which are relevant and germane to the matter for issuance of notice under Section 148 of the Act, the respondent-Department rejected objections mechanically without application of mind in an absolutely perfunctory manner. It is further submitted that the reasons spelt out for issuance of notices under Section 148 of the Act were totally alien to the mandate of Section 147/148 of the Act and it was a simple case of change of opinion. The petitioner has raised a specific contention that the reasons furnished by the Department nowhere suggest that the Department has found that it is a case of income escaping assessment, which is pre-requisite for initiation of proceedings under Section 147/148 of the Act.

5. While joining issue with the Department, the petitioner has submitted that first assessment order was passed vis-?-vis both the assessment years after

considering the regular books of accounts of the assessee and, therefore, there was no occasion for resorting to Section 147/148 of the Act for re-assessment. For strengthening her positive assertions, the petitioner-assessee has also taken shelter of the fact that even no mistake was noticed by the Department while considering her application for rectification under Section 154 of the Act. The petitioner has also stated in the writ petitions that there was no failure on her part to disclose fully and truly all material facts necessary for both the assessment years. Rejection of objections submitted by the petitioner by a vague, cryptic and non-speaking order is also set out a ground in the writ petitions to assail the impugned action of the respondent-Department. With a view to assail the impugned action of the respondent-Department, the petitioner has specifically pleaded in the writ petitions that she has reasons to believe that impugned notices were issued on audit objection just to thwart objections of the assessment getting barred by time. Simultaneously, the petitioner also pleaded that audit objections are dropped by the Department.

6. Joining issue with the Department on merits of the case, petitioner-assessee has made an affirmative attempt to question the legality of disallowing land consolidation expenses of Rs. 52,04,000/- for Assessment Year 2007-08 vide Annex.9 and likewise for Assessment Year 2008-09 while issuing notice under Section 148 of the Act. The petitioner-assessee has set out a specific case that disallowing land consolidation expenses for Assessment Year 2007-08 was a perverse and mala fide decision passed in a perfunctory manner and vis-?-vis Assessment Year 2008-09 initiation of reassessment proceedings was absolutely unfounded and based on mere ipse dixit of the Assessing Officer (AO). In order to assail the impugned notices under Section 147/148 of the Act, many grounds are set out in both the writ petitions and the assessment order (Annex.9) is also assailed as non-est being outcome of arbitrary and illegal initiation of re-assessment proceedings. In totality for the Assessment Year 2007-08, the petitioner has prayed for quashing the entire re-assessment proceedings as well as assessment order (Annex.9).

7. The petitioner-assessee has also questioned the impugned action of the Department on the ground that the proceedings under Section 147/148 of the Act are initiated by the AO without application of mind on the dictates of his superior officer, Commissioner of Income-tax, and therefore, all consequential actions are vitiated in law inasmuch as proceedings under Section 147/148 of the Act are to be initiated by AO concerned after recording his satisfaction that certain income of the assessee has escaped assessment. It is also pleaded that requisite sanction is to be obtained by the AO after recording satisfaction that it has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. The assessee has raised ground that no such satisfaction was recorded by the AO and he has simply initiated the proceedings under Section 147/148 of the Act at the behest of Commissioner of Income-tax which has rendered the assessment order (Annex.9) for Assessment Year 2007-08 as non-est in the eye of law and vis-?-vis Assessment year 2008-09 all

subsequent proceedings are nullity in eye of law.

8. The respondent-Department submitted reply to both the writ petitions while defending its action stoutly. In the form of preliminary objections, it is submitted by the respondent-Department that the writ petition is not maintainable for the simple reason that the competent authority of the Department has initiated the proceedings under Section 147/148 of the Act while adhering to due process of law. It is also submitted that the Assessing Officer has recorded cogent reasons for initiating proceedings under Section 147/148 of the Act. An objection is also sought to be raised by the Department that writ petition against the show-cause notice is not maintainable. Availability of alternative efficacious statutory remedy of appeal under Section 246A of the Act is also pleaded in the return for non-suiting the petitioner-assessee. Referring to some of the legal precedents for buttressing this preliminary objection, the respondent-Department has specifically pleaded that when under a fiscal statute, hierarchy of remedy of appeals are provided, the party has to exhaust them instead of seeking relief by invoking jurisdiction under Article 226 of the Constitution of India. The respondent-Department has also justified its action by asserting with full emphasis that proceedings under Section 147/148 of the Act was initiated against the petitioner for both the assessment years with due application of mind upon finding that in both the assessment years certain income of the assessee has escaped assessment.

9. In SBCW No. 4532/2015, the Department has specifically pleaded that against the assessment order (Annex.9) remedy of appeal provided under the Act is very much available to the petitioner, and therefore, writ petition is not maintainable. As regards SBCW No. 4531/2015, the respondent-Department has pleaded that, in the event of passing of assessment order under Section 147/143(3) of the Act, the petitioner can very well avail the remedy of statutory appeal and, at this stage, it is not desirable to interfere with the matter when apparently there is a clear case of pilferage of tax by the petitioner.

10. Adverting to the merits of the case, the respondent-Department has submitted vis-à-vis both the writ petitions that re-opening of assessment proceedings by the AO is strictly in accordance with law and the same cannot be categorized as infirm, perverse or in a perfunctory manner. Justifying the action of reopening of the assessment proceedings, the respondent-Department has urged that AO has followed the prescribed procedure and initiated the proceedings after getting necessary legal approval.

11. The petitioner has submitted rejoinder to reply in both the writ petitions. The petitioner has made an attempt in the rejoinder to repudiate all the preliminary objections raised by the Department. In the rejoinder, some of the legal precedents are also referred by the petitioner-assessee and also an attempt is made to distinguish the judgment on which Department has placed reliance on the issue of alternative remedy of appeal. The petitioner has submitted in the rejoinder that remedy of appeal is not equally efficacious alternative remedy and

the same is harassing and futile exercise, which petitioner-assessee cannot afford, who is a widowed lady.

12. Mr. N.M. Ranka, learned senior counsel submits that initiation of proceedings for re-assessment of income vis-?-vis both the assessment years i.e. 2007-08 and 2008-09 as well as issuance of notice under Section 148 of the Act is without any basis inasmuch as there is no whisper in the impugned notices denoting "Income Escaping Assessment". Mr. Ranka, learned senior counsel would contend that assessment of income of assessee finalized for both the assessment years right upto ITAT is sought to be reopened by the AO on mere change of opinion and as such it is impermissible. Learned counsel has urged that powers under Section 147/148 of the Act cannot be exercised by the AO, while relying on the revenue audit objections, nor the said power can be exercised at the dictates of officer higher in hierarchy may it be Chief Income-tax Commissioner. Elaborating his arguments, learned counsel contends that the AO is the sole repository of such extraordinary powers when he has reason to believe that income of the assessee has escaped assessment and not otherwise. Assailing the reasons assigned for reopening of the assessment proceedings, learned senior counsel submits that the reasons are vague and cryptic not satisfying the requirements envisaged under Section 147 of the Act. Mr. N.M. Ranka learned senior counsel, while dilating on merits, would urge that land consolidation expenses for both the assessment years were considered by the AO and then income of the assessee was assessed ought not to have been made subject-matter of alleged income escaping the assessment after final adjudication by the ITAT in this behalf. Learned counsel further submits that the AO, while issuing notices under Section 148 of the Act, has not been able to lay its hand on any extraneous material vis-?-vis land consolidation expenses for both the assessment years has conclusively rendered the notices vulnerable. Learned counsel contends that reopening of assessment proceedings cannot be resorted to by AO in want of tangible material by reappraisal of same material, which was considered while passing initial assessment orders. Learned senior counsel, while addressing on the availability of alternative, efficacious and statutory remedy of appeal under Section 246 and 246A of the Act, would contend that said remedy is not efficacious, in the backdrop of facts and circumstances of the instant case, inasmuch as the very initiation of re-assessment proceedings and issuance of notices for both the assessment years by the AO is de-hors the law and without jurisdiction. Authenticating his submissions, in this behalf, learned counsel contends that availability of statutory alternative remedy is not an absolute bar for maintainability of writ petition and, looking to the peculiar facts and circumstances in the instant case, issue involved in both these writ petitions requires adjudication on merits and the petitioner, who is a widowed lady, cannot be relegated to alternative remedy to suffer further harassment in the hands of Revenue. Learned counsel has made an affirmative attempt to urge that there is no disputed facts in the instant petitions and the pivotal question, which has emerged, is the true purport of powers of AO under Section 147/148 of the Act

and interpretation of term "Income Escaping Assessment" which can very well be adjudicated by this Court in exercise of extraordinary jurisdiction. Lastly, learned senior counsel has submitted that assessment order (Annex.9) for the Assessment Year 2007-08 in Civil Writ Petition No. 4532/2015 is a glaring example of violation of principles of natural justice and therefore, the said order is vitiated in law. Mr. N.M. Ranka, learned senior advocate, in support of his various contentions has placed reliance on some of the legal precedents.

i. Calcutta Discount Co. Ltd. V/s. Income-tax Officer, Companies District I, Calcutta, & Anr. [, (1961) 41 ITR 191 (SC)]

13. Supreme Court in this verdict, per majority, analysed the provision of Section 34 of the Income-tax Act, 1922 (for short, "Act of 1922") which is *pari materia* to Section 147 of the Act. Highlighting the condition precedent for initiating proceedings under Section 34 of the Act of 1922 as amended in the year 1948, the Court observed:

"To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income-tax Officer must have reason to believe that income, profits or gains chargeable to income-tax have been under-assessed. The second is that he must have also reason to believe that such "under assessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer could have jurisdiction to issue a notice for the assessment or re-assessment beyond the period of four years, but within the period of eight years, from the end of the year in question."

14. While dilating on the duties casted on the assessee to disclose the material facts necessary for his assessment, the Court observed:

"...It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise-the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing authority has to find

out what primary facts have been proved, what other facts can be inferred from them, and taking all these together, to decide what the legal inference should be."

15. Finally the Court concluded that duty of the assessee does not extend beyond the full and truthful disclosure of all primary facts and held:

"Does the duty, however, extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee-to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences-whether of facts or law-he would draw from the primary facts.

If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn?

It may be pointed out that the Explanation to the sub-section has nothing to do with "inferences" and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income-tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose "inferences"-to draw the proper inferences being the duty imposed on the Income-tax Officer.

We have, therefore, come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this."

ii. Commissioner of Income-tax V/s. (1) Kelvinator of India Ltd. [, (2010) 320 ITR 561 (SC)].

16. Supreme Court in this verdict, while taking note of the amendment under Section 147 of the Act w.e.f. 1st of April 1989, made endeavour for schematic interpretation of the words "reason to believe" and opined in clear and unequivocal terms that mere change of opinion cannot be per se a valid reason to reopen the assessment proceedings. The Court held:

"On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back

assessment, but in section 147 of the Act (with effect from 1st April, 1989), they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain pre-conditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer."

iii. Commissioner of Income-tax V/s. Vardhman Industries [, (2014) 363 ITR 625 (Raj.)

17. The Division Bench of this Court in this verdict while examining the condition precedent for issuance of notice for reassessment under Section 147/148 of the Act declined to interfere with the judgment of the Income-tax Appellate Tribunal by rejecting appeal of the Revenue under Section 260-A of the Act. Reiterating the principle that the words "reason to believe" did not admit of conferment of arbitrary powers to the Assessing Officer to reopen assessment on the basis of mere change of opinion, the Court held:

"It is no longer *res integra* that a mere change in the opinion of the Assessing Officer after completion of the assessment under section 143(3) of the Act is not a legally approved determinant for valid initiation of reassessment proceeding under section 147 of the Act the essential and inviolable condition precedent therefor being the reason to believe that any income chargeable to tax has escaped assessment. Such a reason has to be essentially traceable to discoveries and satisfaction from new and hitherto unexplored sources and materials and not to a view of his own differently oriented on the basis of the same inputs, once

considered and applied.

The hon"ble apex court in CIT v. Kelvinator of India Ltd. (supra), while dwelling on this prescription of section 147 of the Act, enunciated that with the schematic interpretation of the words "reason to believe" did not admit of conferment of arbitrary powers to the Assessing Officer to reopen assessment on the basis of mere change of opinion. It was held that the Assessing Officer had no power to review but to reassess and that reassessment has to be essentially based on the fulfilment of certain pre-conditions, as legislatively ordained."

iv. Commissioner of Income-tax V/s. Vaishali Avenue [, (2014) 268 CTR (Raj.) 207].

18. In this verdict, Division Bench of this Court, while upholding the judgment of Income-tax Appellate Tribunal, again reiterated the same principle.

v. Mukesh Modi V/s. Deputy Commissioner of Income-tax & Anr. [, (2014) 366 ITR 418 (Raj.)]

19. In this verdict, the words "reason to believe" is examined threadbare to deduce its true purport. The Court opined that AO on scrutinizing the available material for resorting to the power for re-assessment may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumor. The Court held:

"...The Legislature in its wisdom has conferred powers on the Assessing Officer to reopen the assessment proceedings for ensuring proper vigil and check on unscrupulous assesseees who are involved in evasion of tax. The intent of the Legislature is to vouchsafe the authority of the Assessing Officer for enriching the coffers of the Revenue under special circumstances. Thus, with this solemn object, Section 147 of the Act is couched with a very clear and unambiguous language that the assessing authority can resort to reopen the assessment if it has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. While inserting the words "has reason to believe", the Legislature has made an affirmative attempt to circumscribe these powers by making it amply clear that these powers are to be exercised bonafide to farther interests of the Revenue and not to transgress these powers in a casual and cavalier manner. Emphasis on the recitals "has reason to believe" pre-supposes that the Assessing Officer on scrutinizing the available materials for resorting to such powers may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The belief must be held in good faith; it cannot be a mere pretence..."

20. In the same verdict, while considering the objection of the Revenue about availability of alternative remedy of appeal under Sections 246 and 246-A of the Act, the said objection was overruled in the backdrop of peculiar facts and circumstances of the case. The Court held:

"Lastly, advertng to the objection of the Revenue about availability of alternative

remedy under section 246 and 246A of the Act, suffice it to state that its availability to a suitor is not an absolute bar to the invocation of the writ jurisdiction of the High Court under Article 226 of the Constitution and that without exhausting such alternative remedy a writ petition would not be maintainable. Constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the suitor. Injustice, whenever and wherever it takes place, has to be struck down as an ante-thema to the rule of law and the provisions of the Constitution."

vi. Indian and Eastern Newspaper Society V/s. Commissioner of Income-tax, New Delhi [, (1979) 119 ITR 996 (SC)]

21. In this verdict, Supreme Court has held that opinion of an internal audit party of the Income-tax Department on a point of law cannot be regarded as "information" within the meaning of Section 147(b) of the Act for the purpose of re-opening an assessment.

vii. Commissioner of Wealth-tax V/s. Kaviraj Mahipat Singh [, (1987) 165 ITR 705 (Raj.)].

22. Division Bench of this Court while construing the provisions of Section 17(1) (a) of the Wealth Tax Act, 1957 did not find any error in the order of the Tribunal thwarting reopening of assessment on reconsideration of same material on the basis of report of revenue audit party and accordingly answered the reference against the Revenue and in favour of assessee. Court held:-

"In Indian and Eastern Newspaper Society v. CIT , [1979] 119 ITR 996, their Lordships of the Supreme Court have discussed the law relating to reassessment in consequence of the internal audit party report. In that case, it was held by their Lordships of the Supreme Court that if the Income-tax Officer proceeded to reassess the income of the assessee on the basis of the view expressed by the internal audit party of the Income-tax Department, it would merely be a change of opinion and that the opinion rendered by the audit party in regard to law cannot add to or colour the significance of such law for the purpose of belief of the assessing authority as required under section 147(a) of the Income-tax Act, which is in pari materia to section 17(1)(a) of the Wealth-tax Act. Thus, it appears to us that the Income-tax Appellate Tribunal was justified in holding that no question of law arose out of the finding recorded by the Tribunal on the question that initiation of the reassessment proceedings under section 17(1)(a) of the Wealth-tax Act was invalid as there was no omission or failure on the part of the assessee to disclose all material facts at the time of the original assessment."

viii. Commissioner of Income-tax V/s. Greenworld Corporation [, (2009) 314 ITR 81 (SC)]

23. In this verdict, while acknowledging powers of the AO in passing the order of assessment found it to be a judicial function which is to be discharged

independently without any interference by any authority higher in hierarchy. The Court held:

"We may now consider the effect of the "Noting". The noting of the Assessing Officer was specific. It was stated so in the proceedings sheet at the instance of the higher authorities itself. No doubt in terms of the circular letter issued by Central Board of Direct Taxes, the Commissioner or for that matter any other higher authority may have supervisory jurisdiction but it is difficult to conceive that even the merit of the decision shall be discussed and the same shall be rendered at the instance of the higher authority who, as noticed hereinbefore, is a supervisory authority. 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 Central Board of Direct Taxes 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."

ix. Commissioner of Income-tax Calcutta V/s. Burlop Dealers Ltd. [, (1971) 79 ITR 609 (SC)].

24. Supreme Court in this verdict while construing Section 34(1)(a) of the Indian Income-tax Act, 1922, observed that where on the evidence and materials produced during the original assessment proceedings, the Income-tax Officer could have reached a conclusion other than the one which he has reached, a proceeding under Section 24(1)(a) of the Income-tax Act, 1922 will not lie merely on the ground that the Income-tax Officer has raised an inference which he may later regard as erroneous. The Court held:

"The Income-tax Officer had, in consequence of information in his possession that the agreement with Ratiram Tansukhrai was a sham transaction, reason to believe that income chargeable to tax had escaped assessment. Such a case would appropriately fall under section 34(1)(b). But the period prescribed for serving a notice under section 34(1)(b) had elapsed. Under section 34(1)(a) the Income-tax Officer had authority to serve a notice when he had reason to believe that by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the year, income chargeable to tax had escaped assessment. As observed by this court in Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies District I, Calcutta:

"The words used are "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year ". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by

the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable."

We are of the view that under section 34(1)(a) if the assessee has disclosed primary facts relevant to the assessment, he is under no obligation to instruct the Income-tax Officer about the inference which the Income-tax Officer may raise from those facts. The terms of the Explanation to section 34(1) also do not impose a more onerous obligation. Mere production of the books of account or other evidence from which material facts could with due diligence have been discovered does not necessarily amount to disclosure within the meaning of section 34(1), but where on the evidence and the materials produced the Income-tax Officer could have reached a conclusion other than the one which he has reached, a proceeding under section 34(1)(a) will not lie merely on the ground that the Income-tax Officer has raised an inference which he may later regard as erroneous. The assessee had disclosed his books of account and evidence from which material facts could be discovered: it was under no obligation to inform the Income-tax Officer about the possible inferences which may be raised against him. It was for the Income-tax Officer to raise such an inference and if he did not do so the income which has escaped assessment cannot be brought to tax under section 34(1)(a)."

x. Global Signal Cables (India) P. Ltd. V/s. Deputy Commissioner of Income-tax [, (2014) 368 ITR 609 (Delhi).

25. Division Bench of Delhi High Court in this verdict highlighted the condition precedent for issuance of notice of re-assessment of income. Elaborating on this vital issue, the Court held:

"It is evident that while the assessing officer mentioned that income had escaped assessment because of the failure on the part of the assessee to fully and truly disclose the material facts for assessment, he has not indicated as to which material fact had not been fully and truly disclosed by the petitioner-assessee.

The learned counsel for the petitioner placed reliance on a decision of this Court in the case of Haryana Acrylic Manufacturing Co. v. CIT: , [2009] 308 ITR 38 (Delhi). While considering the provisions of sections 147 and 148 of the said Act, in particular the first proviso thereof, this court observed as under (page 57):

"In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to

disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in *Wel Intertrade P. Ltd.* , [2009] 308 ITR 22 (Delhi) we had agreed with the view taken by the Punjab and Haryana High Court in the case of *Duli Chand Singhanian* , [2004] 269 ITR 192 (P&H) that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing Officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we hold that the notice dated March 29, 2004, under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated March 2, 2005, are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above."

(underlining added)

The same principle is reiterated in *Rural Electrification Corporation Ltd. v. CIT* , [2013] 355 ITR 356 (Delhi). Also in *Microsoft Corporation (I) Ltd. v. Deputy CIT W.P.(C.) No. 284/2013*, decided on May 23, 2013) , [2013] 357 ITR 50 (Delhi) a Division Bench of this court had observed as under (page 67):

"From the above, it is evident that merely having a reason to believe that income had escaped assessment is not sufficient for reopening the assessment beyond the four year period referred to above. It is essential that the escapement of income from assessment must be occasioned by the failure on the part of the assessee to, inter alia, disclose material facts, fully and truly. If this condition is not satisfied, there would be a bar to taking any action under Section 147 of the said Act."

The facts of the present case are squarely covered by the decision of a Division Bench of this court in *Swarovski India Ltd. v. Deputy CIT-W.P.(C.) 1909 of 2013*, decided on August 8, 2014 - since reported in , [2014] 368 ITR 601 (Delhi) wherein the notice under section 148 of the said Act was quashed for being issued after the expiry of four years from the relevant assessment year wherein there was no specific mention of which material facts were not disclosed by the assessee in the course of its original assessment proceedings under section 143(3) of the said Act. The relevant paragraph is reproduced hereinbelow (page 607):

"It is clear that the escapement of income by itself is not sufficient for reopening the assessment in a case covered by the first proviso to Section 147 of the said

Act unless and until there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. In the present case, it has not been specifically indicated as to which material fact or facts was/were not disclosed by the petitioner in the course of its original assessment under section 143(3) of the said Act...."

In the present case also, there exist no grounds for reopening the assessment after the expiry of four years from the relevant assessment year. The notice under section 148 of the said Act is based on reappraisal of the same material on record. The respondent has not specifically indicated as to which material facts were not disclosed by the petitioner-assessee in the course of the assessment proceedings under the said Act."

xi. Additional Commissioner of Income-tax V/s. Ganeshilal Lal Chand [, (1984) 154 ITR 274 (Raj.).

26. In this verdict, Division Bench of this Court held:

"We have heard Mr. Surolia on behalf of the Department and Mr. Ranka on behalf of the assessee. We have perused the reasons recorded by the ITO for reopening the assessment. In our view, the ITO failed to give any reason that there was any failure or omission of the assessee to disclose fully and truly all the material facts at the time of making the original assessment. In the absence of such finding recorded by the ITO, he had no jurisdiction to reopen the assessment under s, 147(a) of the Act. It is well settled that even if there was any oversight or mistake or inadvertence in making the original assessment, it does not empower any ITO to reopen the assessment under S.147(a) of the Act. A catena of decisions have been cited by Mr. Ranka in support of the view taken above. They are:

(1) Chhugamal Rajpal v. S.P. Chaliha , [1971] 79 ITR 603 (SC), (2) CIT v. Burlop Dealers Ltd. , [1971] 79 ITR 609 (SC), (3) Sheo Nath Singh v. AAC of IT , [1971] 82 ITR 147 (SC), (4) Gemini Leather Stores v. ITO , [1975] 100 ITR 1 (SC), (5) Parashuram Pottery Works Co. Ltd. v. ITO , [1977] 106 ITR 1 (SC), (6) Indian and Eastern Newspaper Society v. CIT , [1979] 119 ITR 996 (SC) and (7) General Mrigendra Shum Sher Jung Bahadur Rana v. ITO , [1980] 123 ITR 329 (Delhi)."

xii. Paladiya Brothers & Co. V/s. Assistant Commissioner of Income-tax [, (2015) 376 ITR 567 (Guj.)]

27. Division Bench of Gujarat High Court in this verdict dilated on the condition precedent for reassessment and issuance of notice. The escapement of income must be occasioned by failure of assessee to disclose fully and truly all material facts is also emphasized in this verdict. The Court held:-

"Applying the decision of Division Bench of this court in the case of Niko Resources Ltd. (supra) as well as Gujarat Lease Financing Ltd. (supra), to the facts of the case on hand and as observed hereinabove, there does not appear to

be failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment with respect to the additional depreciation claimed, the initiation of the impugned reassessment proceedings which are initiated beyond the period of four years, are not permissible and the same cannot sustain and on that ground alone, the impugned reassessment proceedings deserve to be quashed and set aside."

xiii. Godrej Industries Ltd. V/s. B.S. Singh, Deputy Commissioner of Income-tax & ors. [, (2015) 377 ITR 1 (Bom).

28. Division Bench of Bombay High Court while examining the notice for reassessment made endeavour to examine the condition precedent and also emphasized that reasons required to be recorded by the AO at the time of issuance of notice. The Court held:

"We have considered the rival submissions. The law with regard to reopening of assessment is fairly settled. As assessment can be reopened under section 147 and 148 of the Act only on the jurisdictional requirement for reopening of an assessment being strictly satisfied. This is for the reason that a reopening of an assessment would disturb an settled position by reopening a completed proceeding. Normally, the jurisdictional requirements to be satisfied for issuing of an reopening notice are as under:

(a) the Assessing Officer must record his reasons/grounds for issuing a reopening notice before issuing the same;

(b) the Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment and the same must be recorded/revealed in his reasons/grounds;

(c) the Assessing Officer should not have considered the issue on which the reopening is sought during the regular assessment proceedings. In case the issue has been considered even if evidenced by asking questions then such an attempt to reconsider would not be permitted on ground of being a mere change of opinion;

(d) the reopening of an assessment must be on tangible material and the grounds/reasons for reopening must be recorded before the issuing of notice for reopening of an assessment;

(e) these grounds/reasons recorded for reopening of an assessment must disclose a live link between the tangible material and the reason to believe that income chargeable to tax has escaped assessment;

(f) in case of assessment sought to be reopened are beyond a period of four years from the end of the relevant assessment year then there should have been a failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment; and

(g) sanction of a superior officer to the reasons recorded, where required, in

terms of section 151 of the Act should have been obtained before issuing of the impugned notice.

All the above jurisdictional requirements have to be satisfied cumulatively, wherever applicable. Therefore, even if one the numerous jurisdictional requirements necessary for the issue of reopening notice is not satisfied, the reopening of an assessment fails. The sustainability of the reopening notice would be tested only on the basis of the reason recorded at the time of issuing the notice.

Therefore, the reasons recorded at the time of issuing notice is the only evidence of the Assessing Officer's reason to believe that income chargeable to tax has escaped assessment. These reasons cannot be added to, deleted from or supplemented. Besides when a notice for reassessment is challenged, the burden is on the Revenue to establish that the jurisdictional requirement stands satisfied. So far as the reason to believe on the part of the Assessing Officer is concerned, at the stage of issuing the notice only a prima facie and not a conclusive case of income escaping assessment should be established to turn down a challenge to the reopening notice."

xiv. Commissioner of Income-tax V/s. Chhabil Dass Agarwal , [2013] 357 ITR (SC)

29. Supreme Court, while dealing with the statutory remedy, has laid emphasis on its efficacy and held:

"....The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam & Co. v. State of Haryana , [1985] 3 SCC 267, this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case."

30. Mr. K.K. Bissa, learned senior standing counsel for the Income-tax Department, submits that AO has initiated re-assessment proceedings qua both the assessment years strictly in accordance with law and, therefore, same cannot be made subject-matter of judicial scrutiny in exercise of extraordinary jurisdiction of this Court. Mr. Bissa would contend that for initiating re-assessment proceedings reasons have been recorded by the AO and sufficiency of reasons cannot be gone into by this Court. Learned counsel has urged that in exercise of judicial review vis-?-vis fiscal and taxing statutes the authorities are required to be given free hand to unearth evasion of tax. Repelling the contention of learned counsel for the assessee, Mr. Bissa would contend that revenue audit objections were dropped and the AO has initiated proceedings for re-assessment of income vis-?-vis both the assessments years, by exercising its

discretion while doubting the land consolidation expenses and, therefore, no interference is called for in both the petitions.

31. Repudiating contention of learned counsel for the assessee, learned counsel for the Revenue submits that AO has exercised his power under Section 147/148 of the Act independently and there is no question of vulnerability of the re-assessment proceedings being initiated under the influence of a superior officer. Mr. Bissa has further urged that there is nothing on record to substantiate this positive assertion of the petitioner, and therefore, challenge laid to the re-assessment proceedings in both the writ petitions on this anvil cannot be sustained. Learned counsel for the Revenue has urged that the re-assessment proceedings are initiated under the Act and equally efficacious remedy of appeal is also provided under the Act, therefore, petitioner cannot be allowed to bypass the alternative efficacious remedy and both the writ petitions are liable to be rejected on this count alone. Mr. Bissa, with full emphasis at his command, has submitted that in Civil Writ Petition No. 4532/2015, after reopening the assessment proceedings, impugned order (Annex.9) has also been passed which can very well be assailed by the petitioner by way of appeal under Section 246A of the Act, and therefore, petitioner cannot maintain this writ petition. While joining issue with the petitioner on Civil Writ Petition No. 4531/2015, learned counsel contends that in case assessment order is passed for the Assessment Year 2008-09, the petitioner can very well avail alternative remedy and, at this stage, writ petition is not entertainable on wholly non-est and imaginary grounds and the petitioner is well within her right to furnish requisite material to prove the land consolidation expenses before AO during re-assessment proceedings. In substance, his submission is that writ petition as such is premature and no indulgence can be granted to the petitioner at this stage. Mr. Bissa in support of his various contentions has placed reliance on some of the legal precedents.

i. CIT V/s. Chhabil Dass Agarwal [, (2013) 357 ITR 357 (SC)].

32. Interestingly both the assessee and the Revenue have placed reliance on this verdict. The assessee has placed reliance on this verdict to wriggle out from the objection of existence of alternative remedy of statutory appeal whereas the Revenue has placed reliance on this verdict to non-suit the assessee on this score. The Supreme Court in this judgment discussed the issue relating to availability of alternative efficacious statutory remedy of appeal, more particularly, in respect of reassessment proceedings under the Act and held:

"Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal v. Supdt. of Taxes* , AIR 1964 SC 1419, *Titaghur Paper Mills Co. Ltd.* Case (supra) and other similar judgments that the High Court will not

entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In *Ram & Shyam Co. v. State of Haryana*, [1985] 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case, neither has the assessee-writ petitioner described the available alternative remedy under the Act as ineffectual and non-effacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have exercised its jurisdiction in the facts of instant case.

In light of the same, we are of the considered opinion that the Writ Court ought not to have entertained the Writ Petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon."

ii. *Akash Jain V/s. Assistant Commissioner of Income Tax & Anr.* - (S.B. Civil Writ Petition No. 6448/2014) and *Shubh Laxmi Buildcon Private Ltd. V/s. The Assistant Commissioner of Income Tax & Anr.* - (S.B. Civil Writ Petition No. 5477/2014), both decided on 25.05.2015. In both these orders, learned Single Judge has reiterated the principle laid down in *Chhabil Dass Agarwal* (supra). The Court held:

"In view of the principles laid down by the Hon'ble Supreme Court in the case of *Chhabil Dass Agarwal* (supra), the application/petition filed by the petitioner cannot be entertained on account of availability of effective alternative remedy.

The petitioner may approach the appellate authority within a period of 15 days. In case, the petitioner files appeal within a period of 15 days alongwith application seeking condonation of delay, the appellate authority shall consider the application seeking condonation of delay sympathetically keeping in view the fact that the petition remained pending before this Court even after the petitioner approached this Court by way of amendment on 28.4.2015 i.e. within the original limitation available to the petitioner."

iii. Jeans Knit (P.) Ltd. V/s. Deputy Commissioner of Income-tax , [2014] 50 Taxmann.com 319 (Karnataka)]

33. In this case, Karnataka High Court declined to entertain writ petition against the notice for re-assessment under Section 148 of the Act. The Court held:

"The judgment relied upon by the learned counsel appearing for the appellant-assessee in our opinion are of no avail to seek any relief in an intra court appeal arising from the order in writ petition under Article 226 of the Constitution of India. We are so observing in view of the reasons recorded by the Assessing Officer in the order dated 3-1-2013 and the order dated 2nd August, 2013 impugned in W.P. No. 36150/2013, from which the present writ appeal arises. As observed earlier, on the face of it the reasons recorded by the Assessing Officer, in our opinion are sufficient to issue notice under Section 148 of the Act. In any case, as tried to be contended on behalf of the appellant-assessee it would not be possible in writ jurisdiction under Article 226 of the Constitution of India to reassess the entire material to reach a conclusion other than the one recorded by the learned Single Judge in both the orders, impugned in the present appeal."

iv. Joint Commissioner of Income-tax V/s. Kalanithi Maran , [2014] 270 CTR 296 (Madras)

34. Division Bench of Madras High Court also reiterated the same principle and non-suited the assessee for remedy of writ under Article 226 of the Constitution of India in the event of availability of statutory remedy. The Court held:

"We are concerned in all these cases not on the sufficiency of reasons on the part of the assessing officer for his belief at this stage. The legislative intent is to allow the assessing officer to go through the process of assessment. Even under Section 147 of the Act, a Court of law cannot presume a lack of jurisdiction, when a fact in issue requires an adjudication. It has to be exercised in terms of Sections 139, 143(2) and 143(3). Therefore, considering the scheme of the enactment, particularly, with reference to Sections 147 to 153 of the Act, we are of the view that an order passed on the objections of the assessee over adjudicating facts is not open to challenge by way of filing a writ petition.

Learned counsels appearing for the petitioners submitted that the objections raised have not been considered properly by the assessing officer. It is also submitted that when a speaking order is required to be passed, the same is amenable to challenge. We are not able to countenance the said argument. We have already held that the order passed on a consideration of the objections raised cannot be termed as the order having civil consequences. The assessing officer is not required to consider the objections in detail. On the contrary, he is required to indicate the basis for his re-opening the assessment. When under Section 147 the assessing officer can even assess any other income chargeable to tax, which has escaped assessment, which comes to his notice subsequently during the course of the proceeding, the power being wide, it cannot be challenged on the ground of improper or inadequate consideration of objections.

In any case, the conclusion arrived at can also be challenged after the assessment is concluded. There is no bar in law for the assessee to raise his contentions before the assessing officer based upon new materials. The assessee can also raise his contentions including those grounds urged before the assessing officer at the time of passing orders on them. Therefore, we are of the view that the order passed on the objections raised by the assessee would not prevent the assessing officer from exercising his power on merits while passing the assessment order.

Learned counsels appearing for the petitioners submitted that the assessing officer is not required to indicate the reasons in the assessment order and he has to pass a separate order on the new objections raised. Therefore, under those circumstances, the issues raised will have to be decided in the writ petitions by this Court alone. The said submission made by the learned counsel for the petitioners cannot be accepted. Passing a separate order giving reasons or incorporating it in the assessment order itself on the further objections of the assessee is procedural in nature. In any case, the same would not give any right to the assessee to approach this Court. However, we would only like to clarify that if any new contentions/objections are raised by the assessee concerned, the assessing officer concerned will have to consider the same and incorporate it either in the assessment order or by passing a separate order."

v. Raymond Wollen Mills Ltd. V/s. Income-tax Officer , [1999] 236 ITR 34 (SC).

35. Supreme Court, while considering the provisions of Section 147 of the Act opined that Court is only required to see whether there was prima facie some material on the basis of which department can reopen the case. The Court held:

"In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceedings. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."

vi. GKN Driveshafts (India) Ltd. V/s. Income-tax Officer , [2002] 125 TAXMAN 963 (SC).

36. Supreme Court declined to interfere for adjudging validity of notice issued under Sections 148 and 143(2) of the Act. The Court held:

"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

vii. Assistant Commissioner of Income-tax V/s. Banswara Syntex Ltd. , [2005] 144 TAXMAN 292 (Raj.)

37. Division Bench of this Court dilated on the powers of the AO for reopening the assessment proceedings and courses open to the assessee in that event. The Court observed:

"...It is well settled that the sufficiency of reasons for forming the belief is not for the Court to judge. The final order which may be passed by the assessing authority under section 147, if it goes against the respondent, is appealable under section 246 of the IT Act. The respondent cannot be allowed to short-circuit the procedures prescribed by law."

38. The Court further held:

"It seems to us that when a notice under Section 148 of the IT Act is issued to a noticee, he is to adopt the following path paved and recognised by the legislature and the judicial decisions:

(1) File return in response to the notice.

(2) He can ask the assessing authority to furnish reasons for issuance of the notice, which the assessing authority is bound to communicate to him within a, reasonable time.

(3) On receiving the reasons he may file objections thereto, which the assessing authority is bound to decide by a speaking order before proceeding with reassessment of income chargeable to tax with regard to the relevant assessment year.

(4) After the passing of the order of reassessment under Section 147 of the IT Act by the assessing authority, the assessee, if not satisfied with the order, can file an appeal before the appellate authority under Section 246 thereof."

viii. Commissioner of Income-tax V/s. P.V.S. Beedies (P.) Ltd. , [1999] 103 TAXMAN 294 (SC)

39. Supreme Court in this verdict did not find any infirmity in reopening of assessment proceedings under Section 147(6) of the Act on the basis of factual

information given by the internal audit party. The Court held:

"We are of the view that both the Tribunal and the High Court were in error in holding that the information given by the internal audit party could not be treated as information within the meaning of Section 147(b). The audit party has merely pointed out a fact which has been overlooked by the Income Tax Officer in the assessment. The fact that the recognition granted to this Charitable Trust had expired on 22-9-1992 was not noticed by the ITO. This is not a case of information on a question of law. The dispute as to whether reopening is permissible after the audit party expresses an opinion on a question of law is now being considered by a larger Bench of this Court. There can be no dispute that the audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law. In view of that we hold that reopening of the case under Section 147(b) in the facts of this case was on the basis of factual information given by the internal audit party and was valid in law. The judgment under appeal is set aside to this extent."

ix. N.K. Industries Ltd. V/s. Income-tax Officer (OSD) , [2014] 49 TAXMANN.com 216 (Gujarat)

40. Division Bench of Gujarat High Court while examining Section 32 read with Section 148 of the Act reiterated the principle that AO can form opinion on the basis of audit objection for issuance of notice for reassessment. Court held:

"With respect to the first of the two reasons recorded by the Assessing Officer, therefore, it clearly emerges that she was acting at the instance of the audit party, though she herself held a contrary belief that no income chargeable to tax has escaped assessment on these two counts. Had this been the sole reason for issuing notice for reopening, we would have perhaps allowed the petition and quashed the notice. In the present case, however, the Assessing Officer was convinced that on the third ground recorded in the reasons, income chargeable to tax had escaped assessment. It is true that such ground was also brought to her notice by the audit party and that by itself would not mean that she was acting at the instance of the audit party. As held by the Supreme Court in the case of CIT v. P.V.S. Beedies (P.) Ltd. , [1999] 237 ITR 13/103 Taxman 294, if a particular issue is brought to the notice of the Assessing Officer by the audit party and the Assessing Officer of his/her application of mind finds that the ground is valid, reopening of assessment cannot be quashed merely because such ground was brought to the notice of the Assessing Officer by the audit party. In this context, even the counsel for the petitioner was unable to dispute that the question of depreciation requires re-examination since the question whether the asset for which the depreciation was claimed was put to use before 30th September of the year under consideration, and, therefore, whether full depreciation at the specified rate during the year under consideration was allowable."

x. PVP Ventures Ltd. V/s. Assistant Commissioner of Income-tax, Chennai , [2015] 61 TAXMAN.com 232 (Madras)

41. Learned Single Judge of Madras High Court in this verdict examined the rigor of Section 147 read with Sections 72 and 149 of the Act and declined to accept the plea of the assessee that reopening of assessment by AO is without application of mind when it is solely on the basis of audit report. The Court held:

"The main contention of the petitioner is that there is no failure on the part of the petitioner in not disclosing fully and truly all material facts necessary for the assessment year under consideration and in the absence of the same, the assumption of jurisdiction by the respondent under Section 147 of the Act, after expiry of four years from the end of the relevant assessment year, is illegal and invalid and thereby, the impugned proceeds cannot be sustained. This contention raised on behalf of the petitioner, in my considered opinion, is fallacious and has no force at all. It is curious enough to note that as observed above, in the original returns filed by the petitioner on 30.09.2008, the petitioner had not at all disclosed fully or truly all material facts regarding the income, viz., unabsorbed depreciation and business loss and depreciation, which the Assessing Officer has reason to believe that the same has escaped assessment within the meaning of Section 147 of the Act. Therefore, when admittedly, the material which is the subject-matter of the proceedings under Section 147 was not disclosed in the original returns filed by the petitioner on 30.09.2008, it cannot be construed that the reopening of the assessment is beyond four years. In fact, the petitioner has, for the first time, has disclosed the subject material, viz., unabsorbed depreciation and business loss of earlier years, only on 25.1.2011 in the form of rectification petition under Section 154 of the Act, seeking rectification, wherein, a rectification order has been passed by the respondent on 6.9.2011. In such circumstances, since the original returns filed by the petitioner got merged with the rectification order, dated 6.9.2011, the period of four years has to be calculated not from the end of the relevant assessment year, but should be from the date on which, the petitioner has filed a rectification petition under Section 154 of the Act, i.e. on 25.1.2011 wherein, as already stated, for the first time, brought the subject material, viz., unabsorbed depreciation and business loss of earlier years. Then, the reopening of the assessment is well within the period of four years and it cannot be construed that the respondent has proceeded to reassess the income for the assessment year 2008-09 beyond four years since the notice under Section 148 of the Act has been issued on 10.12.2013. Therefore, once it is clear that the reassessment was proposed within the period of four years, the present case does not fall under proviso of the Section 147 of the Act, which makes an embargo on the assessing officer to make reassessment beyond four years on the account of failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. Hence, the issuance of the impugned proceedings, viz., show-cause notice under Section 148 of the Act, dated 10.12.2013 and the reassessment order, dated 20.1.2015 by the respondent on the ground that he has reason to believe that the income,

which is chargeable to tax for the assessment year 2008-09 has escaped assessment, in my opinion, are well within the jurisdiction of the respondent and legally sustainable and I do not find any arbitrariness in such reopening of the assessment. In such view of the matter, the reliance placed on the decisions, cited supra, by the learned senior counsel, would not any way help the petitioner since they dealt with the issue of matter wherein, the reassessment has been resorted beyond the period of four years.

As regards the contention that the reassessment based on audit report without independent application of mind by the Assessing Officer is not sustainable, is concerned, I do not find any force in the said contention since the respondent has given cogent reasons in his speaking order, dated 12.1.2015 while rejecting the objections raised by the petitioner, for reopening of the assessment and therefore, it cannot be stated that the respondent has not applied his mind and solely resorted to base on the audit report. In fact, the audit party is entitled to point out a factual error or omission in the assessment and it is settled law that reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law. It has been held so in the case of CIT v. P.V.S. Beedies , [1999] 237 ITR 13/103 Taxman 294 (SC), wherein, the Hon"ble Supreme Court has held as under:

"The dispute as to whether reopening is permissible after audit party expresses on opinion on a question of law is now being considered by a larger Bench of the Supreme Court. There can be no dispute that the audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law..."

xi. Central Provinces Manganese Ore Co. Ltd. V/s. Income-tax Officer , [1991] 59 TAXMAN 17 (SC)

42. Supreme Court in this verdict dilated on disclosure of primary facts by the assessee for initiation of re-assessment proceedings within the four corners of Section 147(a) of the Act. The Court held:

"The only question which arises for our consideration is whether the two conditions required to confer jurisdiction on the ITO under Section 147(a) have been satisfied in this case. The first is that the ITO must have reason to believe that the income chargeable to income-tax had been under-assessed and the second that such under-assessment has occurred by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the year 1953-54.

So far as the first condition is concerned, the ITO, in his recorded reasons, has relied upon the fact as found by the Custom Authorities that the appellant under-invoiced the goods he exported. It is no doubt correct that the said finding may not be binding upon the income-tax authorities but it can be a valid reason to believe that the chargeable income has been under-assessed. The final outcome of the proceedings is not relevant. What is relevant is the existence of reasons to

make the ITO believe that there has been under-assessment of the assessee's income for a particular year. We are satisfied that the first condition to invoke the jurisdiction of the ITO under Section 147(a) was satisfied.

As regards the second condition, the appellant did not produce the books of accounts kept by them at their head office in London nor the original contracts of sale which were entered into at London with the buyers. The appellant did not produce before the ITO any of the accounts which related to the foreign buyers. No reasons were given for the supply of manganese ore at a lower than the market rate. It is for the assessee to disclose all the primary facts before the ITO to enable him to account for the true income of the assessee. The proven charge of under-invoicing per se satisfies the second condition. The appellant's assessable income has to be determined on the basis of the price received by it for the goods exported. If the true price has not been disclosed and there was under-invoicing, the logical conclusion prima facie is that there has been failure on the part of the appellant to disclose fully and truly all material facts before the ITO. We are, therefore, satisfied that both the conditions required to attract the provisions of section 147(a) have been complied with in this case."

43. I have heard learned counsel for the parties; perused the requisite materials available on record in both the petitions and bestowed consideration to the legal precedents cited at Bar by the rival parties.

44. The significant question, which has cropped up in both these petitions, is clear and explicit. The rival parties have different perceptions concerning the power of AO for reopening of assessment proceedings. The Legislature in Chapter-XIV of the Act has prescribed procedure for assessment. Section 147 deals with power and jurisdiction of the AO to reopen assessment proceedings, when he has "reason to believe" that any income chargeable to tax has escaped assessment for any assessment year subject to the provisions of Sections 148 to 153 of the Act. Section 147 of the Act postulates requisite conditions for assessment or reassessment of income by the AO. Section 148 of the Act envisages provision for issuance of notice to the assessee before making assessment, reassessment or re-computation under Section 147 of the Act by the AO. Section 149 of the Act prescribes time limit for notice, whereas Section 150 of the Act stipulates provisions for cases where assessment is in pursuance of an order on appeal etc. Sections 151 to 153 of the Act deal with the procedure, which includes sanction for issuance of notice and time limit for completion of assessments and reassessments.

45. As there is serious dichotomy on the interpretation of Sections 147/148 of the Act and the parties have addressed on the legislative intent conferring power on the AO, how such power is to be exercised and under what contingency, it has become imperative for this Court to dilate on the basic principles of interpretation of taxing and fiscal statutes.

46. To explicate the crucial issue, let us switch on to basic tenets of

interpretation of statutes vis-à-vis taxing and fiscal statutes. In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law. When the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed and on the other hand if the case is not covered within the four corners of the provisions of taxing statutes, no tax can be imposed by inference or by analogy or by an attempt to probe into the intentions of the Legislature and by considering what was the substance of the matter. It goes without saying that in interpreting a taxing statute, equitable considerations are entirely out of place and no taxing statute can be interpreted on any presumptions or assumptions. In *Martand Dairy & Farm V/s. The Union of India & Ors.* [(1975) 4 SCC 313] speaking for the Court Justice Krishna Iyer preferred a literal meaning of the tax statutes for its interpretation and observed that "It is not for the Court to launch on obscure fiscal astrology but merely to construe what has been expressed in plain words". Therefore, if the words used are ambiguous and reasonably open to interpretations, benefit of interpretation can be given to the subject.

47. Applying the principles of interpretation of statute adumbrated supra, a bare reading of Section 147 of the Act makes it amply clear that emphasis is on the words "reason to believe".

48. While construing these words "reason to believe", the consistent view of the law courts is that these words did not admit of conferment of arbitrary powers to the Assessing Officer to reopen assessment on the basis of mere change of opinion. The Assessing Officer, while construing these words to exercise powers under Section 147 of the Act, may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumor. The belief must be held in good faith; it cannot be a mere pretence. With the passage of time, the legal precedents have also dilated on the relevant material on the strength of which the AO can form an opinion that he has reason to believe that any income of the assessee chargeable to tax has escaped assessment. The requisite material, in this behalf, has to be tangible and not founded on reappraisal of the same material. Assessing Officer, for the purpose of taking recourse to reassessment proceedings, is not expected to give undue credence to the opinion rendered by the internal audit party for the purpose of its belief, in this behalf, as required under Section 147 of the Act.

49. There is yet another aspect of the matter that first proviso to Section 147 of the Act circumscribes the power of the AO to proceed against the assessee when there is no lapses on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. Notice under Section 148 of the Act to the assessee where income has escaped assessment can be issued by AO after recording reasons in terms of sub-section (2) of Section 148 of the Act. Therefore, the powers of the AO for issuance of notice is fettered by sub-section (2) of Section 148 of the Act inasmuch as before issuing the notice, it is obligation of the AO to record reasons for doing so.

50. Recording reasons for reopening of an assessment is not an empty formality,

but a condition precedent. In order to construe the reasons to satisfy the test of "reason to believe" under Section 147 of the Act, a live link between the tangible material is required to be disclosed by the AO. Well, it is true that, while exercising power of judicial review, sufficiency or adequacy of reasons cannot be gone into by the court to scuttle genuine case of pilferage and evasion of tax by an unscrupulous assessee but then AO for issuing notice under Section 148 of the Act, cannot be allowed a free hand to eschew the legislative intent. While interpreting a tax statute, the language used is not to be either stretched in favour of the Revenue or narrowed in favour of the tax payer. So where the court has to consider a provision expressly designed to prevent tax evasion, which uses unnecessarily wide language to achieve its purpose, that language will be given effect to even though the section is thereby made to apply to cases which it was probably never intended to catch.

51. Now switching on to the factual backdrop of both the cases, let us first examine the notice under Section 148 of the Act issued to the petitioner-assessee for the Assessment Years 2007-08, which is subject matter of S.B. Civil Writ Petition No. 4531/2015. The reasons recorded by the AO for issuance of notice reads as under:-

On examination of the Assessment record, it is found that the assessee have claimed a land consolidation expense of Rs. 1,02,04,000/- in the year under consideration. But as per the terms and conditions of the agreement between the assessee and M/s. PACL India Ltd. this expenditure activity relates to M/s. PACL India Limited. Therefore, the expenditure of Rs. 1,02,04,000/- debited in the P/L Account on the basis of this activity was not an allowable expenditure to the assessee. Hence, I have reason to believe that the income of Rs. 1,02,04,000/- is escaped income for the A.Y. 2007-08. The Notice is hereby issued with prior recording of the reasons and after taking necessary approval as per the Income tax Act 1961.

52. Similarly, for the Assessment Year 2008-09, a show cause notice is issued, which reads as under:

"Please refer the Assessment Order in your case of the A.Y. 2008-09. In this case, you have claimed a land consolidation expenses of Rs. 60,27,000/-. How, the same is allowable expense? Produce complete details of the same before this office.

Further the PACL India Limited has also denied the Agreement between your good self and that of your good self. In the light of the same, Please enlighten the same as to how same is verifiable and acceptable.

You are requested to submit the reply for the same to this office by 16.03.2015. Hence, you are hereby requested to co-operate with the department and furnish the necessary evidences so as to why the remedial action under section 148 of the I.T. Act 1961 should not be done in your case."

53. Precisely for both the assessment years, the AO has raised serious objections vis-?-vis land consolidation expenses claimed by the assessee for different denominations. In case of land consolidation expenses of Rs. 1,02,04,000/-, for the Assessment Year 2007-08, the AO has recorded reasons that, as per terms and conditions of the agreement between the assessee and M/s. PACL India Ltd., this expenditure activity relates to M/s. PACL India Ltd. For the Assessment Year 2008-09, the AO has assigned reason that land consolidation expenses of Rs. 60,27,000/- is not allowable inasmuch as M/s. PACL India Ltd. has denied the agreement between it and the assessee. For both the assessment years, petitioner-assessee submitted detailed reply/objection to the reasons under Section 148(2) of the Act. Acknowledging reply/objection of the assessee for both the assessment years, Revenue has sent a communication to the assessee justifying its action for reopening the assessment. Therefore, in my considered opinion, the Revenue has made sincere endeavour to justify its action for reopening of assessment vis-?-vis both the assessment years and has also earnestly tried to satisfy the requirements envisaged under Section 147/148 of the Act.

54. However, the averments made in both the writ petitions by the assessee that assessment orders were passed for the Assessment Year 2007-08 under Section 143(3) of the Act and for the Assessment Year 2008-09 under Section 148/143(3) of the Act upon disclosure fully and truly all material facts by the assessee, have not been controverted in the counter affidavits filed by the Revenue. On behalf of the respondent-Revenue, in both the writ petitions, much emphasis is laid on the maintainability of the writ petitions on the anvil of availability of alternative, efficacious remedy of appeal. On factual aspects, reply submitted by the Revenue, in both the cases, is vague and evasive and as such is not in consonance and in conformity with the Order VIII Rule 3 & 5 CPC.

55. When the averments made in the petitions are not specifically denied or disputed in the reply, the averments made therein would be deemed to have been admitted provided the plea raised is duly supported by evidence. Therefore, in substance, it is rather difficult to comprehend that the petitioner-assessee, for claiming land consolidation expenses vis-?-vis both the assessment years, has not candidly disclosed fully and truly all material facts necessary for the assessment years of these years.

56. It is noteworthy that the original assessment order made under Section 143(3) of the Act for the Assessment Year 2007-08 was not assailed by the Revenue and the assessee, while agreeing with the total income assessed, simply laid appeal on the interest charged and the same is reduced by the ITAT by its order dated 14th December, 2012. Even no mistake in the assessment order was noticed under Section 154 of the Act.

57. Similarly, for the Assessment Year 2008-09, original assessment order was assailed by the assessee before the Commissioner of Income-tax (Appeals), Jodhpur to question disallowing expenditure of a sum of Rs. 20,00,000/- shown

in the Profit & Loss Account of assessee by the assessing authority and the said appeal was allowed by the appellate authority and eventually the order of the appellate authority was also upheld by the ITAT.

58. The entire checkered history of both the cases undeniably persuaded this Court to believe that case of the assessee for both the assessment years was not only examined by the AO but also by the officers/authorities higher in hierarchy under the Act.

59. True it is that the issue involved in both the petitions was examined at the appellate level in both the petitions but that itself cannot be construed as a valid and plausible ground to circumscribe the powers of AO under Section 147/148 of the Act.

60. As a matter of fact, powers of AO under Section 147/148 of the Act are conferred with laudable objects to unearth the evasion or pilferage of tax. The provisions of a fiscal and taxing statute designed to curb evasion of tax cannot be narrowed by the courts, so often to apply ordinary charging section with an eye to the substance of the transaction to be taxed rather than its form.

61. It is needless to observe here that evasion of tax by an assessee is to be dealt with heavy hands and so also to prevent pilferage of revenue. However, powers, in this behalf, are not expected to be exercised by the Revenue for collateral purposes or to cause undue harassment and embarrassment to the assessee.

62. The grounds set out in both the petitions vociferously canvassed on behalf of the assessee that proceedings under Section 147/148 of the Act have been initiated by the AO, at the behest of authorities higher in hierarchy, merits rejection in want of cogent and convincing material to substantiate the same.

63. The pivotal issue raised by the assessee, in both the petitions on which Revenue has also locked horns, appears to be quite alluring but then in S.B. Civil Writ Petition No. 4532/2015, some of the subsequent events cannot lose sight of the Court and these subsequent events have also acquired great significance vis-?-vis S.B. Civil Writ Petition No. 4531/2015, i.e., for the Assessment Year 2008-09.

64. For the Assessment Year 2007-08, the AO has passed a fresh assessment order under Section 147/143(3) of the Act on 27th of March, 2015 and the said writ petition is filed on 27th of April, 2015 wherein challenge is also laid to the assessment order. The assessment order (Annex.9), in the said writ petition, is undoubtedly appellable order. The assessment order, which is impugned in S.B. Civil Writ Petition No. 4532/2015, can very well be assailed by the petitioner-assessee under Section 246 and 246A of the Act. Further, the remedy of appeal before the ITAT is available if the outcome of the appeal under Sections 246/246A of the Act is not productive for the assessee. The jurisdiction and powers of the appellate authority under the Act are very wide so as to examine

the legality and propriety of the impugned action of the AO and the consequential orders. Appellate authority, while exercising its jurisdiction, can take care of about the grievance of the assessee in right perspective and if feel persuaded can very well redress.

65. Though in S.B. Civil Writ Petition No. 4531/2015 i.e. for the Assessment Year 2008-09, fresh assessment order by AO has not been passed under Section 147/143(3) of the Act but the bone of contention for reopening of the assessment remains the same i.e. land consolidation expenses whether allowable or not to the assessee. Therefore, the objection of the Revenue about availability of alternative, efficacious remedy deserves credence vis-?-vis both the assessment orders and cannot be by-passed in the peculiar facts and circumstances of the instant case.

66. The majority judgment of the Supreme Court in Calcutta Discount Co. Ltd. (supra) is clearly distinguishable inasmuch as, in that case, during the pendency of the writ petition challenging the notice for reopening of assessment, AO passed the assessment orders with permission of the Court, and therefore, the Court, while nullifying the notice for reopening of the assessment, proceeded to quash assessment orders also.

67. This Court in Mukesh Modi's case (supra), while noticing serious infirmities in the reassessment proceedings initiated under Section 147/148 of the Act, annulled notices and, taking into account the peculiar facts of the case, quashed the consequential assessment orders, which were made during the pendency of the writ petition by the AO in a perfunctory manner. Moreover, in this verdict, the Court has also taken into consideration a very vital fact that the AO has passed the original assessment order after carrying out search and seizure under Section 132 and making survey under Section 133A of the Act thereby it was abreast about all the material collected during search and seizure as well as survey and the material disclosed by the assessee. This sort of situation is not available in the instant petitions. The said judgment is, therefore, distinguishable and cannot render any assistance to the cause of the petitioner.

68. The rest of the judgments, on which reliance is placed by the petitioner, are the cases arising out of the judgments passed by the ITAT and not by the writ court while examining the validity of the notice under Section 147/148 of the Act. Thus, these judgments are also not of significance and as such cannot render any assistance to the assessee.

69. The verdict of Supreme Court in Chhabil Dass Agarwal (supra) clearly clinches the issue in favour of the Revenue. The ratio decidendi of this judgment can very well be pressed into service vis-?-vis both the writ petitions and consequently objection of the Revenue is liable to be sustained to non-suit the petitioner in both the petitions. The judgment in Chhabil Dass Agarwal (supra) has also been followed by co-ordinate Bench of this Court in Akash Jain (supra) and Shubh Laxmi Buildcon Private Ltd. (supra). Supreme Court in an earlier

decision in *Champalal Binanai V/s. The Commissioner of Income-tax, West Bengal & Ors.* [, 1971 (3) SCC 20], while considering availability of alternative remedy of appeal under the Income-tax Act, 1922, opined that before exhausting the said remedy, an assessee is not entitled to invoke extraordinary jurisdiction enshrined under Article 226 of the Constitution. The Court held:

Before parting with the case we deem it necessary once more to emphasize that the Income-tax Act provides a complete and self-contained machinery for obtaining relief against improper action taken by the departmental authorities, and normally the party feeling himself aggrieved by such action cannot be permitted to refuse to have recourse to that machinery and to approach the High Court directly against the action. The assessee had an adequate remedy under the Income-tax Act which he could have availed of. He, however, did not move the Income-tax Appellate Tribunal which was competent to decide all questions of fact and law which the assessee could have raised in the appeal including the grievance that he had not adequate opportunity of making his representation and invoked the extraordinary jurisdiction of the High Court. In our judgment no adequate ground was made out for entertaining the petition. A writ of certiorari is discretionary; it is not issued merely because it is lawful to do so. Where the party feeling aggrieved by an order of an Authority under the Income-tax Act has an adequate alternative remedy which he may resort to against the improper action of the authority and he does not avail himself of that remedy the High Court will require a strong case to be made out for entertaining a petition for a writ. Where the aggrieved party has an alternative remedy the High Court would be slow to entertain a petition challenging an order of a taxing authority which is *ex facie* with jurisdiction. A petition for a writ of certiorari may lie to the High Court, where the order is on the face of it erroneous or raises question of jurisdiction or of infringement of fundamental rights of the petitioner. The present case was one in which the jurisdiction of the High Court could not be invoked.

70. The argument of learned counsel for the assessee that statutory remedy of appeal is illusory and harassing cannot be countenanced in the backdrop of facts and circumstances of these matters, especially when against the original assessment orders, petitioner-assessee has successfully availed the remedy of appeal and the appellate authority has annulled the assessment orders to the extent of charging of interest under Section 234A/B/C of the Act.

71. Availability of alternative efficacious remedy for maintainability of writ petition is a self-imposed restriction from which court, at times, may depart in certain special circumstances of an individual case. Such eventualities are (i) when the authority has acted arbitrarily without the sanction of law (ii) when the action of the authority is palpably wrong or (iii) when High Court is confronted with an unprecedented extraordinary situation.

72. I am afraid such very exceptional circumstances are not available in these petitions to bypass statutory alternative remedy.

73. In view of foregoing discussions, both these petitions cannot be entertained on account of availability of efficacious alterative remedy of appeal.

74. The petitioner shall be at liberty to approach the appellate authority against the assessment order dated 27th March, 2015 (Annex.9) within 15 days from the date of issuance of certified copy of the order. In case, alongwith the appeal, petitioner makes an application for seeking condonation of delay, it is expected of the appellate authority to consider the same sympathetically by taking note of the fact that S.B. Civil Writ Petition No. 4532/2015 remained pending before this Court for a considerable period. In case of S.B. Civil Writ Petition No. 4531/2015 no specific order, in this behalf, is required as the assessment order is yet to be passed by the AO. It is needless to observe here that for the Assessment Year 2008-09 AO may proceed further in the matter dispassionately strictly in accordance with law pursuant to notice under Section 148 of the Act.

75. The upshot of above discussion is that both the writ petitions fail and are rejected with the observations made hereinabove.

76. Costs are made easy.

77. A copy of this order be placed in CWP No. 4531/2015.