

(2005) 11 AHC CK 0189

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 1046, 1047, 1048, 1049, 1050 and 1051 of 2005

Mithlesh Kumar Tripathi

APPELLANT

Vs

The Commissioner of Income Tax, The Additional
Commissioner of Income Tax and The Assistant
Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 127, 131, 132(1), 139, 143(2)

Citation : (2005) 199 CTR 511 : (2006) 280 ITR 16 : (2005) 149 TAXMAN 692

Hon'ble Judges : B.B. Agarwal, J;A.K. Yog, J

Bench : Division Bench

Advocate : Dhruv Agrawal and Dev Kant Pandey, for the Appellant; Shambhu Chopra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Yog, J.—Aforementioned six Writ Petitions, under Article 226, Constitution of India with identical factual matrix giving rise to common questions of law, with the consent of the learned counsel for the parties have been connected to be heard together and decided by a common judgement.

2. For convenience, we refer to the facts of the leading case- viz. Writ Petition No. 1046 of 2005- Mithlesh Kumar Tripathi v. The Commissioner of Income Tax and Ors.

3. Mithlesh Kumar Tripathi and Smt. Seema Tripathi, the two petitioners in the above six writ petitions three each happens to be husband and wife who have been filing their "returns" with Income Tax Permanent Account No. ABUPT 3610 Q and ACCEPT 6474 H.

4. As envisaged u/s 132(1), Income Tax Act, 1961 (called "the Act") a search

was carried out at the office premises of the petitioners at 3B, Sagar Apartments, Tilak Road, New Delhi on 10-10-2002. Separate cases for three Assessment years; viz. 1998-99, 1999-2000 and 2000-2001, were registered for each of the two petitioners. Income Tax Commissioner, Delhi-VII, New Delhi later, vide order dated May 6, 2004 in exercise of powers conferred u/s 127 of the Act transferred all six cases of the two petitioners to the Assistant Commissioner, Income Tax, Central Circle, Agra/Respondent No. 3.

5. Block Assessment proceedings for the period 1.4.1996 to 10.12.2002 (Assessment Years 1997-1998 to 2003-2004) were initiated under Chapter XIV-B of the Act. Assistant Commissioner, Income Tax, Agra vide notice dated 21.10.2004 called upon the petitioners to submit reply to the queries made therein (Annexure 3 to the Writ-Petition). Petitioner appeared and submitted reply to the queries. Block Assessment order dated 31.12.2004 was passed in each the above case (Annexure 4 to the Writ Petition).

6. Assistant Commissioner, Income Tax, Central Circle, Agra/Respondent No. 3, in exercise of powers contemplated u/s 148 of the Act, issued impugned Notice dated 31.3.2005 for Assessment Year 2000-2001/Annexure 2 to the Writ Petition.

7. Relevant extract of the impugned notice dated 31.3.2005 reads-

"Whereas I have reason to believe that your income chargeable to tax for the assessment year 2000-2001 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/reassess the income of the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice a return in the prescribed form of your income in respect of which you are assessable for the said assessment year.

8. In compliance to the said notice, petitioner filed revised-return on April 27, 2005 and vide letter dated 13.5.2005 requested Assistant Commissioner, Income Tax/ Respondent No. 3 to communicate/furnish "reasons" for initiating re-assessment proceedings u/s 147 of the Act but the Respondents did not respond and hence the petitioner felt aggrieved. Consequently the above Writ Petition claiming following reliefs-.-

" (a) issue a writ of certiorari or any other appropriate writ, order or direction quashing/setting aside the notice dated 31.3.2005 issued by the respondent No. 3 to the petitioner for the assessment year 2000-2001 (Annexure 2);

(b) issue a writ of prohibition or any other appropriate writ, order or direction restraining the respondents, their officers and servants from proceeding in any manner whatsoever pursuant to the notice dated 31.3.2005 issued by the respondent No. 3 to the petitioner;

(c) award cost of the petition to the petitioner; and

(d) pass such other or further order(s) or issue such other direction as this

Hon"ble Court may deem fit and proper in the facts and circumstances of the present case."

9. Relevant pleadings on behalf of the petitioner are in para 14 to 17 of the Writ Petition which are reproduced-

"14. That the petitioner states and submits that there has been no change in circumstances since the passing of the block assessment order on 31.12.2004 which necessitated the issuance of the notice u/s 148 of the Act. The petitioner, however, in compliance of the aforesaid notice dated 31.3.2005 issued u/s 148 of the Act filed his return for the assessment year 2000-2001 on 27th April, 2005. Copy of the said return filed by the petitioner for the assessment year 1998-99 is annexed hereto and marked as Annexure 5.

15. That after filing the return in compliance of the notice u/s 148 of the Act, the petitioner vide letter dated 13.5.2005 called upon the respondent No. 3 to supply the reasons for reopening the assessment u/s 148 of the Act but no reasons have been supplied to the petitioner till date. Copy of the letter-dated 13.5.2005 sent by the petitioner to the respondent No. 3 requiring him to furnish the reasons are annexed hereto and marked as Annexure 6.

16. That a perusal of the aforesaid notice would show that the assessment year for which the notice has been issued by the respondent No. 3 to the petitioner u/s 148 of the Act proposing to reassess is covered by the aforesaid block period. There are no reasons relevant or germane for issuance of notice u/s 148 of the Act for reassessment u/s 147 of the Act. In any event no reasons have been supplied to the petitioner despite a request made by the petitioner in that behalf.

17. That the entire proceedings initiated in purported exercise of the powers u/s 148 of the Act for reassessment u/s 147 of the Act are arbitrary and without any basis and the notice u/s 148 of the Act has been issued in a mechanical manner without any application of mind. The petitioner has a prima facie good case and every chance of success and unless prayer as prayed for is granted, the petitioner would suffer irreparable loss and injury. It is further prayed that the impugned notice dated 31.3.2005 and all proceedings pursuant thereto be also stay pending disposal of this Writ Petition."

(underlined by us to lay emphasis)

10. In defence, Respondents filed "counter affidavit". Relevant paras 6, 16, 17, 18 of the said counter affidavit read-

"6. That the petitioner has challenged the action of the Assessing Officer regarding issuance of notice u/s 148 of the Act. It may be pertinent to mention here that in response to the notice issued u/s 148 of the Act the petitioner had already filed its returns before the assessing officer and after filing the returns by the petitioner on 27.4.2005, no notice u/s 143(2) of the Act or any other notice for making assessment has been issued to the petitioner by the answering respondent. In fact at present the assessment proceedings u/s 147 of the Act are

pending. However, it may be submitted that the Assessing Officer vide its letter dated 26.7.2005 has sent the reasons recorded to the petitioner. A photostat copy of the reasons recorded by the Assessing Officer is being filed herewith and marked as Annexure CA-1 to this counter affidavit.

16. That the contents of paragraph No. 13 of the writ petition are not correct, as stated, hence emphatically denied. The proceedings for block assessment and regular assessments are quite different and independent. Block assessment is made on the basis of material found during the course of search/requisition whereas the regular assessment is made on the basis of facts and information etc. The notice u/s 148 of the Act was issued after obtaining approval from respondent No. 2 as provide under the provisions of Law.

17. That in reply to the "contents of paragraph No. 14 of the writ petition the reply given to paragraph No. 13 of the writ petition are hereby repeated and reiterated. Further it is submitted that the proceeding of block assessment do with restrict the proceedings initiated u/s 148 of the Act. The objection of the petitioner is irrelevant, the petitioner has filed his return in compliance of the notice issued to it on 2.7.4.2005 thereafter no notice u/s 143(2) have been issued to the petitioner. It is very surprising as to why the petitioner has approached this Hon"ble Court where there wax no proceedings initiated against it and when he had complied with the notice u/s 148 of the Act. So far as the supply of reasons are concerned, ax stated above, since the petitioner has not approached the Assessing Officer and has merely filed an application before the Dak Table and, therefore, never approached the Assessing Officer for Issuance of reasons, the same were not supplied to it because the petitioner is base at Delhi and not at Agra. However, when the Assessing Officer was required to communicate the reasons, immediately on 26.7.2005 the reasons have been supplied to the petitioner and even after about two weeks the petitioner never approached the Assessing Officer.

18. That in reply to the contents of paragraph No. 75 of the writ petition it is submitted that the reasons for initiating proceedings u/s 147 have been sent to the petitioner long back on 26.7.2005. The petitioner has a right to obtain the reasons for initiating proceeding u/s 147 of the Act. As held by the Hon"ble Supreme Court in the case of G.K.N. Driveshafis (India), 19 I.T.R 259. , the petitioner"s objection will be disposed of by passing a speaking order by the Assessing Officer, but since no objection has been filed by the petitioner till date, hence no order could be passed."

(Underlined by us to lay emphasis)

11. "Reasons" for giving notice u/s 148 of the Act (Annexure CA-1 referred to in aforequoted para 6 of the counter affidavit) read-

"Reasons for initiating proceedings u/s 147 of the I.T. Act, 1961

The assessee showed sales of jewellery at Rs. 17,40,552/- in his return of

income for the year under consideration. This jewellery was declared under the VDIS, 1997 and its sales were shown to M/S Surya Ornaments, 31/22, Bees Kila Road, Jind pur, Alipur, Delhi and M/S Shree Ji. Jewellers, 638/1, Behind police Station, Alipur, Delhi-36. The assessee showed long term capital loss of Rs. 351672/- on this sale and carried it forward to subsequent years for being set off. The office premises of the assessee were searched on 10-12-2002 and during the post search enquiries both these, concerns were not found at the given addressees. During the block assessment proceedings in the. case of the assessee and other assesses of the group further enquiries were made and the authorises representative of the assessee was required to furnish the present residential and business addresses of the owners of these concerns. These enquiries revealed that M/S Surya Ornaments was the proprietary concern of Sri Sunil Kumar Agrawal was found dealing only in the trade of Kirana items used in manufacture of Pan masala and Gutkha. As per the returns of income filed by him he had also shown the jewellery business under the name of Surya Ornaments during the year under consideration but the record relating to this concern was not found during the search of his premises. In order to verify the sales of jewellery shown by the assessee and other assesses of the group, he was summoned u/s 131 of the I.T. Act, 1961 but he did not appear on the ground that he was suffering from some serious brain ailment. No books of account and vouchers pertaining to his proprietary concern, Surya Traders, were produced either by his counsel. Hence, the genuineness of the sale transaction of jewellery has remained unproved. As regards the other purchaser of jewellery, i.e. M/S Shree Ji Jewellers, it was informed by the assessee's counsel that this concern belonged to Shri Subhash Chandra Mittal who had shifted to Mathura. He informed that Shri Mittal was residing at Mayatila, Halan Ganj, Mathura. The ITI deputed to make the enquiries succeeded in tracing out his residence and also served a summons u/s 131 of the I.T. Act, 1961 requiring him to produce the record of his business but he failed to comply. As per the report of the ITI, Shri Mittal is at present doing service in a private concern which belongs to the same group to which the assessee belonged at the time of search. As Shri Mittal has not appeared and produced the relevant record to prove the genuineness of transactions of purchase of gold jewellery and its subsequent disposal, it is clear that his concern was a sham entity created just to facilitate the assessee and other per sons connected with the group to introduce cash in the garb of sale proceeds of the jewellery. Considering these facts and circumstances, I have reason to believe that an income of Rs. 1740552/- has escaped assessment in the A.Y. 1999-2000 and therefore action u/s 147 of the I.T. Act, 1961 is called for in the assessee's case and it is, therefore, imposed to issue a notice u/s 148 for this assessment year."

12. Rejoinder Affidavit, filed by the petitioner, without disputing factual statements in the counter affidavit, is of no significance.

13. In the facts of the case recapitulated above, there is no dispute between the parties on following scores in the instant case:

(i) Assessing Officer, in discharge of statutory obligation u/s 148(2) of the Act, has recorded reasons;

(ii) Notice u/s 148(2) of the Act for initiating "re-assessment" proceeding, was issued by Assessing Authority/Respondent No. 3, after obtaining approval from the concerned Authority; and

(iii) "Reasons", have been communicated during pendency of the writ-petition.

14. Heard learned counsel for the parties at length.

15. The first submission of the Petitioner is that "Reasons", on the basis of which re-assessment proceedings are initiated, have not been communicated inspite of request.

16. In the undisputed factual back drop of the instant case, viz; where reasons have been communicated-as stated in the counter affidavit-the above grievance of the petitioner has become inconsequential and lost relevance.

17. Second submission on behalf of the petitioner, though faintly urged, is that there has been no change in the circumstances after passing of the Block Assessment order on 31.12.2004 and therefore, no occasion to give notice u/s 148(2) and, therefore, initiation of "reassessment-proceedings" are arbitrary.

18. This argument also carries no force as on perusal of record of the case one finds that the developments culminating into "reasons" for issuing notice u/s 148(2) of the Act, are definitely indicative of significant change in the circumstances on record to be reckoned with.

19. Third contention of the learned counsel for the petitioner is that "Reason", do not germane out of material or the facts of the case before the concerned authority and the impugned "Notice" u/s 148(2) of the Act has been issued in a mechanical manner without application of mind.

20. This argument is also not sustainable. Perusal of the reasons (quoted above) show that, if not both, the second reason out of the two reasons-pertaining to M/s Shree Ji Jewellers-emerge from cogent material constituting basis for notice u/s 148(2) of the Act.

21. Most crucial argument, though fourth and the last, made on behalf of the Petitioner is that when section 148(2) of the Act, contemplates that Assessing Authority has to record reasons, the natural inference is that it must be with certain object which legislature intended to achieve. According to the petitioner "Reasons" must be indicated/disclosed in the "notice" or simultaneously along with the "Notice" itself so that assessee is informed of the "cause" (ground) of the notice at the earliest relevant opportunity and not later after filing of "Revised- Return" as claimed by Respondents. It is submitted that there is two fold purpose of "recording reasons" (i) to ensure that action is not arbitrary or biased and (ii) to enable assessee to file his return effectively and expeditiously. According to the petitioner, object of the provision is not to land a "Assessee" in

a situation where he is forced to grapple in dark or to forge and fabricate a web is compelled to indulge in wild guess and wherein assessee may be dragged in a trap.

22. None of the learned counsel for the parties dispute that "sufficiency* or "adequacy" of "reason" is not justiciable before Courts.

23. In the case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, Apex Court ruled:

"7. It would appear from the perusal of the provisions reproduced above that two conditions have to be satisfied before an Income Tax Officer acquires jurisdiction to issue notice u/s 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, viz. (1) the Income Tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (2) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assessee (a) to make a return u/s 139 for the assessment year to the Income Tax Officer, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions must coexist in order to confer jurisdiction on the Income Tax Officer. It is also imperative for the Income-tax Officer to record his reasons before initiating proceedings as required by Section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income Tax Officer that it is a fit case for the issue of such notice...."

8. The grounds or reasons which lead to the formation of the belief contemplated by Section 147(a) of the Act must have a material bearing on the question of escapement of income of the assessee from assessment because of his failure or omission to disclose fully and truly all material facts. Once there exist reasonable grounds for the Income Tax Officer to form the above belief, that would be sufficient to clothe him with jurisdiction to issue notice. Whether the grounds are adequate or not is not a matter for the court to investigate. The sufficiency of grounds which induce the Income Tax Officer to act is, therefore, not a justiciable issue. It is, of course, open to the assessee to contend that the Income Tax Officer did not hold the belief that there had been such non-disclosure. The existence of the belief can be challenged by the assessee but not the sufficiency of reason for the belief. The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reason for the formation of the belief have a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section. To this limited extent, the action of the Income Tax Officer in starting proceedings in respect of income escaping assessment is open to challenge in a court of law (see observations of this Court in the cases of Calcutta Discount Company Limited Vs.

Income Tax Officer, Companies District, I and Another, and S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, , while dealing with corresponding provisions of the Indian Income Tax Act, 1922)".

(underlined by us to lay emphasis)

24. For convenience, Section 147 & 148 of the Act, to the extent relevant for our purposes are quoted below:

" 147. If the [Assessing] Officer I has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year):

Provided that....

Explanation 1....

Explanation 2....

148. [1] Before making the assessment, reassessment or re computation u/s 147, the Assessing Officer shall serve [888] as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139]

[2] The assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.]"

25. Sub-section(2) of Section 148 of the Act, on the reading of its language as such without adding/extracting words from outside, unambiguously mandates and initiate re-assessment proceedings. The said Sub-section (2) neither expressly nor impliedly, provides for "reasons" to be communicated to the assessee. It is only by virtue of "judicial pronouncements" that Apex Court and other High Courts, including our High Court in the case of K.M. Bansal (Infra), while interpreting the provision laid down that "reasons" ought to be communicated to avoid "arbitrary" action or to avoid "abuse" of the power/office by Tax authorities with an object to save "Assessee" from harassment. It is through judicial pronouncement only particularly K.M. BanasI's case (infra) that "Reasons" are require to be communicated only after filing of "Revised-Return".

26. We shall deal with the above decision later.

27. So far as Section 148(2) of the Act is concerned, it is silent regarding "communication of reasons" and as to whether the same are to be communicated before or after filing of revised return. This gives rise to an occasion wherein courts are required to fill in the gap and make the provision "meaningful" and "purposive" without doing violence with the "pith and substance" of the provision and object / intent of the legislature.

28. Settled principles of "statutory interpretation" require that a provision in a legislative enactment is to interpret it in a manner which conform to the rules of natural justice, i.e. which may not be against sense of "fairness" and "good conscience". It is stressed that when, there "is no "logic" or "rational nexus" to interpret a statutory provision, otherwise, then court should prefer that interpretation which is meaningful, purposive, for not doing so.

29. In the process of "interpretation", one has to ascertain whether Legislature u/s 148(2) of the Act, which in unequivocal terms require "reasons" to be recorded, intended such "reasons" not to be communicated/disclosed along with "Notice" that reasons are to be disclosed when asked for but courts have already interpreted, said provision and held after filing of "revised-return". The dispute is at what point of time "Reasons" are to be communicated to the assessee. According to the petitioner "reasons" have to be disclosed in the Notice but the respondents contend otherwise.

30. In Section 148(2) of the Act, there is nothing in express terms/words wherefrom one may construe/infer a condition precedent of filing of "Revised-Return" before "Reasons" are communicated.

31. For this purpose, one has to ascertain-(a) whether non disclosure of reasons, while giving Notice, fulfils the "contention" and the "object" of the framers while the provision in hand was drafted by the legislature, (b) what "purpose" or "object" shall be achieved if reasons are not disclosed till filing of "Revised-Return", and (c) whether the intent/object of the legislature shall be fully or better served if reasons are disclosed along with notice, which shall make the provision meaningful and purposive.

32. Care is also to be taken that "interpretation" of a "statutory provision" which fails to achieve express or implied "object" of legislature, or fails to check an apprehended mischief, if any, and/or "offends principle of natural justice has to be ignored. Preference be given to an "interpretation" which fulfils legislative "intent" and also not opposed to principles of natural justice, unless otherwise expressly excluded by the legislature.

33. Normally one expects "Reasons" to be communicated along with notice so that assessee is informed of the "ground" for initiating reassessment in order to ensure that action is not "arbitrary". It shall enable an "assessee" to take care of the "escaped assessment" (which is the basis/foundation of the notice) as well as to take care, while filing fresh return, to disclose/ explain any other income, if any, which may have otherwise escaped assessment.

34. It is well settled that Section 148(2) is to be read in a manner which serves legislative intent/object in inserting Section 148(2) in the Act and makes the provision "meaningful" and "purposive". Viewing from that point of view, we find that Section 148(2) of the Act expressly require "recording of reasons", which has definite purpose (and not a mere a formality on paper), i.e. to avoid arbitrariness or biased or malafide action by Taxing Authorities.

35. Keeping the above object of the legislature in mind, the courts, including the Apex Court, interpreted the said section by laying down that reasons have to be communicated, as otherwise the same will remain a mere formality with no ultimate purpose or object to be served.

36. Reference is made to the following decisions-to appreciate the above premise.

1. Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others,

"11. In interpretation of statutes, courts have steered clear of the rigid stand of looking into the words of the section alone but have attempted to make the object of the enactment effective to render its benefit into the person in whose favour it is made.... It is here that the court has to evolve the concept of purposive interpretation which has found acceptance wherever a progressive social beneficial legislation is under review.... Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the court's duty to discern the intention in the context of the background in which a particular section is enacted.... It is always the duty of the court to give such a construction to a statute as would promote the purpose object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction...."

(underlined by us to lay emphasis)

2. Atma Ram Mittal Vs. Ishwar Singh Punia,

"8...the purpose of legislation would thus be defeated. Purposive interrelation in a social amelioration legislation, is an imperative irrespective of anything else."

9. ...Mukherjea, J. as the learned Chief Justice then was, in Poppatlal Shah Vs. The State of Madras, said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislature has used and the true meaning of what words as was said by Lord Reid in Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg AG, 1975 AC 391 : (1975) 1 All ER 810 : (1975) 2 WLR 513. We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law...."

(underlined by us to lay emphasis)

3. Kehar Singh and Others Vs. State (Delhi Administration),

"... During the last several years "the "golden rule" has been given a go-by. We now look of the "intention" of the legislature or the "propose" of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which give rise to the Act. We look at the mischief's which the legislature intended to redress. We look at the whole situation and not just one to one relation. We will not consider any proviso out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence, and consistency within the law as a whole and to avoid undesirable consequence."

(underlined by us to lay emphasis)

4. State of Karnataka Vs. Appa Balu Ingale and others,

"34...Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future and to decide objectively disengaging himself/herself from every personal influence or predilections. Therefore, the judges should adopt purposive interpretation of the dynamic contents of the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time. ...To construe law one must enter into its spirit, its setting and history...."

(underlined by us to lay emphasis)

5. United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others,

"24. The above result is also reached by the application of the principle of purposive construction.

25. In regard to purposive interpretation. Justice Frankfurter observed as follows:

"Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose I some Reflections on the Reading of Statutes, (1947) 1 CLR 527 ."

6. M/s. Oxford University Press etc. Vs. Commissioner of Income Tax,

"33. In the State of Tamil Nadu Vs. Kodaikanal Motor Union (P) Ltd., this Court referring to K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, and Luke v. IRC (1964) 54 ITR 692 : 1963 AC 557 observed: (SCC p. 100, para 17)

"17... As Lords Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result, We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye "some" violence to language is permissible."

34. In Keshavji Ravji and Co. v. CIT, : [1990]183ITR1(SC) this Court held that in a taxation statute where literal interpretation lead to result not intended to subserve the object of the legislation another construction in consonance with the object should be adopted...."

58...Noticing the words of Judge Learned Hand, it was said that the task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. We must not adopt a strictly literal interpretation of Section 52(2) but construe its language having regard to the object and the purpose which the legislature had in view in enacting the provision and in the context of the setting in which it occurs.... It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision...."

(underlined by us to lay emphasis)

7. D. Saibaba Vs. Bar Council of India and Another,

"18. Reading word for word and assigning a literal meaning... would lead to absurdity, justity and to such consequences as Parliament could have never intended the provision has an ambiguity and is capable of being read in more ways than one. We must, therefore, assign the provision a meaning and so read it as would give it to an otherwise lifeless letter and enable the power of review conferred thereby being meaningfully availed and effectively exercised."

8. Kailash Chand and Another Vs. Dharam Das,

"In Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and

Others, this Court has held that a statute can never be exhaustive. The legislature is incapable of contemplating all possible situations which may arise in future litigation and in myriad circumstances. The scope is always there for the Court to interpret the law with pragmatism and consistently with the demands of varying situations. The construction placed by the court on statutory provisions has to be meaningful. The legislative intent has to be found out and effectuated."

(underlined by us to lay emphasis)

9. AIR 2003 SC 2103

"11. It is well-settled principle in "law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said, " Statutes should be construed, not as theorems of Euclid", Judge learned Hand said, " but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage*³.) This view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama*⁴ (SCC p 284, para 16)."

37. The core issue, required to be adjudicated, is "what is the stage when reasons ought to be communicated to the assessee?", or " what, is the stage when an assessee can claim as of right to be communicated with the reasons"?

38. It is through judicial pronouncements, particularly judgement of this Court in the case of *K.M.Bansal* (infra), it is held that reasons are to be communicated only after filing of "revised-return".

39. As noted earlier, "Reasons" not only to be recorded but also to be communicated as held by the courts while interpreting Section 148(2) of the Act, even though there are no express words to that effect in the said section.

40. There is also nothing in Section 148(2) of the Act indicating expressly or otherwise, that an assessee can ask for reasons to be communicated only after he has filed "revised-return" in response to the notice under mat section.

41. In the above context, the Court is required to interpret Section 148(2), in a manner which makes the provision not only "meaningful" and "purposive" but also not opposed to "fairness"/"fairplay" and "good conscience" the core ingredients of rules of natural justice.

42. Reference is made to the following cases-wherein the Apex Court has time and again held that if two interpretations are possible of a statutory provision except in case of express statutory exclusion, the one which satisfies "rules of natural justice", is to be preferred.

1. *Swadeshi Cotton Mills Vs. Union of India (UOI)*,

"31. The rules of natural justice can operate only in areas not covered by any law validly. They can supplement the law but cannot supplant it (per Hedge, J. in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, of the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power (see Union of India (UOI) Vs. Col. J.N. Sinha and Another, .

32. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain, this rule is universally respected and duty to afford a fair hearing in Lord Loreburn's oft-quoted language, is "a duty laying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, " convenience and justice"- as lard Atkin felicitously put it- " are often not on speaking terms." General Medical Council v. Spackman, 1943 AC 627, .

2. Mrs. Sarojini Ramaswami Vs. Union of India and others,

"115. It may also be noted that the rules of natural justice are manifested in the two principles of nemo judex in sua causa and audi alteram partem.... The grievance ventilated is that of being condemned unheard. The audi alteram partem rule has a few facets" two of which are (q) notice of the case to be met: and (b} opportunity to explain...."

3. In Canara Bank and Others Vs. Shri Debasis Das and Others,

"13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantial on natural Ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities, and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions " natural justice" and " legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted 10 exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of Supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principles is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed become wholly vitiated, thus, it is, but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time"

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the right of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting rights. These rules are intended to prevent such authority from doing injustice."

19. Concept of natural Justice has undergone a great deal of change in recent years. Rules of natural Justice are not rules embodied always expressly in a statute or in rules, framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied, and what its context should be, in a given case must depend to a great extent on the facts and circumstances of that case the framework of the statute under enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infringement of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its everything that affects a citizen in his civil life."

(underlined by us to lay emphasis)

4. (2004)4 SC C 447 Mangi Lal v. State of M.P.

Apex Court, following the "ratio" laid down in the case of Swadeshi Cotton Mills (supra),-observed:-

" 10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure Before taking a decision, unless the statute provides Otherwise The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be

permitted to exclude the presentation of a litigant's defence or stand, even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial character, to adopt modalities, necessary to achieve requirements of natural justice and fair play to enquiry better and proper discharge of their Duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of the parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (see *Swadeshi Cotton Mills Vs. Union of India (UOI)*, . It aims to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only, in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are notice of the case to be met, and opportunity to explain."

(underlined by us to lay emphasis)

5. AIR 2001 S C 24 (para 2) *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.*

"While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to define the doctrine in a specific manner or method. Straight-jacket formula cannot be made applicable but compliance of the doctrine is solely dependant upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non compliance of the doctrine, the law courts in that event ought to set right the wrong inflicted upon the concerned person and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action."

43. Notice u/s 148(2) of the Act requiring an assessee to file "Revised-Return" for re-assessment without disclosing ground/"reasons" is no notice of the case to be met or opportunity to explain. Such a notice for sure lacks basic information and thus for certain fails to apprise the party even the basic ground/circumstance on the basis of which he is compelled by Assessing Officer to file revised return. It is complete denial of opportunity to defend and answer the Notice. Assessee is left in dark and compelled to make a "roving and fishing search" to detect/locate alleged "escaped income". In case reason/ground is disclosed along with the notice (without disclosing "source of information" or "other material") it will definitely facilitate expeditious filing of revised return and also enable the

"Assessee" to declare, apart from the "escaped income" pointed out in the notice, other "escaped income" or "undisclosed income".

44. Learned counsel appearing on behalf of the Department admits that even after "revised-return" is filed in pursuance to the notice u/s 148(2) of the Act, one can still amend/ revise said revised return. From the above it is clear, that apparently there is no "object" or "purpose" in sight which seems to be achieved and also there seems to be no logic or valid ground for not disclosing reasons before filing of the "Revised-Return".

45. An assessee is unnecessarily harassed if reasons are not communicated along with or in the notice. Reasons as argued by the learned counsel for the petitioner, (i) are generally not supplied promptly even when asked for and that too for no reason or rhyme (ii) in large number of cases assessee has no option but to rush to High Court which unnecessarily burdens already over-loaded dockets of the Courts (iii) loss of time, energy and inconvenience caused to the assessee; and (iv) unnecessary (which is otherwise avoidable) burden upon public-exchequer since Revenue Department spent millions and millions (all over country) in contesting avoidable litigation besides reckless waste of valuable hours of working of "Revenue Official".

46. Present case is the best example, (if one has asked for an illustration) wherein "Reasons" are supplied only when assessee was compelled to file the present Writ Petition.

47. There is ample experience, and no discussion is needed, that in the present scenario, it is in itself a punishment if one is pushed, for no fault of his, to file a suit/petition in Court. On the other hand, erring official enjoys litigation at the cost of public money. Even if, "Assessee" is right and just in filing Writ Petition- there is no real compensation in terms of money and correspondingly erring "Revenue Official" remains unruffled, even though, as in the present case, inaction in failing to supply reasons, amounts to criminal negligence/abuse of office."

48. Argument that entire process, u/s 148(2) of the Act starting from the stage of "recording reasons", "obtaining of approval from higher authorities" to issue Notice followed by issuance of notice requiring assessee to file "revised return", and thereafter ultimately till filing of "Revised, Return" is "administrative action/ process" and that it is only after filing of "revised-return" (in pursuance to the notice u/s 148(2) of the Act) that proceedings assumes character of quasi-judicial nature, require a fresh look.

49. Learned counsel for the Revenue referred to the case of K.M. Bansal (Deceased by Lrs.) Vs. Commissioner of Income Tax and Another, wherein this Court referring to the case of K.S. RASHID AND SON AND OTHERS Vs. Income Tax OFFICER., observed.... The main question before the Supreme Court, however, pertained to the validity of Sub-section (1A) of Section 34..." and considered, by interpreting Section 148(2) of the Act requirement of recording

reasons under that Section. The question raised by the appellant in that case before the Court was that "no reasons" were recorded by the ITO as required by the proviso to the said section and that no "reasons" were communicated to the assessee, as inherently required without expressing in so many words, under aforesaid section. Referring to the case of S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, Division Bench of this Court noted:

"It would be relevant to notice that, according to this decision of the Supreme Court, the proceedings u/s 34 acquire quasi-judicial character only after the service of notice upon the assessee, and garljer{hereto, they are administrative in character. Since the requirement of recording reasons is a stage anterior to issuance of notice, it was held that there way no obligation on the part of the Income Tax Officer to communicate the same. It way also observed that recording of reasons is required by law as a condition for initiation of proceedings and also for obtaining sanction of the Commissioner who must be satisfied that the action proposed was warranted."

50. Dealing with the various decisions, this Court in the case of K.M. Bansal (supra) concluded-

"...

Applying the above principles to the case in hand, it must be held that, in cases where the asessees have filed their returns or revised returns, as the case may be, in response to the notice u/s 148(1) and have also raised a contention that the very initiation of the reassessment proceedings is not in accordance with law, the Assessing Officer shall communicate the reasons recorded by him u/s 148(2) to the assessee, subject, of course, to the necessity of protecting his sources/informants if he thinks, such protection is necessary in any given case. Suffice it to say that he shall proceed in accordance with the principles enunciated above."

(underlined by us to lay emphasis)

51. This Court, thus held that-it may not be conclusive and proper for the Revenue to communicate reasons along with Notice considering the necessity to protect source/informants and decision of the Supreme Court in the case of S. Narayanappa (Supra) would be stultified if the court nevertheless interpreted Section 148(2) of the Act to mean that reasons were to be communicated to the assessee without submitting "revised-return".

52. Petitioner, however, place reliance upon the judgement in the case of Comuidado of Chicalim v. Income Tax Officer, Goa and Ors., (2001)10 SC C 20 which is, for convenience, reproduced below-

"1. Under appeal by special leave is an order of a, Division Bench of the High Court at Bombay, sitting at Panaji. By that order the writ petition filed by the appellant was summarily dismissed.

2. By the writ petition the appellant challenged the validity of notice issued to it

by the first respondent u/s 148 of the Income Tax Act, 1961. The notice alleged that the first respondent had reason to believe that the appellant's income chargeable to tax for Assessment year 1986-87 had escaped assessment and that, therefore, the first respondent proposed to assess the appellant's income for that assessment year. It was averred in the writ petition that the first respondent had failed to disclose the reasons that he was obliged to record u/s 148(2) for reopening the assessment. Further, the writ petition averred that the respondents had already issued a notice to the appellant u/s 148 of the Income Tax Act, 1961 for the same assessment year and that the appellant had, in compliance therewith, filed a return. It was asserted that, therefore, the second notice u/s 148 did not lie.

3. The Division Bench took the view that ^Section 148 merely required that reasons should be recorded, not that they should be communicated. Since, therefore, there was, in its view, no failure to perform a statutory duty, it could not call for and examine the reason. As to the ground in relation to the previous notice, the Division Bench noted that it had not been asserted in the writ petition that the Income Tax Authority had made an assessment pursuant to the previous notice. It observe that the appellant had submitted to the jurisdiction of the authority u/s 148 and, therefore, "acquiesced off the grievance".

4. We are afraid that the High Court was in error on both counts. It is trite law that when an assessee challenges a notice to reopen the assessment u/s 147 on the ground that no reasons u/s 148 had been recorded or disclosed, the court must call for and examine the reasons and, in fact, ordinarily, the reasons are set out by the respondents to the writ petition in their counter. The High Court also did not appreciate that if the appellant had already been served with a notice u/s 148 and had complied therewith by filing a return, it was entitled to contend that no second notice lay and also to submit that, in any event, the second notice was barred by time.

5. It is, therefore, necessary to set aside the order of summary dismissal of the writ petition and to restore the writ petition (Writ Petition No. 356 of 1991) to the file of the High Court to be heard and disposed of on merits. Our observations are confined to the order of summary dismissal that is impugned and should not in any way influence the decision of the court on merits. Both the parties shall be entitled to take all available contentions at such hearing. The writ petition, having regard to the lapse of time, shall be decided expeditiously.

Order of the appeal a accordingly. No order as to costs."

53. Aforesaid judgement of the Supreme court is of no help to the petitioner in as much as the point under consideration has not been adjudicated, directly or indirectly, by the Apex Court.

54. Learned counsel for the petitioner also referred to the provisions of "The Right to Information Act, 2005" to emphasise that the petitioner is entitled to have the specific information namely the reasons along with notice but did not

elaborate and pressed his point on the basis of said Act.

55. On behalf of the petitioner, however, it is submitted that it is not only "unfair" but also uncalled for on the part of the Revenue to presume all "assesseees" to be dishonest and then to make an endeavour to interpret Section 148(2) of the Act when there is nothing in the section/Act to warrant this approach.

56. Petitioner cannot be faulted when he submits that Section 148(2) of the Act is required to be interpreted and "understood in a manner which makes the provision "purposeful" keeping in mind that the "object" of the legislature to check mischief, if any, is not frustrated and the "purpose" of the provision itself is rendered redundant. Statutory provision in question, as discussed above, is to be interpreted in a manner which induces life and makes the provision meaningful and at the same time, in absence of express/implied exclusion, satisfies principles of natural justice.

57. Apprehension expressed by the division bench in the case of K.M. Bansal (supra), namely to protect "source" and "informant", is supported by no reasons. It appears from the perusal of said judgement that the issue directly raised and adjudicated was whether "reasons" are at all required to be "communicated (even though not mentioned in Section 148(2) of the Act in so many words) irrespective of the stage when such reasons were to be communicated. Observation by the Bench in the said case-"reasons" are to be communicated only after filing revised-return, appears to have been made only incidentally-without the issue being raised and argued at the Bar and hence it is not "binding" adjudication. Observation is "per incuriam" because apparently the counsel appearing in that case did not precisely address the issues before Court. Reference may be made to the case reported in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, -wherein Supreme Court observed -

"46. To consider the ratio decidendi of a case we have, therefore, to ascertain the principle on which the case was decided. Sir George Jessel in *Oshorn v. Rowlatt*, (1880) 13 Ch D 774 remarked that (Ch D, p. 785) " the only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided".

47. The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the ratio decidendi which the judges who decided the case themselves have chosen may be even different from the one which has been approved by subsequent judges. This is because judges, while deciding a case will give their own reasons but may not distinguish their remarks in a rigid way between what they thought to be the ratio decidendi and what were their obiter dicta, that is, things said in passing having no binding force, though of some persuasive power...."

58. There is no dearth of decisions and it is now well settled that while

interpreting a statutory provision if two interpretations are possible the one which favours-Tax payer has to be adopted. Reference may be made to State of Punjab Vs. Jullunder Vegetables Syndicate, . Para 5 of the said judgement reads:-

"5. Before we advert to the rival contentions it will be convenient to clear the ground, it is a settled rule of construction that in interpreting a fiscal statute the Court cannot proceed to make good the deficiencies, if there be any, in the statute; it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the tax payer; see C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, . In considering a taxing Act, the Court is not justified in straining the language in order to hold a subject liable to tax."

59. Learned Counsel for the Department could not rebut that none of the circumstances viz. (i) anxiety to protect evidence/informant and (ii) destruction / tampering of evidence /material, indicated in K.M. Banasi's case furnish sound or strong logic to hold that reasons ought to be communicated after filing of "revised return" which, at least to some extent fails to satisfy principles of natural justice.

60. Aforementioned two circumstances pointed out in K.M. Bansal's case (supra) are only peripherally true, but not so if one happen to examine the substance in depth.

61. Learned counsel for the Revenue had to concede that a "revised-return¹, filed in response to the notice u/s 148(2) of the Act, can be revised after reasons are communicated at later stage. In that situation, we find no good reason not to communicate reasons with Notice u/s 148(2) of the Act in as much as the apprehension, if any, to destroy material/informant subsequently also cannot be ruled out particularly when "Assessee" has a right to amend later his return at any stage.

62. Learned counsel for the Department submitted that this Court, may issue a "Mandamus" to the Revenue to supply "reasons" within specified period (say 2 to 3 weeks) of filing of return in pursuance to the notice u/s 148(2) of the Act and direct Union Government for appropriate amendment in Section 148(2) of the Act to that effect.

63. The above argument is misplaced. It is for the legislature to intervene if, in its wisdom, there is ambiguity hi some statutory provision which is being misused or not applied in its true spirit. Court, duty is to iron out the creases, clear out the surroundings or foggy areas, fill in the gap and make the statutory provision, as it exists, meaningful which subserve the end of justice.

64. Section 148(2), Income Tax Act, itself requires reasons to be recorded to check arbitrary action and also to give a chance to the Assessee to disclose "escaped-income" whether detected by "Revenue" or not to the extent of recording reasons and "obtaining approval" to "give notice may be

"administrative action" but the very act of giving notice backed by good and valid reasons-in our considered opinion or the interpretation of section 148(2) of the Act is quasi judicial function- which itself is conferred by statute. Distinction between Administrative and quasi-judicial/judicial function is thin and barely real when such action concerns rights of other person.

65. Authority to give notice flows from Section 148(2) of the Act, statute confers jurisdiction and empowers Assessing Officers u/s 148(2), Income Tax Act to re-open Assessment proceedings. Otherwise assessment being over- general rule of public policy and settled principle of law is that once a proceeding is over, it should not be reopened under same set of facts and circumstances.

66. In our considered opinion, if reasons are supplied along with notice u/s 148(2) of the Act, it shall obviate unnecessary, harassment to the assessee as well to the Revenue by avoiding unnecessary litigation which will save Courts also from being involved in unproductive litigations. Above all it shall be inconsonance with the principles of natural justice, as discussed above.

67. In view of the admitted position in the undisputed facts of the instant case that reasons have been disclosed/ communicated though during pendency of the Writ Petition in this Court, the grievance of the parties, if any, has become non-existent and there being no surviving cause of action today, the Writ Petition does not survive and hence liable to fail.

68. In the result, the Writ-Petition fails.

69. No order as to costs.