

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Before:

The Hon'ble Justice Om Narayan Rai

WPO 656 of 2025

Balmer Lawrie And Company Limited

Vs.

Union of India & Ors.

For the Petitioner : Mr. Pratyush Jhunhunwala, Adv.
Ms. Sruti Datta, Adv.
Ms. Sakshi Singhi, Adv.

For the Respondents : Mr. Siddhartha Lahiri, Adv.
Mr. Amit Sharma, Adv.
Mr. Abhishek Kr. Agrahari, Adv.

Hearing Concluded on : 22.12.2025

Judgment on : 09.01.2026

Om Narayan Rai, J.:-

1. This writ petition has been filed assailing proceedings for reassessment of the petitioner's income for the Assessment Year 2019-20.

FACTS OF THE CASE:

2. A brief summary of the facts gathered from the writ petition may first be noticed:-
 - a) The petitioner is a Government company. It is under the control of the Ministry of Petroleum and Natural Gas, Government of India and is classified as a category-I, Miniratna Company.
 - b) Of the several businesses which the company conducts, one is to provide travel facilities including air travel services to its customers.

- c) In course of its air travel services, the petitioner's customers often seek for air travel insurance and the petitioner facilitates the same through its empanelled insurers which includes M/s. Reliance General Insurance Company Limited (hereafter "Reliance"). For such purpose, the petitioner collects the amount payable to the insurance company from its customers and remits the sums to Reliance. The insurance policy is directly issued in the name of the petitioner's customers and the petitioner earns commission for facilitating such transaction.
- d) The petitioner also has hoardings and other spaces at its premises for putting up marketing banners or advertisement material and the petitioner uses the same for generating revenue. It is the petitioner's case that during the financial year 2018-19 (Assessment Year 2019-20), the petitioner received a sum of Rs.1,10,33,116/- from Reliance and offered the same to tax, while filing Income Tax Return (hereafter "ITR") for the said Assessment Year on October 31, 2019.
- e) The petitioner's aforesaid ITR was processed under Section 143(1) of the Income Tax Act, 1961 (hereafter "the said Act of 1961") and an intimation dated June 5, 2021 was furnished to the petitioner. However, the said ITR was not subjected to scrutiny assessment.
- f) On March 30, 2025 a notice to show cause under Section 148A(1) of the said Act of 1961 was issued to the petitioner for the Assessment Year 2019-20 stating that the respondent revenue authorities had information suggesting that income chargeable to tax had escaped assessment within the meaning of Section 147 of the said Act of 1961. Along with the said notice the following material were supplied:-

- i. An annexure which indicated that the information relied on by the revenue authorities had been obtained in *“execution of Cycle 5 of CBDT approved Risk Management Strategy (Cycle-5) for the identification of potential cases for action u/s. 148/148A of the Income Tax Act, 1961”*;
 - ii. Case Related Information Detail;
 - iii. Dissemination Note and
 - iv. Certain other documents including excel sheets, relevant chapters of appraisal report pertaining to the search operation conducted in respect of Shri Ajay Mehta and Others and relevant statements recorded during such search operation.
- g) By the said notice the petitioner was asked to show cause as to why a notice under Section 148 of the said Act of 1961 should not be issued.
- h) The petitioner furnished its reply to the said notice under Section 148A(1) of the said Act of 1961 on April 09, 2025 appending therewith - the details of payment by the Reliance for the financial year 2018-19 and payment details including UTR numbers and sample policy issued to customers. It was also mentioned therein that the accounts of the petitioner were audited by the Comptroller and Auditor General of India and that the audit report contained no adverse remark as regards the petitioner's accounts. The petitioner requested for dropping the reassessment proceedings while asserting that no notice under Section 148 of the said Act of 1961 should be issued against the petitioner.
- i) Upon receipt of the petitioner's reply, the respondent revenue authorities issued another notice dated June 14, 2025 under Section 148A(1) of the

said Act of 1961. The annexure to the said notice referred to the earlier notice dated March 30, 2025 issued under Section 148A(1) of the said Act of 1961 and indicated that the issuer of the fresh notice had taken over charge of Circle-5(1), Kolkata on May 16, 2025 and had considered the submissions made by the petitioner on April 09, 2025. The petitioner was thereby requested *“to furnish further submission/document, if any, on or before 20/06/2025”*.

- j) The said notice was followed by another notice dated June 16, 2025, again under Section 148A(1) of the said Act of 1961 along with an annexure whereby the petitioner was informed that the petitioner’s reply dated April 09, 2025 submitted in respect of show cause notice dated March 30, 2025 did not *“co-relate with the notice and information shared”* with the petitioner and that the information was therefore once again being shared with the petitioner.
- k) The petitioner furnished its fresh reply to the said show cause notice on June 20, 2025 thereby objecting to impugned proceedings for reassessment of the petitioner’s income for the Assessment Year 2019-20 on similar lines as done in its earlier reply dated April 09, 2025 and urged the income tax authority to drop the reassessment proceedings.
- l) Thereafter an order under Section 148A(3) of the said Act of 1961 was passed by the Assessing Officer thereby concluding that petitioner’s case was *“FIT”* for issuance of notice under Section 148 of the said Act of 1961 for reassessment of the petitioner’s income for the Assessment Year 2019-20.

- m) Immediately after the said order dated June 28, 2025, reopening notice under Section 148 of the said Act of 1961 was issued on June 30, 2025.
- n) Being aggrieved by the reopening of assessment of the petitioner's income for the Assessment Year 2019-20 as aforesaid, the petitioner has approached this Court by filing the instant writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

- 3. Mr. Jhunjhunwala, learned Advocate appearing for the petitioner has made the following submissions:-
 - a. Initiation of reassessment proceedings is wholly without jurisdiction inasmuch as in the case at hand, the Assessing Officer has no information that may suggest any income has escaped assessment as required under Section 148 of the said Act of 1961.
 - b. The sole allegation articulated by the Annexure to the notice dated March 30, 2025 under Section 148A(1) of the said Act of 1961, is that the petitioner had engaged in transactions with Reliance. However, no indication as regards the nature of the transactions that was aimed at by the respondent revenue authorities has been provided to the petitioner.
 - c. The case related information details annexed to the notice under Section 148A(1) of the said Act of 1961 indicates that the revenue authorities had no specific document in their possession on basis whereof it could be contended that the petitioner's income has escaped assessment.
 - d. The dissemination note annexed to the said notice to show cause under Section 148A(1) of the said Act of 1961 indicates that the search and seizure action was conducted in respect of Wings Brand Group and Ajay

- Mehta Group. The said dissemination note did not contain the name of the petitioner anywhere. None of the statements recorded during the search and seizure action copies whereof had been supplied to the petitioner made any reference to the petitioner anywhere.
- e. The comments of the Comptroller and Auditor General of India under Section 143(6) (b) Companies Act, 2013 on the financial statements of the petitioner for the year ended March 31, 2019 contained nothing negative or adverse.
- f. The fact that there was no adverse comment made on the petitioner's accounts, itself established that there was nothing wrong with the income earned by the petitioner in the relevant Assessment Year.
- g. The order under Section 148A(3) of the said Act of 1961, reveals that the Assessing Officer has proceeded to reopen the petitioner's case for assessment on the ground that no details had been furnished with respect to the receipt of Rs.1,02,41,800/- from M/s. Prudent Insurance Brokers Private Limited (hereafter "Prudent") while the charge levelled against the petitioner in the notice to show cause under Section 148A(1) was with regard to the transaction of the petitioner with Reliance for amount of Rs.1,09,41,800/-.
- h. A judgment of the Hon'ble Division Bench of this Court in the case of ***Excel Commodity & Derivative (P.) Ltd. vs. Union of India***¹ was relied on for the proposition that if the notice under Section 148A(b) of the said Act of 1961 called upon a person to show cause as to why such person's case would not be reopened for assessment by citing a particular reason,

¹ [2023] 150 taxmann.com 94 (Calcutta)

then reopening could not be done on another reason indicated by the Assessing Officer in the order passed under Section 148A(d) of the said Act of 1961.

- i. While exercising the power of reopening a case for assessment the Assessing Officer should keep in mind that the Assessing Officer has no power to review a case. The power vested with the Assessing Officer is only to reassess and such reassessment can be done only upon fulfilment of certain pre-conditions, one of which is information suggesting income escaping assessment. A judgment of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax vs. Kelvinator of India Limited**² was relied on in support of the aforesaid contention.
- j. A judgment of the Hon'ble High Court of Delhi in the case of **Signature Hotels P. Ltd. vs. Income-Tax Officer & Anr.**³ was relied on for the proposition that there must be material or evidence which *prima facie* shows or establishes *nexus* or link with the opinion that income has escaped assessment.
- k. A judgment of the Hon'ble Supreme Court in the case of **Income Tax Officer, I Ward, DISTT. VI, Calcutta vs. Lakhmani Mewal Das**⁴ was cited for the proposition that any and every material, howsoever vague and indefinite or distant, remote and farfetched would not constitute information. For the same proposition a judgment of the Hon'ble Division Bench of this Court in the case of **Principal Commissioner of Income**

² [2010] 320 ITR 561 (SC)

³ [2011] 338 ITR 51 (Delhi)

⁴ [1976] 103 ITR 437 (SC)

Tax-18, Kolkata vs. Prasant Desai⁵ and the Hon'ble Division Bench of the High Court of Bombay in the case of ***Karan Maheshwari vs. Assistant Commissioner of Income-Tax & Ors.***⁶ were also relied on.

1. Mr. Jhunjhunwala asserted that the Assessing Officer has wrongly assumed jurisdiction and as such the entire proceeding should be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

4. Mr. Amit Sharma, learned Advocate appearing for the respondent revenue authorities, submitted as follows:-
 - a. The provisions of Section 148A of the said Act of 1961, which precede issuance of a reopening notice under Section 148 of the said Act of 1961, are actually statutory reproductions of the principles laid down by the Hon'ble Supreme Court in the case of ***GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Ors.***⁷
 - b. In terms of the provisions of Section 147 of the said Act of 1961, the Assessing Officer would be very well entitled to make addition on new facts even without following the procedure under Section 148A of the said Act of 1961. In such view of the matter, it was not open to the petitioner to contend that since the notice under Section 148A(1) had been issued calling upon the petitioner to show cause why reassessment proceedings would not be initiated on the ground of its transactions with Reliance, therefore, the Assessing Officer would be

⁵ 2025 (6) TMI 984

⁶ [2024] 465 ITR 232 (Bom)

⁷ (2003) 1 SCC 72

denuded of its authority to reopen the case for assessment of the petitioner's income for the Assessment Year 2019-20 on the ground that the petitioner had not been able to satisfy the revenue authorities as regards the petitioner's transactions with Prudent.

- c. At the stage of issuance of notice under Section 148 of the said Act of 1961, the revenue authorities are not required to reach a definite conclusion. The revenue authorities are well authorised to reopen a case if there is information suggesting that income has escaped assessment.
- d. In the case at hand there is information suggesting that income has escaped assessment and a Writ Court should be loath to intervene at this stage.
- e. A judgment of the Hon'ble High Court of Jharkhand in the case of ***Renu Singh vs. Principal Commissioner of Income-tax***⁸ was relied on in support of the contention that Writ Court should not intervene under Article 226 of the Constitution of India, at the stage of issuance of notice to show cause. It was contended that the said judgment of the Hon'ble High Court of Jharkhand was challenged before the Hon'ble Supreme Court by way of a Special Leave Petition but the same was dismissed by an order dated July 09, 2024 in the case of ***Renu Singh vs. Principal Commissioner of Income-tax***⁹.
- f. It is not for the Writ Court to second guess the sufficiency or adequacy of reasons for the issuance of the notice for reopening of assessment.

At the stage of reopening the final outcome of the reassessment is not

⁸ [2024] 161 taxmann.com 296 (Jharkhand)

⁹ [2024] 164 taxmann.com 381 (SC)

required to be foretold by the Assessing Officer and the Assessing Officer would be well within his jurisdiction to issue a reopening the notice if he is satisfied that there is information suggesting that income has escaped assessment. In support of such contention, a judgment of the Hon'ble High Court of Gujarat in the case of **Akshat Pramodkumar Chaudhary vs. Deputy Commissioner of Income-tax**¹⁰ was pressed into service.

g. It was submitted by Mr. Sharma that there was nothing wrong with the reopening of the assessment and as such the writ petition deserved dismissal.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER:

5. Mr. Jhunjunwala re-joined by submitting that the Assessing Officer in the name of having information could not rely on vague and indefinite information for the purpose of reopening assessment. He submitted that in cases where the Assessing Officer had wrongly assumed jurisdiction, this Court could always intervene under Article 226 of the Constitution of India. In support of his submission, he relied on a judgment of the Hon'ble Supreme Court in the case of **Jeans Knit (P.) Ltd. vs. Deputy Commissioner of Income-tax, Bangalore**¹¹.

ANALYSIS & DECISION:

6. Section 147 of the said Act of 1961 provides for assessment of income that has escaped assessment. For the purpose of invoking the provisions of Section 147 of the said Act of 1961, the revenue authorities are required to

¹⁰ [2023] 153 taxmann.com 25 (Gujarat)

¹¹ [2017] 77 taxmann.com 176 (SC)

issue a notice under Section 148 of the said Act of 1961. Issuance of notice under Section 148 of the said Act of 1961 is to be preceded by the statutory protocol of Section 148A of the said Act of 1961, unless the case falls under the first proviso to Section 148A. Issuance of notices under Section 148 as well as under Section 148A is predicated upon existence of information with the Assessing Officer which suggests that income chargeable to tax has escaped assessment. A meaningful reading of Section 148A(1) of the said Act of 1961 would necessarily lead to the inference that the notice must indicate or specify the information which according to the Assessing Officer is suggestive of income having escaped assessment.

7. In the case at hand the information that has been supplied to the petitioner by the notice issued to it under Section 148A(1) of the said Act of 1961 is as follows:-

“The information contains that your company has made transaction with following insurance companies, during the year under consideration, which is not in accordance with the provision of IRDAI.

<i>Companies through which transaction was made</i>	<i>Amount</i>
<i>M/s. Reliance General Insurance Company Limited</i>	<i>Rs. 1,09,41,800/-</i>

{In compliance of the stipulations contained in Section 148A(1) of the Income-tax Act, 1961, the relevant information in possession of the Department, in its entirety, is being annexed to this Notice}.

The foregoing information suggests that income chargeable to tax has escaped assessment in this case, for the relevant Assessment Year.”

8. The notice unambiguously indicates that the petitioner’s transactions with Reliance only were under the tax scanner. It clearly alleges that the

petitioner's transaction with Reliance during the year under consideration was "not in accordance with the provisions of IRDAI" and then proceeds to quantify the transaction. When the notice indicates the charge with such specificity, any person of ordinary prudence would reasonably be expected to analyse the other information supplied along with the notice in the light of the charge levelled in order to answer the same.

9. The petitioner appears to have done exactly that. The impugned order passed under Section 148(3) of the said Act of 1961, however, reveals that the relevant Assessing Officer has proceeded to reopen the petitioner's case on a ground that did not find mention in the notice to show cause issued under Section 148A(1) of the said Act of 1961.
10. To wit, while in the notice to show cause issued under Section 148A(1) of the said Act of 1961, the Assessing Officer has flagged the transactions between the petitioner and Reliance, in the order under Section 148(3) of the said Act of 1961, the Assessing Officer has changed the basis of reopening from the transaction between the petitioner and Reliance to transaction between the petitioner and Prudent. The same would be evident from the following observations of the Assessing Officer in the order under Section 148(3) of the said Act of 1961:-

"As per information uploaded by the ACIT/DCIT, Central Circle-5(3), Mumbai, assessee company received Rs.7,00,000/- as commission directly from Reliance General Insurance Company Ltd. and further received Rs.1,02,41,800/- through an intermediary, namely, Prudent Insurance Brokers Pvt. Ltd. during the FY 2018-19. Relevant portion of the information is reproduced as under:

Table – C

Reliance General Insurance Company Limited

Details of Large Marketing Vendor during FY 2018-19

<i>Marketing vendor</i>	<i>PAN</i>	<i>Name of Insurance Intermediary</i>	<i>Amount</i>
ARMOUR MANAGEMENT CONSULTANTS PRIVATE LIMITED	AADCA2769C	BHARAT REINSURANCE BROKERS PVT LTD	1,71,57,900
AROMA VENTURES	AARFA5667J	TOYOTA TSUSHO INSURANCE BROKER INDIA PVT LTD	23,71,700
ASHOK NARKEM	AEJPN2860A	ASHOK NARKEM	39,63,000
BALJEETSINGH SURJITSINGH BAGGA	AARPB8241M	No Intermediaries	49,01,133
BALJEETSINGH SURJITSINGH BAGGA	AARPB8241M	NISSAN RENAULT FINANCIAL SERVICES PVT LTD	7,67,256
BALJEETSINGH SURJITSINGH BAGGA	AARPB8241M	PARAM AUTOMOBILES PRIVATE LIMITED	7,67,256
BALJEETSINGH SURJITSINGH BAGGA	AARPB8241M	PUNJAB AUTOMOBILES INDIA PRIVATE LIMITED	7,67,255
BALMER LAWRIE & CO. LTD.	AABCB0984E	PRUDENT INSURANCE BROKERS PVT. LTD	1,02,41,800
BALMER LAWRIE & CO. LTD.	AABCB0984E	No Intermediaries	7,00,000

However, on perusal of the submission filed and documents furnished in course of proceedings u/s. 148A of the Act, as evident in Table-A & B above, it has only shown the receipt from Reliance General Insurance Co. Ltd. totalling to Rs.1,10,33,116/-. However, no detail has been furnished with respect to the receipt of Rs.1,02,41,800/- from M/s. Prudent Insurance Brokers Pvt. Ltd. Further, in course of proceedings u/s. 148A of the Act, no submission/clarification/explanation has been filed with regard to such transaction although all the information, as available in this office, were provided to the assessee company.”

- 11.** Based on the aforesaid observations, the Assessing Officer at paragraph 6.3 of the said order has concluded thus:-

“6.3. Accordingly, in present matter, I am satisfied that there is unaccounted receipt of Rs.1,02,41,800/-, which is found to have escaped assessment, as per provisions of Section 149(1)(b) of Income-tax Act, 1961.”

- 12.** The above observations and abrupt conclusion of the Assessing Officer do not appeal at all. The Assessing Officer’s assertion that all information available with him had been supplied to the petitioner (which are appendages to the notice under Section 148A(1) of the said Act of 1961), would not justify the change of track by him. The specific perspective for

analysing the documents supplied with the notice under Section 148A(1) of the said Act of 1961 was made clear in the said notice itself, namely – that the petitioner had conducted certain transactions with Reliance which required probe. Consequently, the petitioner cannot reasonably be expected to analyse those documents in the context of its alleged transactions with Prudent.

13. If the explanation sought from the petitioner by the notice issued under Section 148A(1) of the said Act of 1961 was in respect of its transactions with Reliance, then the order under Section 148A(3) of the said Act of 1961 could not have rolled on a different turf. It is very well settled now that an order cannot travel beyond the confines of the notice to show cause. (***See Reckitt & Colman of India Ltd. vs. Collector of Central Excise***¹²)
14. In fact by proceeding on a ground different than the one urged in the notice under Section 148A(1) of the said Act of 1961, the Assessing Officer has indirectly accepted the petitioner's contentions in response to the said notice. That being the position, the defence of the petitioner against reopening of proceedings for assessment of its income could not have been trumped by the Assessing Officer by relying on a ground that was never put to the petitioner.
15. In the case of ***Excel Commodity & Derivative (P.) Ltd.*** (supra) an Hon'ble Division Bench of this Court had also held so in the following words:-

“4. The appellant-assessee was issued notice under section 148A(b) of the Act dated March 22, 2022. The sum and substance of the allegation in the notice was that the appellant-assessee has done fictitious derivative transactions with M/s. Blueview Tradecom Pvt. Ltd. The assessee submitted their detailed reply to the

¹² (1997) 10 SCC 379

said notice enclosing all relevant documents in support of their claim to justify that they have not indulged in any fictitious derivative transaction. The procedure contemplated under section 148A requires the Assessing Officer to consider the reply and thereafter pass a reasoned order, if in the opinion of the Assessing Officer, the information furnished by the assessee in their reply is satisfactory, then nothing more requires to be done. On the other hand, if the Assessing Officer is of the view that the reply furnished by the assessee is not acceptable, then he is to pass a speaking order in terms of clause (d) of section 148A of the Act. In the instant case, the Assessing Officer has passed the order under section 148A (d) dated April 7, 2022. On a reading of the said order, we find that the Assessing Officer has indirectly accepted the explanation given by the appellant-assessee that they have not indulged in any fictitious derivative transaction. We say so because in the order dated April 7, 2022 in paragraph 4 therein, the Assessing Officer alleges that prima facie the appellant-assessee has taken accommodation entry by way of fund transfer from M/s. Brightmoon Suppliers Pvt. Ltd. which is a different company. Thus, the order passed under clause (d) of section 148A of the Act is not based on the reason for which notice dated March 22, 2022 was issued under section 148A(b) of the Act. Therefore, the order dated April 7, 2022 is illegal and has to be held to be wholly unsustainable. In such factual position, the necessity to remand the matter back to the Assessing Officer does not arise.”

- 16.** Furthermore, this Court finds sufficient force in the submissions of Mr. Jhunjhunwala that the information provided to the petitioner and relied on by the Assessing Officer does not suggest that the petitioner's income has in any manner escaped assessment at least on the basis of the material presently on record. To be specific, the dissemination note does not even name the petitioner. The statements recorded in the search and seizure operation conducted in respect of Wings Brand Group and Ajay Mehta group also do not whisper anything about the petitioner or anything related to the petitioner. In such view of the matter is not understood as to how alleged transactions between the petitioner and Prudent as highlighted in the chart appended to the notice under Section 148A(1) of the said Act of

1961 and extracted in the order under Section 148A(3) of the said Act of 1961, without anything more, can be termed/used as information suggestive of income escaping assessment.

17. The legal principles established by the Hon'ble Supreme Court in the case of **Lakhmani Mewal Das** (supra) still remain foundational to the income tax jurisprudence. The requirement of “*rational connection*” which in terms of the said judgment “*postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer*” cannot be given a go-by. Thus direct nexus or live link between the information and the Income Tax Officer’s opinion that income has escaped assessment will have to be established. Indeed at the stage of issuance of notice under Section 148 the Assessing Officer is not required to conclusively prove that income has escaped assessment but then the information must suggest that there is income has escaped assessment. In the case at hand there is no such suggestion at all. The resounding words of **Lakhmani Mewal Das** (supra) deserve notice in this context:-

“As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words “definite information”

which were there in Section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in Section 147 of the Act of 1961 would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, farfetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.”

- 18. Signature Hotels P. Ltd.** (supra) has been rendered by the Hon’ble Delhi Court by relying on **Lakhmani Mewal Das** (supra). The Hon’ble Bombay High Court has also applied the same principles in the presently obtaining Section 148A regime in the case of **Karan Maheshwari** (supra). An Hon’ble Division Bench of this Court has also decided the case of **Prasant Desai** (supra) by relying on the same principles laid down by the Hon’ble Supreme Court in the case of **Lakhmani Mewal Das** (supra).
- 19.** A judgment of the Hon’ble Delhi High Court in the case of **Divya Capital One (P.) Ltd. vs. Asstt. CIT**¹³ which has been relied on by the Hon’ble Division Bench of this Court in the case of **Excel Commodity & Derivative (P.) Ltd.** (supra) is also very instructive. The relevant portion of **Excel Commodity & Derivative (P.) Ltd.** (supra) where **Divya Capital One (P.) Ltd.** (supra) has been quoted with agreement is extracted herein:-

“7. In Divya Capital One (P.) Ltd. v. Asstt. CIT reported in [2022] 445 ITR 436 (Delhi); (2002) 139 taxmann.com 461 (Delhi), the court had considered the new reassessment claim and held as follows (page 441 of 445 ITR):

“This court is of the view that the new reassessment scheme (vide amended sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business. In fact, the Legislature brought in safeguards in the amended reassessment scheme in accordance with the judgment of the Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 (SC); [2003] 259 ITR 19 (SC) before any exercise of jurisdiction to initiate reassessment proceedings under section 147 of the Act.

¹³ [2022] 445 ITR 436 (Del)

This court is further of the view that under the amended provisions, the term 'information' in Explanation 1 to section 148 cannot be lightly resorted to so as to reopen assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is 'information to suggest' under amended law or 'reason to believe' under erstwhile law the benchmark of escapement of income chargeable to tax' still remains the primary condition to be satisfied before invoking the powers under section 147 of the Act. Merely because the respondent-Revenue classifies a fact already on record as 'information' may vest it with the power to issue a notice of reassessment under section 148A(b) but would certainly not vest it with the power to issue a reassessment notice under section 148 post an order under section 148A(d)."

8. *As pointed out in the aforesaid mentioned decision, the term "information" in Explanation 1 under section 148 cannot be lightly resorted to so as to reopen assessment and this information cannot be a ground to give unbridled power to the Revenue. In fact, in the case on hand, the information has been lightly used which resulted in issuance of notice. As pointed out earlier, the assessee had submitted the explanation to the notice along with documents in support of their claim. The Assessing Officer has given up the said allegation which formed the basis of the notice and proceeded on a fresh ground for alleging that the transaction with some other company was an accommodation entry. Therefore, on that score also the order dated April 7, 2022 is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue."*

20. In the celebrated case of ***Kelvinator of India Limited*** (supra) the Hon'ble Supreme Court has clearly held that reassessment has to be based on fulfilment of certain preconditions. Such preconditions are imbibed in the statute itself. In the said case too, the Hon'ble Supreme Court had emphasised that *"the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment."*

21. Turning to the contentions of Mr. Sharma, it is no longer open to debate that a Writ Court would be loath to interfere at the stage of issuance of notice of reassessment. However, the policy of non-interference at the stage of

issuance of reopening notice adopted by the High Court cannot be exalted to a mandatory fetter on its power under Article 226 of the Constitution of India such that it cannot exercise its writ jurisdiction even in cases where there is arbitrary exercise of authority by the revenue or the case falls within any of the other well-known exceptions that justify invocation of writ remedies. The judgment in the case of ***Jeans Knit (P.) Ltd.*** (supra) cited by Mr. Jhunjhunwala has clarified the position that in fit cases writ petitions can be entertained even at the stage of issuance of reopening notice under Section 148 of the said Act of 1961.

- 22.** It must be kept in mind that reopening of assessment is a serious action and it must be done strictly in accordance with law. In the case at hand at least two conditions justifying invocation of writ powers stand satisfied – arbitrariness in changing the ground of reopening indicated in the show cause notice and consequential violation of principles of natural justice in passing an order against the petitioner based on a ground which the petitioner had no opportunity to deal with.
- 23.** In view of the aforesaid, the submission of Mr. Sharma that a Writ Court should keep its hands off the matter cannot be accepted. The judgment in the case of ***Akshat Pramodkumar Chaudhary*** (supra) cannot come to the rescue of the revenue inasmuch as the same was delivered in the peculiar facts of the case where the Court was satisfied that there was enough material to justify issuance of notice under Section 148 of the said Act of 1961. Paragraph 5.1 of the report would clearly reveal the same:-

“5.1 Whereas in the present case, the revenue authority has taken into consideration the statement of Mr. Anil Kumar Khemka and on the basis of that statement and other material, notice came to be issued.”

24. Mr. Sharma had contended that since Section 147 of the said Act of 1961 empowers the Assessing Officer to make addition on new facts even without following the procedure under Section 148A of the said Act of 1961 therefore notwithstanding the fact that a notice under Section 148A(1) had been issued to the petitioner calling upon it to show cause as to why reassessment proceedings would not be initiated on the ground of its transactions with Reliance, the Assessing Officer would still be justified to reopen the case for assessment of the petitioner's income for the Assessment Year 2019-20 on the ground that the petitioner had not been able to satisfy the revenue authorities as regards the petitioner's transactions with Prudent. This Court is unable to agree with Mr. Sharma.

25. Section 147 of the said Act of 1961 may first be noticed:-

***“147. Income escaping assessment.**—If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year).*

Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of Section 148-A have not been complied with.”

26. A meaningful reading of the provisions of Section 147 of the said Act of 1961 would make it clear that the same would get activated only after completing the drill in Section 148 and 148A (where applicable) and not before that. The

power of the Assessing Officer to assess or reassess income in respect of issues which come to his notice subsequently can be exercised only after the assessment or reassessment proceedings have commenced. The emboldened and underscored portion of the Explanation to Section 147 of the said Act of 1961 makes the said aspect very clear.

- 27. *Renu Singh*** (supra) relied on by the revenue was delivered in the context of a challenge thrown to an assessment order where there was an appellate remedy available. The case at hand is clearly not so. Further, as already discussed hereinabove, this case has been found fit for interference under Article 226 of the Constitution of India.
- 28.** For all the reasons aforesaid, the order impugned dated June 28, 2025 passed under Section 148A(3) of the said Act of 1961 and the consequential reopening notice dated June 30, 2025 issued under Section 148 of the said Act of 1961 in respect of Assessment Year 2019-20 fail to withstand judicial scrutiny. The same are set aside.
- 29.** It is however clarified that this order shall not prevent the respondent revenue authorities from initiating fresh proceedings, in accordance with law, if the requisite conditions are fulfilled.
- 30.** W.P.O 656 of 2025 stands disposed of with the above observations. No costs.
- 31.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)