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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.23165 of 2025

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

***

Sunil Kumar Sahoo
Aged about 50 Years
Son of Narayan Sahoo
Proprietor of
M/s. Bhagabati Cashew
At/P.O.: Dhirapatna
Via: Bhapur, District: Dhenkanal. ... Petitioner

-*VERSUS*-

1. Deputy Commissioner of Income Tax
Circle-1(2), Bhubaneswar
At: 5th Floor, Aayakar Bhawan
Rajaswa Vihar, Bhubaneswar
District: Khordha.

2. Joint Commissioner of Income Tax
Aayakar Bhawan
Rajaswa Vihar, Bhubaneswar
District: Khordha.

3. Tax Recovery Officer
Income Tax Department
4th Floor, Aayakar Bhawan
Rajaswa Vihar
Bhubaneswar – 751007.

4. Deputy Director of Income Tax
(Investigation)
Unit – 2(2), Bhubaneswar
District: Khordha. ... Opposite parties

Counsel appeared for the parties:

For the Petitioner : Mr. Sidhartha Ray,
Senior Advocate
Assisted by
M/s. Kshirod Kumar Sahoo,
and
Dillip Kumar Samal, Advocates

For the Opposite parties : Mr. Avinash Kedia,
Junior Standing Counsel,
Income Tax Department

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 19.03.2026 :: Date of Judgment : 31.03.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

Challenge is laid in the instant writ petition against Assessment framed under Section 147 read with Section 144 of the Income Tax Act, 1961, *vide* Order dated 14.11.2017 of the Deputy Commissioner of Income Tax, Circle 1(2), Bhubaneswar with respect to assessment

year 2012-13 (Financial Year 2011-12) purported to have been passed in pursuance of Notice under Section 148 and subsequent Notices dated 14.06.2017 and 23.10.2017 under Section 142, and the petitioner craves indulgence of this Court exercising power under Articles 226 and 227 of the Constitution of India for grant of following relief(s):

"In the context aforesaid it is most humbly prayed that Your Lordships may after hearing the counsel for the petitioner be pleased to:

(i) Call for the records;

(ii) And further Your Lordships may be pleased to issue rule nisi calling upon the opposite party to show cause as to why the order of reassessment passed under Section 147/144 of Income Tax Act for the assessment year 2012-13 passed by opposite party No.1 under Annexure-5 & the Demand Notice Under Annexure-5/A to the Writ Petition shall not be quashed;

(iii) And further Your Lordships may be pleased to issue rule nisi calling upon the opposite parties to show cause as to why the order of attachment dated 21.05.2025 issued by the opposite party No.3 under Annexure-4 shall not be quashed,

(iv) And if the opposite parties fail to show cause or show insufficient cause then the rule may be made absolute;

(v) *And further Your Lordships may be pleased to pass such other order or orders as your Lordships may deem fit and proper;*

And for this act of kindness, the petitioners as in duty bound shall ever pray."

Case of the petitioner:

2. The petitioner filed return of income for the assessment year 2012-13 on 05.04.2013 under the Income Tax Act, 1961 (for brevity, "IT Act") declaring total income at Rs.22,26,000/-. After filing of return for the said assessment year, no communication was made in respect of assessment under Section 143(1).

2.1. The Deputy Commissioner of Income Tax, Circle 1(2), Bhubaneswar without causing any independent inquiry with respect to information received *vide* Letter dated 29.03.2017 from the Deputy Director of Income Tax (Investigation), Unit–2(2), Bhubaneswar reopened the Assessment for the assessment year 2012-13. Subsequent thereto, a penalty proceeding was initiated by issue of show cause notice in obedience to which the petitioner having appeared in the said proceeding, the Assessing Authority imposed penalty under Section 271C of the IT Act on 13.04.2018.

2.2. Neither the Notice under Section 147 nor was the Assessment Order served on the petitioner. The

petitioner came to know about the Assessment Order and the Demand Notice passed under Section 147/144 of the IT Act, on 21.05.2025 when a Tax Recovery Proceeding was initiated. The Tax Recovery Officer, has issued the order of attachment of the immovable property. On getting the information about such attachment order, the petitioner having applied for the certified copy of the relevant Orders which was supplied to him on 24.07.2025.

2.3. Hence this application has been filed questioning jurisdiction of the Assessing Officer to pass Assessment Order dated 14.11.2017 under Section 147 read with Section 144 (Annexure-5) and as a consequence thereof raise demand under Section 156 of the IT Act *vide* Annexure-5A without ensuring service of Notice under Section 148.

Hearing:

3. Though copy of the writ petition was served on the Senior Standing Counsel for the Income Tax Department on 18.08.2025, no counter affidavit has been filed by the Department.

3.1. On 12.03.2026 when the matter was taken up for the first time by this Court, at the request of Sri Subash Chandra Mohanty, learned Senior Standing Counsel for

the Income Tax Department the matter stood adjourned to 19.03.2026 for furnishing instructions.

3.2. Accordingly matter being listed today, on receipt of written instruction from the Department, Sri Avinash Kedia, learned Junior Standing Counsel for the Income Tax Department appeared and was ready with the matter to advance arguments.

3.3. Heard Sri Sidhartha Ray, learned Senior Advocate assisted by Sri Kshirod Kumar Sahoo, learned Advocate for the petitioner and Sri Avinash Kedia, learned Junior Standing Counsel representing the opposite parties.

3.4. Hearing being concluded, the matter stood reserved for preparation and pronouncement of Judgment/Order.

Arguments and submissions:

4. Sri Sidhartha Ray, learned Senior Advocate being assisted by Sri Kshirod Kumar Sahoo, learned Advocate urged that the mandatory requirement of Section 148 implying service of notice on the petitioner contemplating initiation of proceeding for assessment under Section 147 read with Section 144 being not complied with, the Assessment Order dated 14.11.2017 suffers from patent infirmity rendering the entire proceeding vitiated.

4.1. It is vociferously argued that without completing the assessment process under Section 143 (as there was no communication in this respect), no assessment could have been validly initiated under Section 147 by taking recourse to provisions of Section 148. The impugned assessment being made without demonstrating that the notice under Section 148 was served on the petitioner, the assessment order cannot be sustained.

4.2. Amplifying his argument further, Sri Sidhartha Ray, learned Senior Advocate would emphasise that the modes specified in Section 282 of the IT Act with respect to service of notice, as it existed prior to bringing into force Notification dated 30.01.2019 issued by the Central Board of Direct Taxes, being not adhered to, the Assessment Order dated 14.11.2017 (Annexure-5) and consequential Demand Notice dated 14.11.2017 raising demand to the tune of Rs.47,45,150/- cannot be sustained.

5. Vehemently opposing entertainment of the writ petition it is stated that inordinate delay in approaching this Court being not appropriately explained, the petitioner cannot be allowed to circumvent alternative remedial forum. Sri Avinash Kedia, learned Junior Standing Counsel refuted the submissions made by the learned Senior Advocate and supported the Assessment Order on the premise that non-appearance of the assessee despite

issue of statutory notice under Section 148 coupled with notices under Section 142 left the Assessing Authority without any option but to conclude the assessment based on unexplained cash deposits made under Section 69A of the IT Act.

Consideration of arguments and submissions:

6. The Assessment Order dated 14.11.2017 (Annexure-5) reflects the following fact:

> *"The case was reopened under Section 147 of the IT Act, 1961. Notice under Section 148 of the Act* ***was issued to the assessee*** *requiring to deliver before the expiry of 30 days from the date of service of notice, a return in the prescribed form of their income in respect of which they are assessable for the said assessment year."*

6.1. Certified copy of order dated 29.03.2017 (Annexure-1) shows that the Assessing Officer after reducing the fact enumerated in the information received from the Deputy Director of Income Tax (Investigation) to writing on 29.03.2017, directed to issue Notice under Section 148. It is observed in the said order dated 29.03.2017 as follows:

> *"Information has been received from the Deputy Director of Income-tax (Investigation), Unit-2(2), Bhubaneswar vide his letter dated 23.03.2017 that M/s. Bhagabati Cashew is a Proprietorship concern of Shri Sunil Kumar Sahoo, having account No.028405004208 with Bhubaneswar, Nayapalli*

Branch. The account was opened on 30.06.2011. Date of incorporation was 14 March 1984. There are 11 linked accounts under PAN-ATOPS6509F held by the customer. Alert had been generated due to large value cash transactions in currents accounts. As per the due diligence conducted by the bank official customer is into cashew business and exporter of this product. Transaction pattern shows that account get credits by the cash, clearing and get debits by the RTGS, transfer, self paid cheque. Total deposits between 02.07.2011 to 08.10.2011 is amounted to Rs.104 lakhs out of which Rs.78 lakh is by cash and total debit is amounted to Rs.104 lakh. Cash deposited from different branches and on 26.07.2011, Rs.17 lakh remitted through RTGS in own name. Customers another account also showing the same transaction pattern that is cash transaction in a new account is a short period leads to suspicion hence reported.

2. *The additional linked bank accounts as detailed under have been found in the CTR database of FIU-IND in which substantial cash transactions have been made. 1) IDBI Bank, College Road, Cuttack-21710200000 2) ICICI Bank, Bajraakabati Road, Cuttack-6342050085003 3) IDCI Bank, Khurda, Bhubaneswar-042102000030463.*

2. *Enquiry had been initiated by the Directorate by issuing summons to Shri Sunil Kumar sahoo (Prop: Bhagabati Cashew) and the other individual linked to the STR Sri Ashok Kumar Sahoo. In his submission Sri Ashok Kumar Sahoo explained that he is doing business of cashew collection which is seasonal in nature. He takes cash advances from Sri*

Sunil Kumar Sahoo for supply of cashew and when the desired collection is not materialized the advance is returned in cash or deposited in the bank account of the Sri Sunil Kumar Sahoo. The bank account shows number of high cash deposits which are explained as cash collection against sales.

3. *Summons had been issued by the Directorate to both parties. However, only Sri Ashok Kumar Sahoo has complied to summon but had not furnished any documentary evidence like ledger copies, stock book, bank book, cash book. The other party Sri Sunil Kumar Sahoo has not yet complied with the summons. They were also issued the reminder but they have not complied.*

4. *It is seen from the record that the assessee has filed the return of income for the assessment year under consideration i.e. 2012-13 on 05.04.2013 declaring total income of Rs.22,26,000/-. It is observed from the balance sheet filed that the balance available with the banks is Rs.13,233/- only and hence obviously the balance sheet of the concern of the assessee do not manifest or reflective of the transactions brought on record/transaction reported in the letter of the ADIT (Inv.), Bhubaneswar.*

5. *Thus I have reason to believe that income upto such extent has escaped assessment within the meaning of Section 147 of the I.T. Act. Issue notice under Section 148 of the I.T. Act."*.

6.2. The zimni orders of the proceeding under Section 148 as enclosed with the writ petition at Annexure-1 demonstrates as follows:

"28.03.2017 Approval under Section 147 received vide No.11487 dated 28.03.2017 placed in the folder.

29.03.2017 Notice under Section 148 issued to assessee.

No compliance.

14.06.2017 Notice under Section 142(1) issued fixing compliance on 28.06.2017 at 1.15 p.m.

***"

6.3. The written instruction received from the Department and furnished by the learned Junior Standing Counsel during the course of hearing reveals the following facts:

Notice under Section 148 dated 29.03.2017	Despatch on 29.03.2017 *vide* despatch No.11536	---	---
Notice under Section 142(1) dated 14.06.2017	Despatch on 16.06.2017 *vide* despatch No.2065	---	Annexure-A
Notice under Section 142(1) dated 23.10.2017	Despatch on 26.10.2017 *vide* despatch No.8319	Speed post No. EO941011095IN (postal delivery report placed on record)	Annexure-B
Assessment Order along with Demand Notice under Section 156 dated 14.11.2017	Despatch on 14.11.2017 *vide* despatch No.9637	Speed post No. EO941014159IN	Annexure-C

6.4. Aforesaid instruction as provided by the Income Tax Department would make it abundantly clear that though despatch number is assigned with respect to despatch of Notice dated 29.03.2017 under Section 148, it could not be demonstrated the mode of despatch and date of service on the petitioner. However, the zimni order indicates "issue" of notice under Section 148 on 29.03.2017.

6.5. Indubitably from the arguments of counsel for both sides it is discernible that since the Notice under Section 148 was stated to have been issued on 29.03.2017 pursuant to which impugned Assessment Order was passed on 14.11.2017, the provisions of the IT Act as it existed on the date of issue of notice would be the guiding the factor. With the above factual scenario regarding statutory Notice dated 29.03.2017 under Section 148, in order to examine whether service of such notice is *sine qua non* for validity of initiation of proceeding under Section 147 of the IT Act, it is felt expedient to have regard to the relevant provisions of the IT Act.

6.6. The provisions of Section 147, Section 148 and Section 149 of the IT Act at the relevant period stood thus:

"147.Income escaping assessment.—

> *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped*

assessment for any assessment year, he may, subject to the provisions of Section 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 Section 148 to 153 referred to as the relevant assessment year:

Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of

any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—

Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—

For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under Section 92E;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been underassessed ; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—

For the purpose of assessment or reassessment 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, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148.

Explanation 4.—

For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

148. Issue of notice where income escaped assessment.—

(1) Before making the assessment, reassessment or recomputation under Section 147, the Assessing Officer ***shall serve on the assessee a notice*** *requiring him to furnish within such period, as may be specified in such 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 under Section 139:*

Provided that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of Section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of Section 153, every such notice referred to in

this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of Section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—

For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall before issuing any notice under this section record his reasons for doing so.

149. Time limit for notice.—

(1) No notice under Section 148 ***shall be issued*** *for the relevant assessment year,—*

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation.—

In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of Section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.

(3) If the person on whom a notice under Section 148 is to be served is a person treated as the agent of a non-resident under Section 163 and the assessment, reassessment or recomputation to be made in

pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation.—

For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."

6.7. It does surface from the language employed in Section 148(1) that it is required to "serve on the assessee a notice" before making the assessment, reassessment or recomputation under Section 147. In Section 149 it is made clear that "no notice under Section 148 shall be issued" beyond the periods specified therein.

6.8. The use of the word "shall" in the aforesaid provisions would denote that it is mandatory in nature.

6.9. In *Bank of India Vrs. Sri Nangli Rice Mills (P) Ltd., (2025) 9 SCC 225* it is observed as follows:

"115.This Court in Delhi Airtech Services (P) Ltd. Vrs. State of U.P. (2011) 9 SCC 354 held that the general rule of interpretation requires that the word "shall" be read as "must". It observed that the term "shall" only be read as "may" where doing so would achieve the ends of legislative intent behind the substantive provision and the scheme of the entire

statute in question. The relevant observations read as under:

'122. The distinction between mandatory and directory provisions is a well-accepted norm of interpretation. ***The general rule of interpretation would require the word to be given its own meaning and the word "shall" would be read as "must" unless it was essential to read it as "may" to achieve the ends of legislative intent and understand the language of the provisions.*** *It is difficult to lay down any universal rule, but wherever the word "shall" is used in a substantive statute, it normally would indicate mandatory intent of the legislature.*

123. Crawford on Statutory Construction has specifically stated that language of the provision is not the sole criterion; but the courts should consider its nature, design and the consequences which could flow from construing it one way or the other.

124. Thus, the word "shall" would normally be mandatory while the word "may" would be directory. Consequences of non-compliance would also be a relevant consideration. The word "shall" raises a presumption that the particular provision is imperative but this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction.'

116. Similarly in State of Haryana Vrs. Raghubir Dayal, (1995) 1 SCC 133, this Court held that the use of the word "shall" ordinarily be construed as mandatory except where such an interpretation would be anathema to either the scope of the enactment, or where the consequences that would flow from such construction would not demand such interpretation. The relevant observations read as under:

> *'5. The use of the word "shall" is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand.* ***Normally, the word "shall" prima facie ought to be considered mandatory but it is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon.*** *The word "shall", therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the word "shall" as mandatory or as directory, accordingly.* ***Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory.*** *However, if by holding*

*them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory.' ***"*

6.10. The following observation with respect to 'shall' and 'may' appearing in *C. Bright Vrs. The District Collector, (2020) 7 SCR 997* deserves to be quoted:

> *"7. A well settled rule of interpretation of the statutes is that the use of the word 'shall' in a statute, does not necessarily mean that in every case it is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not always correct to say that if the word 'may' has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid [State of U.P. Vrs. Manbodhan Lal Srivastava, AIR 1957 SC 912] and that when a statute uses the word 'shall', prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute [State of U.P. Vrs. Babu Ram Upadhya, AIR 1961 SC 751]. The principle of literal construction of the statute alone in all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute [Reserve Bank of India Vrs. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424]."*

6.11. In *CCE, Cus. & ST Vrs. Ballarpur Industries Ltd., 2016 (I) ILR-Cut 931* this Court while considering the use of the word "shall" as mandatory enunciated the circumstance as follows:

> *"16. It is reported in the decision of Privy Council in Montreal Street Railway Company Vrs. Normandin (1917) AC 170 where their Lordships have observed:*
>
> *'*** **The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at.** The cases on the subject will be found collected in Maxwell on Statutes, 5th Edn., page 596 and the following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.'*
>
> *17. The aforesaid observation has also been followed by the Hon'ble Supreme Court in L. Hazari Mal Kuthiala Vrs. ITO reported in (1961) 41 ITR 12 (SC) = AIR 1961 SC 200. In Bhavnagar University Vrs. Palitana*

Sugar Mill P. Ltd., AIR 2003 SC 511 their lordships have observed:

> *'23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.'*

18. With due respect to the above decisions, it is made clear that when the statute has entrusted the performances of public duty upon the public officer having great importance and the dereliction of such purpose will cause serious inconvenience to the general public and State exchequer. Such statutory provision cannot be said to be mere directory but it is mandatory. Moreover, for interpretation or the construction of statute, it should be read as a whole to find out the purposive interpretation as observed by the Hon'ble Supreme Court."

6.12. Presence of the word "shall" in the provisions of the IT Act referred to above would indicate that the "service on the assessee" in Section 148 and "shall be issued" in Section 149 are necessary concomitant facets and both the sections are required to be read in harmony.

6.13. In *Franklin Templeton Trustee Services Private Limited Vrs. Amruta Garg, (2021) 6 SCC 736,* it has been held as under:

> *"17. The concept of "absurdity" in the context of interpretation of statutes is construed to include any result which is unworkable, impracticable, illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief [See Bennion on Statutory Interpretation, 5th Edn., p. 969.]. Logic referred to herein is not formal or syllogistic logic, but acceptance that enacted law would not set a standard which is palpably unjust, unfair, unreasonable or does not make any sense. [Bennion on Statutory Interpretation, 5th Edn., p. 986.] When an interpretation is beset with practical difficulties, the courts have not shied from turning sides to accept an interpretation that offers a pragmatic solution that will serve the needs of society [Id, p. 971, quoting Griffiths, L.J.]. Therefore, when there is choice between two interpretations, we would avoid a "construction" which would reduce the legislation to futility, and should rather accept the "construction" based on the view that draftsmen would legislate only for the purpose of bringing about an effective result. We must strive as far as possible to give meaningful life to enactment or rule and avoid cadaveric consequences [See Principles of Statutory Interpretation by Justice G.P. Singh, 14th Edn., p. 50.]."*

6.14. In the case of *Vivek Narayan Sharma Vrs. Union of India, (2023) 3 SCC 1,* it has been held as under:

*"134. 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 ["Some Reflections on the Reading of Statutes" [(1947) 47 Columbia LR 527], Columbia LR at p. 538]. This is how Justice Frankfurter succinctly propounds the principle of purposive interpretation. ****

*137. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfil the object and purport of the legislative intent. ****

148. It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain

words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction."

6.15. In *Sultana Begum Vrs. Prem Chand Jain, (1997) 1 SCC 373*, the following principles relating to harmonious construction has been propounded:

"15. On a conspectus of the case-law indicated above, the following principles are clearly discernible:

(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.

(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be

given to both. This is the essence of the rule of "harmonious construction".

(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

(5) To harmonise is not to destroy any statutory provision or to render it otiose."

6.16. The case of *Commissioner of Income Tax Vrs. Hindustan Bulk Carriers, (2003) 3 SCC 57*, proceeded to observe that:

"16. The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See Salmon Vrs. Duncombe, (1886) 11 AC 627 = 55 LJPC 69 = 55 LT 446 (PC), AC at p. 634, Curtis Vrs. Stovin, (1889) 22 QBD 513 = 58 LJQB 174 = 60 LT 772 (CA) referred to in S. Teja Singh case, AIR 1959 SC 352 = (1959) 35 ITR 408.)

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes Vrs. Doncaster Amalgamated Collieries, (1940) 3 All ER 549 = 1940 AC 1014 = 109 LJKB 865 = 163 LT 343 (HL) referred to in Pye Vrs. Minister for Lands for NSW, (1954) 3

All ER 514 = (1954) 1 WLR 1410 (PC).) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania Vrs. Union of India, 1992 Supp (1) SCC 594 = AIR 1992 SC 1.

18. *The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.*

19. *The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath Vrs. State of Karnataka, (1992) 1 SCC 335 = AIR 1992 SC 81.) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum Vrs. Prem Chand Jain, (1997) 1 SCC 373 = AIR 1997 SC 1006.)*

20. *Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.*

21. *The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is*

not a harmonised construction. To harmonise is not to destroy."

6.17. Upon harmonious construction of the provisions of the IT Act so far as is necessary, it can be affirmatively stated that if adequate opportunity is not granted to an assessee and there has been irregular assumption of jurisdiction by the Assessing Officer, it is quite obvious that there has been violation of the principles of natural justice.

6.18. The circular referred to by Sri Sidhartha Ray, learned Senior Advocate would point out that adherence to the principles of natural justice before assessment is expedient to avoid prejudice. Noteworthy here to have reference to said Instruction No.20/2015, dated 29.12.2015 which reads thus:

"Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 29th of December, 2015

Subject: Scrutiny Assessments— some important issues and scope of scrutiny cases selected through Computer Aided Scrutiny Selection (CASS)— reg.

The Central Board of *Direct Taxes ("CBDT"), vide Instruction No.7/2014 dated 26.09,2014 had clarified the extent of enquiry in certain category of*

cases specified therein, which are selected for scrutiny through CASS Further clarifications have been sought regarding the scope and applicability of the aforesaid Instruction to cases being scrutinized

2. *In order to facilitate the conduct of scrutiny assessments and to bring further clarity on some of the issues emerging from the aforesaid Instruction, following clarifications are being made:*

   i. *Year of applicability: As stated in the Instruction No. 7/2014, the said Instruction is applicable only in respect of the cases selected for scrutiny through CASS-2014.*

   ii. *Whether the said Instruction is applicable to all cases selected under CASS: The said Instruction is applicable where the case is selected for scrutiny under CASS only on the parameter(s) of AIR/CIB/26AS data. If a case has been selected under CASS for any other reason(s)/parameter(s) besides the AIR/CIB/ 26AS data, then the said Instruction would not apply.*

   iii. *Scope of Enquiry: Specific issue based enquiry is to be conducted only in those scrutiny cases which have been selected on the parameter(s) of AIR/CIB/26AS data. In such cases, the Assessing Officer, shall also confine the Questionnaire only to the specific issues pertaining to AIR/CIB/26AS data Wider scrutiny in these cases can only be conducted as per the guidelines and procedures stated in Instruction No.7/2014.*

iv. Reason for selection: In cases under scrutiny for verification of AIR/CIB/26AS data, the Assessing Officer has to intimate the reason for selection of case for scrutiny to the assessee concerned.

3. As far as the returns selected for scrutiny through CASS-2015 are concerned, two type of cases have been selected for scrutiny in the current Financial Year— one is 'Limited Scrutiny' and other is 'Complete Scrutiny'. The assessees concerned have duly been intimated about their cases falling either in Limited Scrutiny or 'Complete Scrutiny' through notices issued under Section 143(2) of the Income-tax Act 1961 ('Act'). The procedure for handling 'Limited Scrutiny' cases shall be as under:

a. In Limited Scrutiny cases, the reasons/issues shall be forthwith communicated to the assessee concerned.

b. The Questionnaire under Section 142(1) of the Act in 'Limited Scrutiny' cases shall remain confined only to the specific reasons/issues for which case has been picked up for scrutiny. Further, the scope of enquiry shall be restricted to the Limited Scrutiny issues.

c. These cases shall be completed expeditiously in a limited number of hearings.

d. During the course of assessment proceedings in 'Limited Scrutiny' cases, If it comes to the notice of the Assessing Officer that there is potential escapement of income exceeding Rs. five lakhs (for metro charges, the monetary

limit sha'l be Rs ten lakhs) requiring substantial verification on any other issue(s), then, the case may be taken up for 'Complete Scrutiny' with the approval of the Pr. CIT/CIT concerned However, such an approval shall be accorded by the by the Principal CIT/CIT in writing after being satisfied about merits of the issue(s) necessitating 'Complete Scrutiny' in that particular case Such cases shall be monitored by the Range Head concerned The procedure Indicated at points (a), (b) and (c) above shall no longer remain binding such cases (For the present purpose, Metro charges would mean Delhi Mumbai, Chennai, Kolkata, Bengaluru, Hyderabad and Ahmedabad).

4. *The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice.* ***In this regard, the Assessing Officer shall issue an appropriate show cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same.*** *Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show cause notice.*

5. *The contents of this Instruction should be immediately brought to the notice of ail concerned for strict compliance.*

6. *Hindi version to follow.*

Sd/-
(Ankita Pandey)
Under Secretary to
the Government of India"

6.19. It is argued that the notice to show cause is also required to be communicated by following the manner provided under Section 282 of the IT Act, which reads thus:

"282. Service of notice generally.—

(1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as 'communication') may be made by delivering or transmitting a copy thereof, to the person therein named:

(a) by post or by such courier services as may be approved by the Board; or

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or

(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.

(2) The Board may make Rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named."

6.20. It is submitted by Sri Sidhartha Ray, learned Senior Advocate that by virtue of the Central Verification Scheme, 2019 *vide* Ministry of Finance (Department of Revenue), Central Board of Direct Taxes in Notification bearing No.5/2019/F. No.370142/22/2017-TPL (SO 550(E), dated 30.01.2019 promulgated mechanism for "issue and service of notice" in exercise of power conferred under Section 133C of the IT Act. Thus, he submitted that the manner prescribed under Section 282 as it existed prior to 2019 having not been adhered to, mere making statement in the Assessment Order that Notice under Section 148 was "issued", contradistinguished with the word "served", would not clothe the Assessing Officer to exercise the power and proceed with the assessment under Section 147 read with Section 144. It is canvassed before this Court by the learned Senior Advocate that service of notice by way of electronic mode could only be permissible in the year 2019 and thereafter, but prior thereto as the

Department has to serve the notice by way of Registered Post to the address of the assessee. Such stance is fallacious, inasmuch as the documents enclosed with the written instruction placed by the Junior Standing Counsel does not reveal the fact of communication of notices by using electronic mode. Even otherwise much indication is available in Section 282 of the IT Act for the purpose of service of notice taking shelter of the provisions of the Information Technology Act, 2000. This Court, therefore, does not accede to the contentions advanced in this regard by the learned Senior Advocate.

6.21. Nonetheless, cumulative reading of zimni orders of the proceeding and the statutory provisions as referred to above would unequivocally lead to suggest that the Assessing Officer was required to serve on the petitioner statutory Notice under Section 148. Perusal of written instruction of the Department as furnished by the Junior Standing Counsel does *ex facie* indicate that though Notice under Section 142 was sent by Speed Post on 23.10.2017 and 14.11.2017, the mode of despatch of the statutory Notice under Section 148 has not been mentioned and the same could not be clarified by the learned Junior Standing Counsel. It would not suffice by merely stating in the Assessment Order dated 14.11.2017 (Annexure-5) that the Notice under Section 148 "was issued to the assessee" without demonstrating

whether factually it was "served" on the petitioner. In order to comprehend that the petitioner has been served with the Notice as required under Section 148, it is necessary to understand the meaning of "issue of notice" *vis-a-vis* "service of notice".

6.22. In *R.K. Upadhyaya Vrs. Shanabhai P. Patel, (1987) 3 SCC 96* the Hon'ble Supreme Court of India brought out clear distinction between the two expressions, *viz.*, "issue of notice" and "service of notice" with the following observations:

> *"2. The High Court has quashed the notice by accepting the assessee's contention that the action of the Income Tax Officer was barred by limitation prescribed by the Act. There is no dispute that the notice in this case under Section 147(b) of the Act was issued by registered post on March 31, 1970, and was received by the assessee on April 3, 1970. To the facts of the case, Section 147(b) of the Act applies. The two relevant provisions are in Sections 148 and 149 of the Act which provide:*
>
> *'148.*
>
> *(1) Before making the assessment, reassessment or recomputation under Section 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of this Act shall, so far as may*

be, apply accordingly as if the notice were a notice issued under that sub-section.

*(2) ****

149.

(1) No notice under Section 148 shall be issued,

*(a) ****

(b) in cases falling under clause (b) of Section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.'

The High Court relied upon the decision of this Court in the case of Banarsi Debi Vrs. ITO, AIR 1964 SC 1742 = (1964) 7 SCR 539 where the validity of a notice under Section 34(1) of the Income Tax Act, 1922 and the scope of Section 4 of the Income Tax (Amendment) Act of 1959 by which sub-section (4) was introduced into Section 34 were considered. The Court indicated, keeping the provisions of Section 34 in view, that there was really no distinction between "issue" and "service of notice". Section 34, sub-section (1) as far as relevant provided thus:

"34.

(1) If—

*(a) ****

*(b) *** he may in cases falling under clause (a) at any time within 8 years and in cases falling*

under clause (&) at any time within four years of the end of that year, serve on the assessee, ... and may proceed to assess or reassess such income. ...

Section 34 conferred jurisdiction on the Income Tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundations of jurisdiction. The same view has been taken by this Court in J.P. Janni, ITO Vrs. Induprasad D. Bhatt, AIR 1964 SC 1742 = (1964) 7 SCR 539 as also in CIT Vrs. Robert J. Sas, AIR 1964 SC 1742 = (1964) 7 SCR 539. The High Court in our opinion went wrong in relying upon the ratio of Banarsi Debi Vrs. ITO, AIR 1964 SC 1742 = (1964) 7 SCR 539 in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in Section 34 of the 1922 Act has been spread out into three sections, being Sections 147, 148 and 149 in the 1961 Act. ***A clear distinction has been made out between "issue of notice" and "service of notice" under the 1961 Act.*** *Section 149 prescribes the period of limitation. It categorically prescribes that no notice under Section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment.* ***Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service.***

The requirement of issue of notice is satisfied when a notice is actually issued. *In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period.* ***Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income Tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment.*** *The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in Banarsi Debi Vrs. ITO, AIR 1964 SC 1742 = (1964) 7 SCR 539.* ***As the Income Tax Officer had issued notice within limitations, the appeal is allowed and the order of the High Court is vacated. The Income Tax Officer shall now proceed to complete the assessment after complying with the requirements of law.*** *Since there has been no appearance on behalf of the respondents, we make no orders for costs."*

6.23. In *CIT Vrs. Major Tikka Khushwant Singh, (1995) 212 ITR 650 (SC)* it has been observed as follows:

"1. The point of law involved for decision in this appeal is already settled by the decision of this Court in R.K. Upadhyaya Vrs. Shanabhai P. Patel, (1987) 3 SCC 96 = (1987) 166 ITR 163 (SC), in which it has been held that the issuance of a notice within the period of limitation gives jurisdiction to the Income Tax Officer to proceed to make the reassessment.

2. A copy of the impugned order [Tikka Khushwant Singh Vrs. CIT, (1975) 101 ITR 106 (P&H)] made by

the High Court in the writ petition filed by the respondent has not been produced by the appellant. ***However, from the statement contained in the special leave petition, it appears that the High Court directed the Appellate Assistant Commissioner to decide the assessee's appeal in accordance with law and in doing so to also ascertain when the notice under Section 148 of the Income Tax Act, 1961, had been dispatched by registered post. There is thus no occasion to interfere with the order made by the High Court.***"

6.24. In *Commissioner of Income Tax Vrs. Vision Inc., 2012 SCC OnLine Del 3081* it has been observed as follows:

"*19. The above observations were approvingly cited by the Supreme Court in CIT Vrs. Jai Prakash Singh, (1996) 219 ITR 737. In addition, the Supreme Court also noticed its observations made earlier in Estate of Late Rangalal Jajodia Vrs. CIT, (1971) 79 ITR 505 which are as under:*

'The lack of a notice does not amount to the revenue authority having had no jurisdiction to assess, but that the assessment was defective by reason of notice not having been given to her. An assessment proceeding does not cease to be a proceeding under the Act merely by reason of want of notice. It will be a proceeding liable to be challenged and corrected.'

20. Noticing the aforesaid two judgments, the Supreme Court in Jai Prakash Singh's case (supra) held as under:

'The principle that emerges from the above decision is that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions [charging sections]. Any such omission of defect may render the order made irregular-depending upon the nature of the provision not complied with-but certainly not void or illegal.'

21. *The observations made in the judgments of the Federal Court (supra) [Chatturam Vrs. CIT, (1947) 15 ITR 302] and the Supreme Court in the two judgments cited above are to be understood as reminders that whenever a case is set up by the assessee that there has been no valid or proper service of the notice issued under Section 143(2) of the Act, be it for the purpose of regular assessment under Section 143(3) of the Act or for the purpose of a block assessment under Chapter XIV-B or for the purpose of an assessment under Section 153A, such a plea has to be examined thoroughly and in-depth by taking a practical and reasonable view of the matter, not inconsistent with the statutory provisions, keeping in mind the basic principle that the liability to pay tax, which is founded on the charging provisions of the statute, is not to be nullified on specious or unjustified pleas taken by the assessee."*

6.25. In *Chatturam Vrs. CIT, (1947) 15 ITR 302 = 1947 SCC OnLine FC 9 = AIR 1947 FC 32* it was laid down as follows:

"It was next contended that in the present case notices under Section 22(1) and (2) of the Income-tax Act (1922) were already issued before the Notification of 26th May, 1940. The notices were the foundation of the jurisdiction of the Income-tax Officer. At that time the Finance Act of 1940 was not operative in the area in question and the Governor, by his Notification, cannot give jurisdiction to the Income-tax Officer in respect of his ultra vires notices. This contention is founded on a misunderstanding of the jurisdiction of the Income-tax Officer and the operation of the Income-tax Act. The income-tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income-tax Officer to make the assessment or of the liability of the assessees to pay the tax. It may be urged that the issue and service of a notice under Section 22(1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice. Suppose a person, even before a notice is published in the papers under Section 22(1), or before he receives a notice under Section 22(2) of the Income-tax Act, gets a form of return from the Income-tax Office and submits his return, it will be futile to contend that the Income-tax Officer is not entitled to assess the party or that the party is not liable to pay any tax because a notice had not been issued to him. The liability to pay the tax is founded on Sections 3 and 4 of the Income-tax Act, which are the charging sections. Section 22 etc., are the machinery sections to determine the amount of tax.

Lord Dunedin in Whitney Vrs. Commissioners of Inland Revenue, (1926) A.C. 37 = 10 Tax Cas. 88 stated as follows:

'Now, there are three stages in the imposition of a tax. There is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment, that ex hypothesi has already been fixed. But assessment particularizes the exact sum which a person liable has to pay. Lastly, come the methods of recovery if the person taxed does not voluntarily pay.'

In W.H. Cockerline & Co. Vrs. Commissioners of Inland Revenue, (1930) 16 Tax Cas. 1, at p. 19 [Not reported], Lord Hanworth, M.R., after accepting the passage from Lord Dunedin's judgment quoted above, observed as follows:

'Lord Dunedin, speaking, of course, with accuracy as to these taxes, was not unmindful of the fact that it is the duty of the subject to whom a notice is given to render a return in order to enable the Crown to make an assessment upon him; but the charge is made in consequence of the Act, upon the subject; the assessment is only for the purpose of quantifying it.'

He quoted with approval the following passage from the judgment of Sargant, L.J., in the case of Williams:

'I cannot see that the non-assessment prevents the incidence of the liability, though the amount of the deduction is not ascertained until assessment. The liability is imposed by the charging section, namely, Section 38 (of the English Act) the words of which are clear. The subsequent provisions as to assessment and so on are machinery only. They enable the liability to be quantified, and when quantified to be enforced against the subject, but the liability is definitely and finally

created by the charging section and all the materials for ascertaining it are available immediately.'

In Attorney-General Vrs. Aramayo and Others, (1925) 9 Tax Cas. 445, it was held by the whole Court that there may be a waiver as to the machinery of taxation which inures against the subject.

In India these well-considered pronouncements are accepted without reservation as laying down the true principles of taxation under the Income-tax Act. This contention of the appellants therefore fails."

6.26. It may be pertinent to have regard to *CST Vrs. Subhash & Co., (2003) 3 SCC 454,* wherein it has been observed as follows:

"12. ***Whether service of notice is valid or not is essentially a question of fact.*** *In the instant case, learned Single Judge found that certain procedures were not followed while effecting service by affixture. There was no finding recorded that such service was non est in the eye of the law.* ***In a given case, if the assessee knows about the proceedings and there is some irregularity in the service of notice, the direction for continuing proceedings cannot be faulted.*** *It would depend upon the nature of irregularity and its effect and the question of prejudice which are to be adjudicated in each case on the basis of surrounding facts. If, however, the service of notice is treated as non est in the eye of the law, it would not be permissible to direct de novo assessment without considering the question of limitation. There also the question of prejudice has to be considered.*

***

15. *The term "notice" originated from the Latin word "notifia" which means "a being known" or a knowing and is wide enough in legal circle to include a plaint filed in a suit. "Notice" has been defined in various judicial dictionaries and dictionaries as follows:*

The Judicial Dictionary, Words and Phrases Judicially Interpreted, 2nd Edn., by F. Stroud (p. 1299)

'Notice is a direct and definite statement of a thing, as distinguished from supplying materials from which the existence of such thing may be inferred.'

Webster's Universal College Dictionary, 1997 Edn., (p. 543)

'Information, warning or announcement of something impending; notification; to give notice of one's intentions; a written or printed statement conveying such information or warning; as for renting or employment, that the agreement will terminate on a specified date — 'She gave her employer two weeks' notice.' '

Oxford Concise Dictionary

'an intimation; intelligence, warning" and has the meaning in the expression like "give notice", "have notice" or "formal intimation of something or instruction to do something" and has the expression like "notice to quit", "till further notice".'

Chamber's 20th Century Dictionary, 1993 (p. 1154)

'intimation; announcement; information; warning; a writing, placard etc. conveying an intimation or warning; time allowed for preparation, etc.'

Chamber's Dictionary vide Allied Chambers (India) Ltd., Reprint 1994, 1995 (p. 1154)

'intimation; announcement; a formal announcement made by one of the parties to a contract of his or her intention to terminate that contract; information, especially about a future event; warning; a writing; placard, board etc. conveying an intimation or warning; time allowed for preparation; cognizance; observation; heed; mention; a dramatic or artistic review; civility or respectful treatment; a notion etc.'

Law Lexicon Dictionary— A Legal Dictionary of Legal Terms and Phrases Judicially Defined, 4th Edn., Vol. II, 1989 (p. 226)

'A person is said to have notice of a fact, when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.'

The Law Lexicon Dictionary, 2nd Edn., 1997 (p. 1322)

(1) Intimation; a writing; placard, board etc. conveying an intimation or warning [Section 154 IPC and Article 61(2)(a), Constitution of India];

(2) Knowledge or cognizance (Section 56, Indian Evidence Act).'

16. *"Notice", in its legal sense, may be defined as information concerning a fact actually communicated to a party by an authorised person, or actually derived by him from a proper source, or else presumed by law to have been acquired by him, which information is regarded as equivalent to knowledge in its legal consequences. Dictionary further states : Co Lit 309 Tomlin's Law Dictionary.*

17. *Notice is making something known, of what a man was or might be ignorant of before. And it produces diverse effects, for, by it, the party who gives the same shall have the same benefit, which otherwise he should not have had; the party to whom the notice is given is made subject to some action or charge, that otherwise he had not been liable to; and his estate in danger of prejudice.*

18. *"Notice is a direct and definite statement of a thing as distinguished from supplying materials from which the existence of such thing may be inferred." (Per Parke, B. Burgh Vrs. Legge, (1839) 5 M&W 418 : 8 LJ Ex 258 : 151 ER 177)*

19. *The dictionary gives some other definitions of "notice" as:*

    — *The legal instrumentality by which knowledge is conveyed, or by which one is charged with knowledge.*

    — *The term "notice" in its full legal sense embraces a knowledge of circumstances that ought to induce suspicion or belief, as well as direct information of that fact.*

— *In its popular sense "notice" is equivalent to information intelligence, or knowledge.*

20. *In Anandji Haridas and Co. (P) Ltd. Vrs. S.P. Kasture, AIR 1968 SC 565 it was observed as follows:*

> *'23. We are unable to accept the contention of Mr Gokhale that a notice under Section 11(4)(a) or 11-A(1) is a condition precedent for initiating proceedings under those provisions or that it is the very foundation for the proceedings to be taken under those provisions. The notice contemplated under Rule 32 is not similar to a notice to be issued under Section 34(1)(b) of the Income Tax Act, 1922. All that Sections 11(4) and 11-A(1) prescribe is that before taking proceedings against an assessee under those provisions, he should be given a reasonable opportunity of being heard. In fact, those sections do not speak of any notice. But Rule 32 prescribes the manner in which the reasonable opportunity contemplated by those provisions should be afforded to the assessee. The period of 30 days prescribed in Rule 32 is not mandatory. The rule itself says that 'ordinarily' not less than 30 days' notice should be given. Therefore, the only question to be decided is whether the defects noticed in those notices had prejudiced the appellants. It may be noted that when the assessees received the notices in question, they appeared before the assessing authority, but they did not object to the validity of those notices. They asked for time for submitting their explanation.*

The time asked for was given. Therefore, the fact that only nine days were given to them for submitting explanation could not have in any manner prejudiced them. So far as the mistake in the notice as regards the assessment year is concerned, the assessees kept silent about that circumstance till 1958. It was only when they were sure that the period of limitation prescribed by Section 11-A had expired, they brought that fact to the notice of the assessing authority. It is clear that the appellants were merely trying to take advantage of the mistakes that had crept into the notices. They cannot be permitted to do so. We fail to see why those notices are not valid in respect of the periods commencing from 01.02.1953 till 31.10.1955. We are unable to agree with Mr Gokhale's contention that each one of those notices should be read separately and that we should not consider them together. If those notices are read together as we think they should be, then it is clear that those notices give the appellants the reasonable opportunity contemplated by Sections 11(4)(a) and 11-A(1). ***In Chatturam Vrs. CIT, (1947) 15 ITR 302 = AIR 1947 FC 32 the Federal Court held that any irregularity in issuing a notice under Section 22 of the Income Tax Act, 1922 does not vitiate the proceeding; that the income tax assessment proceedings commence with the issue of the notice but the issue or receipt of the notice is, however, not the foundation of the jurisdiction of the Income Tax Officer to make the assessment or of the liability of***

the assessee to pay the tax. The liability to pay the tax is founded on Sections 3 and 4 of the Income Tax Act which are the charging sections. *Section 22 and others are the machinery sections to determine the amount of tax. The ratio of that decision applies to the facts of the present case. In our opinion, the notices issued in the year 1955 are valid notices so far as they relate to the period commencing from 01.02.1953 to 31.10.1955."*

21. ***Whenever an order is struck down as invalid being violative of principles of natural justice, there is no final decision of the case and, therefore, proceedings are left open.*** *All that is done is that the order assailed by virtue of its inherent defect is vacated but the proceedings are not terminated. [See Guduthur Bros. Vrs. ITO, (1960) 40 ITR 298 = AIR 1960 SC 1326 and Supdt. (Tech. I), Central Excise Vrs. Pratap Rai, (1978) 3 SCC 113.]*

In CST Vrs. R.P. Dixit Saghidar, (2001) 9 SCC 324 it was held as follows:

'5. We are unable to subscribe to the view of the High Court. The aforementioned passage quoted from the Tribunal's order shows that the Tribunal was of the view that once the order is quashed by the Assistant Commissioner, he could not in law remand the case for a decision afresh. As has been noted, before the Assistant Commissioner the counsel for the respondent had contended that the ex parte order should have been set aside because no notice had been received. ***When principles of natural justice are stated to***

have been violated it is open to the Appellate Authority, in appropriate cases, to set aside the order and require the assessing officer to decide the cases de novo. *This is precisely what was directed by the Assistant Commissioner and the Tribunal, in our opinion, was clearly in error in taking a contrary view.'*

This view is clearly applicable to the facts of the present case.

22. *The emerging principles are:*

(i) *Non-issue of notice or mistake in the issue of notice or defective service of notice does not affect the jurisdiction of the assessing officer, if otherwise reasonable opportunity of being heard has been given.*

(ii) *Issue of notice as prescribed in the Rules constitutes a part of reasonable opportunity of being heard.*

(iii) *If prejudice has been caused by non-issue or invalid service of notice the proceeding would be vitiated. But irregular service of notice would not render the proceedings invalid; more so, if the assessee by his conduct has rendered service impracticable or impossible.*

(iv) *In a given case when the principles of natural justice are stated to have been violated it is open to the Appellate Authority in appropriate cases to set aside the order and require the assessing officer to decide the case de novo."*

6.27. In *Commercial Tax Officer Vrs. Neeraja Pipes Pvt. Ltd., 2023 SCC OnLine SC 267* it has been said as follows:

> *"18. In Sri Budhia Swain Vrs. Gopinath Deb, (1999) 2 SCR 1189 similarly, the court observed as follows:*
>
> *'As already noted the appellants sought for review or recall of the order from the O.E.A. Collector solely by alleging that the notice which was required to be published in the locality before settling the land in favour of the respondent No. 1 was not served in accordance with the manner prescribed by law. The appellants did not plead 'non-service of the notice' but raised objection only with regard to 'the manner of service of the notice'. The High court had called for and perused the record of the O.E.A. Collector and noted that the notice was issued on 15.12.1963 inviting public objection. The notice was available on record but some of its pages were missing. The O.E.A. Collector had noted in his order dated 23.2.1966 as under:*
>
> *'It is only due to missing of some pages of the proclamation- including the last page over which the report of the process server was there, a scope was available to the objectors to file this petition. Under the above circumstances, it is not necessary to issue another proclamation and entertain further objection since the case is being heard and going to be finalised on 14.03.1966.'*
>
> *The O.E.A. Collector was satisfied of the notice having been published.* ***Assuming that the notice was not published in the manner contemplated by law, it will at best be a case of irregularity***

in the proceedings but certainly not a fact striking at the very jurisdiction of the authority passing the order*. The Appellate Authority, i.e., the ADM has in his order noted two other contentions raised by the appellants, viz., (i) the application for settlement by the respondent No. 1 was not filed within the prescribed time, and (2) the application should have been treated as an application for lease and should not have been treated as a claim case. None of the two pleas was raised by the appellants in their pleadings. None of the two was urged before O.E.A. Collector. Therefore, there was no occasion to consider those pleas. Still we may make it clear that none of the two pleas could have been a ground for recalling the order which was otherwise within the jurisdiction conferred on the O.E.A. Collector…'*

19. *In the present case, arguendo if the assessee was unaware, in the first instance regarding the issuance of assessment orders against it, at least when the revenue filed a writ petition (W.P. No. 25943/2011) complaining about Canara Bank's proposal to auction the assessee's properties, it had impleaded the assessee too. In the pleadings, there was a specific mention about the assessment orders, them having become final, and why those demands had to be given primacy as revenue dues, over and above the bank's dues. The assessee was served in those writ proceedings; however, it did not dispute the revenue's contention. This, in the opinion of the court is a telling aspect, as it highlights the assessee's conduct in deliberately choosing to keep quiet, even when it could have raised a grievance."*

6.28. Sri Sidhartha Ray, learned Senior Advocate in order to buttress his submission that non-service of notice would vitiate the assessment proceeding as the exercise of power would be without jurisdiction relied on *Muralidhar Gopikishan (P) Ltd. Vrs. State of Odisha, (1999) 116 STC 308 (Ori) = 1990 SCC OnLine Ori 399.* Said decision was rendered in the setting of provisions contained in Rule 12(2) of the Central Sales Tax (Odisha) Rules, 1957 read with Rule 84 of the Odisha Sales Tax Rules, 1947. Since factual scenario in the instant case and the provisions of statute are distinguishable, ratio of said judgment has no application; this is particularly so, in view subsequent decisions of Hon'ble Supreme Court of India referred to above.

6.29. In the present case, as it reveals from the written instructions provided to the Junior Standing Counsel by the Department that Notice under Section 148 of the IT Act was issued on 29.03.2017 and despatched on 29.03.2012 *vide* Serial No.11536 maintained in the Despatch Register. Such fact remained uncontroverted by the learned Senior Advocate who was served with a copy such written instruction during the course of hearing. It is further noticed from the said written instructions that Notice dated 14.06.2017 under Section 142(1) was despatched *vide* Serial No.2065 of Despatch Register and further Notice dated 23.10.2017 under

Section 142(1) was also despatched by Speed Post *vide* Serial No.8319 of Despatch Register. The impugned Assessment Order (Annexure-5) and the Demand Notice (Annexure-5A) were sent by Speed Post *vide* Serial No.9337 of Despatch Register. No rebuttal is placed by the petitioner to show that such notices and assessment order were not sent by Speed Post. A presumption under Section 27 of the General Clauses Act, 1897[1] is available in favour of the opposite parties with regard to sufficiency of the service of notice inasmuch as it has been proved that the opposite party had sent the notice by Registered Post in the address of the petitioner and the same did not return. See, *Suman Chatterjee Vrs. Lina Roy Tappadar, 2016 (I) OLR 254*.

6.30. Burden is cast on the assessee to demonstrate that Notice dated 23.10.2017 under Section 142(1) despatched by Speed Post *vide* Serial No.8319 of Despatch Register was not served. As said notice is presumed to have been served, the proceeding for reassessment under Section 148 can also be said to be within his knowledge. At this juncture reference to Order

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[1] Section 27 of the General Clauses Act, 1897 stands as follows:

"27. Meaning of service by post.—

Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

V, Rule 9 of the Code of Civil Procedure, 1908 may not be inept:

"9. Delivery of summons by Court.—

(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent either to the proper officer to be served by him or one of his subordinates or to such courier services as are approved by the Court.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him in such manner as the Court may direct.

(3) ***The services of summons may be made*** *by delivering or transmitting a copy thereof by registered post acknowledgment due, addressed to the defendant or his agent empowered to accept the service or* ***by speed post*** *or by such courier services as are approved by the High Court or by the Court referred to in sub-rule (1) or by any other means of transmission of documents* ***(including fax message or electronic mail service)*** *provided by the rules made by the High Court:*

Provided that the service of summons under this sub-rule shall be made at the expenses of the plaintiff.

(4) *Notwithstanding anything contained in sub-rule (1), where a defendant resides outside the jurisdiction of the Court in which the suit is instituted, and the Court directs that the service of summons on that defendant may be made by such mode of service of summons as is referred to in sub-rule (3) (except by registered post acknowledgment due), the provisions of Rule 21 shall not apply.*

(5) *When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant:*

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of courier agencies for the purposes of sub-rule (1).”

6.31. On 29.03.2017 the Assessing Authority has recorded satisfaction as to “reason to believe” to initiate proceeding for assessment under Section 147 by issue of notice under Section 148.

6.32. Zimni orders maintained in the proceedings would show that steps are being taken at the end of the Assessing Officer for ensuring presence of the assessee. It is not denied by the learned Senior Advocate that the Assessing Officer had issued Notice under Section 148 of the IT Act within period stipulated in the statute and passed the Assessment Order within the period of limitation. Only contention of the petitioner as reflected in the writ petition was neither notice under Section 148 nor the Assessment Order under Section 147 was ever served.

6.33. In order to perceive the veracity of such contention, minute reading of pleading of writ petition would reveal that it had the knowledge of Assessment Order prior to initiation of proceeding for attachment. In paragraph 3.4 of the writ petition it has been candidly stated thus:

“That the Assessing Officer subsequently initiated the penalty proceeding by issuing a show cause on the petitioner and ***the petitioner appeared in the penalty***

proceeding and the Assessing Officer passed an order levying penalty under Section 271-C of the IT Act on 13.04.2018*. However the petitioner was never served any notice in the reassessment proceeding initiated under Section 147 of the IT Act for the assessment year 2012-13."*

6.34. In 2018 itself as it appears from the above narration of fact, the petitioner had the knowledge about Assessment Order being passed. It can safely be said that it is not a case of time-barred assessment; nevertheless, it is a case of non-service of statutory notice on the petitioner. The documents furnished by the learned Junior Standing Counsel reveals that the statutory notice was issued as per the entry reflected in the Despatch Register. To support such observation reference to Section 149 of the IT Act would be relevant. A glance at sub-section (1) of Section 149 would indicate that the limitation would commence and/or be computed by taking into account "issue" (but not, "service") of notice under Section 148. The period under assessment is assessment year 2012-13. End of the relevant assessment year is 31.03.2013. The income chargeable to tax which has escaped assessment in the present case is more than one lakh rupees for that year. The notice under Section 148 of the IT Act was issued on 29.03.2017. Thus, the initiation of proceeding for assessment under Section 147 is within six years as stipulated under clause (b) of sub-section (1) of Section 149.

6.35. In view of the proposition of law as exposited by different Courts including the Hon'ble Supreme Court of India as referred to *supra* it cannot be gainsaid that being not able to place evidence as to the service of notice under Section 148 of the IT Act, the impugned assessment proceeding is not vitiated. It is significant to note that the words "shall be issued" have been employed in Section 149(1) of the IT Act. In this context for the purpose of proceeding with assessment as it is requirement under Section 148 of the IT Act that the assessee "shall be served" with a notice before making assessment, it is prudent to set aside the Assessment Order along with the Demand Notice *vide* Annexure-5 and Annexure-5A in order to give chance to the petitioner to have his say with respect to reason for the assessment.

7. It may be of relevance to have clear idea about the "jurisdiction" so that a decision can be taken on the question whether by issue of notice under Section 148 of the IT Act on 29.03.2017 the Assessing Officer did not lose jurisdiction to assess, notwithstanding the claim of the petitioner that the assessee was not served with such notice in view of explicit provisions contained in Section 149 of the IT Act specifically providing for "issue" of notice under Section 148.

7.1. This Court derives the connotation of "jurisdiction" as lucidly explained in the case of *Foreshore Co-operative Housing Society Limited Vrs. Praveen D. Desai, (2015) 5 SCR 1075* in the following terms:

> *"41. The term 'jurisdiction' is a term of art; it is an expression used in a variety of senses and draws colour from its context. Therefore, to confine the term 'jurisdiction' to its conventional and narrow meaning would be contrary to the well settled interpretation of the term. The expression 'jurisdiction', as stated in Halsbury's Laws of England, Volume 10, paragraph 314, is as follows:*
>
> > *'314. Meaning of 'jurisdiction': By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognisance, or as to the area over which the jurisdiction extends, or it may partake of both these characteristics.'*
>
> *42. In American Jurisprudence, Volume 32A, paragraph 581, it is said that,*
>
> *'Jurisdiction is the authority to decide a given case one way or the other. Without jurisdiction, a court*

cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." Further, in paragraph 588, it is said that lack of jurisdiction cannot be waived, consented to, or overcome by agreement of the parties.

43. *It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case where the Court has no jurisdiction; it cannot confer upon it by consent or waiver of the parties.*

44. *Section 3 of the Limitation Act, 1963 clearly provides that every suit instituted, appeal preferred and application made after the prescribed period of limitation, subject to the provisions contained in Sections 4 to 24, shall be dismissed although the limitation has not been set up as a defence.*

45. *A Constitution Bench of five Judges of this Court in the case of Pandurang Dhondi Chougule Vrs. Maruti Hari Jadhav, 1966 SC 153, while dealing with the question of jurisdiction, observed that a plea of limitation or plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceeding. The Bench held:*

> *'10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the*

High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.'

46. *In the case of Manick Chandra Nandy Vrs. Debdas Nandy, (1986) 1 SCC 512, this Court, while considering the nature and scope of High Court's revisional jurisdiction in a case where a plea was raised that the application under Order IX Rule 13*

was barred by limitation, held that a plea of limitation concerns the jurisdiction of the court which tries a proceeding for a finding on this plea in favour of the party raising it would oust the jurisdiction of the court. In the case of National Thermal Power Corpn. Ltd. Vrs. Siemens Atkeingesellschaft, (2007) 4 SCC 451, this Court considering the similar question under the Arbitration and Conciliation Act held as under:

'17. In the larger sense, any refusal to go into the merits of a claim may be in the realm of jurisdiction. Even the dismissal of the claim as barred by limitation may in a sense touch on the jurisdiction of the court or tribunal. When a claim is dismissed on the ground of it being barred by limitation, it will be, in a sense, a case of the court or tribunal refusing to exercise jurisdiction to go into the merits of the claim. In Pandurang Dhoni Chougule Vrs. Maruti Hari Jadhav this Court observed that: (AIR p. 155, para 10)

'It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code.'

47. In the case of Official Trustee Vrs. Sachindra Nath Chatterjee, AIR 1969 SC 823, a three Judges Bench

of this Court while deciding the question of jurisdiction of the Court under the Trust Act observed:

> *'15. From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties.'*

48. *In the case of ITW Signode India Ltd. Vrs. CCE, (2004) 3 SCC 48, a similar question came before a three Judges Bench of this Court under the Central Excise Act, 1944, when this Court opined as under:*

> *'69. The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the*

matter no show-cause notice in terms of Rule 10 could have been issued.'

49. *In the case of Kamlesh Babu Vrs. Lajpat Rai Sharma, (2008) 12 SCC 577, the matter came to this Court when the trial court dismissed the suit on issues other than the issue of limitation. The Bench held:*

> *'23. The reasoning behind the said proposition is that certain questions relating to the jurisdiction of a court, including limitation, goes to the very root of the court's jurisdiction to entertain and decide a matter, as otherwise, the decision rendered without jurisdiction will be a nullity. However, we are not required to elaborate on the said proposition, inasmuch as in the instant case such a plea had been raised and decided by the trial court but was not reversed by the first appellate court or the High Court while reversing the decision of the trial court on the issues framed in the suit. We, therefore, have no hesitation in setting aside the judgment and decree of the High Court and to remand the suit to the first appellate court to decide the limited question as to whether the suit was barred by limitation as found by the trial court. Needless to say, if the suit is found to be so barred, the appeal is to be dismissed. If the suit is not found to be time-barred, the decision of the first appellate court on the other issues shall not be disturbed.'*

50. *Mr. Shekhar Naphade, learned senior counsel appearing for the respondent relied upon a recent decision of a Division Bench of this Court in Civil*

Appeal No. 1085 of 2015 (Kamalakar Eknath Salunkhe Vrs. Baburav Vishnu Javalkar & Ors.) where this Court while considering Section 9A of the Maharashtra Amendments of CPC observed that the expression 'jurisdiction' in Section 9A is used in a narrow sense i.e. territorial and pecuniary jurisdiction and not question of limitation. The Court observed:

'17. The expression 'jurisdiction' in Section 9A is used in a narrow sense, that is, the Court's authority to entertain the suit at the threshold. The limits of this authority are imposed by a statute, charter or commission. If no restriction is imposed, the jurisdiction is said to be unlimited. The question of jurisdiction, sensu stricto, has to be considered with reference to the value, place and nature of the subject matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is of a fundamental character. Undoubtedly, the jurisdiction of a Court may get restricted by a variety of circumstances expressly mentioned in a statute, charter or commission. This inherent jurisdiction of a Court depends upon the pecuniary and territorial limits laid down by law and also on the subject-matter of the suit. While the suit might be barred due to noncompliance of certain provisions of law, it does not follow that the non-compliance with the said provisions is a defect which takes away the inherent jurisdiction of the Court to try a suit or pass a decree. The law of limitation operates on the bar on a party to

agitate a case before a Court in a suit, or other proceedings on which the Court has inherent jurisdiction to entertain but by operation of the law of limitation it would not warrant adjudication.

19. *Thus, with the intention to put the aforesaid practice to rest, the State Legislature introduced Section 9A by the amendment Act of 1969 requiring the Court to decide the issue of jurisdiction at the time of granting or vacating the interim relief. In other words, the legislature inserted Section 9A to ensure that a suit which is not maintainable for want of jurisdiction of the concerned Court, ought not be tried on merits without first determining the question of maintainability of the suit as to jurisdiction of the Court, approached by the plaintiff, as a preliminary issue.*

20. *The provision contemplates that when an issue of jurisdiction is raised, the said issue should be decided at first as expeditiously as possible, and not be adjourned to a later date. The primary reason is that if the Court comes to finding that it does not have jurisdiction vested in it in law, then no further enquiry is needed and saves a lot of valuable judicial time.*

21. *A perusal of the Statement of Object and Reasons of the Amendment Act would clarify that Section 9A talks of maintainability only on the question of inherent jurisdiction and does not contemplate issues of limitation. Section 9A has been inserted in the Code to prevent the abuse of the Court process where a plaintiff*

drags a defendant to the trial of the suit on merits when the jurisdiction of the Court itself is doubtful.

*22. In the instant case, the preliminary issue framed by the Trial Court is with regard to the question of limitation. Such issue would not be an issue on the jurisdiction of the Court and, therefore, in our considered opinion, the Trial Court was not justified in framing the issue of limitation as a preliminary issue by invoking its power under Section 9A of the Code. The High Court has erred in not considering the statutory ambit of Section 9A while approving the preliminary issue framed by the Trial Court and thus, rejecting the writ petition filed by the appellant.' ***"*

7.2. The Hon'ble Supreme Court of India has succinctly made it clear regarding objection as to jurisdiction in the case of *Harshad Chiman Lal Modi Vrs. DLF Universal Ltd. and another, (2005) 7 SCC 791* with the following observations:

"30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are—

(i) Territorial or local jurisdiction;

(ii) Pecuniary jurisdiction; and

(iii) Jurisdiction over the subject-matter.

So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be

taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

7.3. With the above perspective, when the present matter is examined, it emanates that the Assessing Officer in order to assess escaped income under Section 147 for the assessment year 2012-13, initiated proceeding on 29.03.2017 by exercising power conferred under Section 148 read with Section 149. The alleged non-service of notice would not deter the Assessing Officer from exercising power under Section 148. The learned Junior Standing Counsel on written instruction could demonstrate that the Notice dated 29.03.2017 was issued after recording reason to believe that there was escapement of income and such notice was despatched. However, he could not throw light on the mode of despatch. Yet, it could be shown that a Notice dated 23.10.2017 under Section 142(1) was issued for production of books of account, *etc.* by Speed Post with delivery report. Therefore, it is obvious that the

petitioner-assessee was aware of assessment proceedings, namely proceeding under Section 148, was pending on the date of service of such Notice under Section 142(1). The petitioner, however, chose not to participate by producing such evidence as required by the Assessing Officer. Furthermore, the fact of participation in the year 2018 in course of the penalty proceeding under Section 271C of the IT Act has been admitted by the petitioner. Since the mode of service of statutory notice could not be established by the opposite parties, the Assessment Order dated 14.11.2017 is liable to be set aside for violation of principles of natural justice.

Conclusion:

8. At paragraph 3.12 of the writ petition the petitioner has asserted as follows:

"The petitioner-assessee asserts that no Notice under Section 148 was served on him as well as the order of assessment was never served on the Assessee. Therefore the initiation of the assessment proceeding and the order of assessment is in gross violation of rules of natural justice as well as the mandates of statute and hence the order of assessment is liable to be quashed. Since the assessee came to know about the demand only after the initiation of the recovery proceeding, the delay caused in approaching this Hon'ble Court is liable to be condoned."

8.1. However, such a contention is falsified by assertion made in paragraph 3.4 of the writ petition wherein it has been admitted that after Assessment Order dated 14.11.2017 being passed under Section 147 of the IT Act, upon initiation of proceeding for imposition of penalty under Section 271C by issue of a show cause notice, the petitioner appeared in the penalty proceeding and the Assessing Officer passed an order imposing penalty under Section 271C of the IT Act on 13.04.2018.

8.2. It is, thus, emanated that there was violation of principles of natural justice due to non-service of statutory Notice under Section 148 of IT Act. No pleading is available to contend that no notice was "issued" under Section 148. It is seen that such statutory notice has been issued within the period of limitation stipulated under Section 149 of the IT Act. Had it been a case of "no notice" the matter would have been different in view of *Orissa Stores Vrs. State of Odisha, 1990 SCC OnLine Ori 407,* wherein in answer to question of law *"whether, on the facts and in the circumstances of the case, the learned Tribunal was justified in remanding the matter for fresh assessment instead of annulling the entire assessment?"*, this Court held,

> *"5.* ***No assessment can be completed without notice. Order without notice is liable to be vacated. Order being vacated proceeding***

remains pending. *It is true that limitation fixed would not be attracted to fresh order of assessment made or passed under section 23 as is provided in the third proviso to section 12(7). But such fresh assessment means where notice had been validly served. On the assessment order being set aside it goes to the stage where the defect or deficiency is found out. Where the defect or deficiency as found affects the jurisdiction as in the case of absence of notice, protection under third proviso is not available. Merely because the Tribunal sets aside the order of assessment under Section 23 for absence of notice, the third proviso cannot give protection to Revenue. Accordingly, as on April 16, 1974, completion of assessment has become barred by limitation and there was no scope for any assessment."*

8.3. In the present case, as the initiation of proceeding under Section 148 by issue of Notice dated 29.03.2017 and passing the Assessment Order dated 14.11.2017 under Section 147 read with Section 144 of the Income Tax Act, 1961 with respect to assessment year 2012-13 is not hit by limitation under Section 149, on appreciating that statutory notice being not served on the petitioner as required under Section 148 of the IT Act before assessment under Section 147, it would be apposite to set aside the Assessment Order and remit the matter to the Assessing Officer to serve notice under Section 148.

8.4. In *Radha Krishan Industries Vrs. State of Himachal Pradesh, (2021) 3 SCR 406* the parameters for

approaching a writ Court under Article 226 has succinctly been laid down as follows:

"27. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where,—

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice;

(c) the order or proceedings are wholly without jurisdiction; or

(d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) *When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*

(vi) *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

8.5. With respect to interference of this Court in exercise of power under Article 226 of the Constitution of India, in *Rajendra Singh Vrs. State of Madhya Pradesh, (1996) 5 SCC 460 (465)* in the context of violation of principles of natural justice it has been enunciated in as follows:

"6. It has been held by a Constitution Bench of this Court in Har Shankar Vrs. Dy. Excise and Taxation Commr., (1975) 1 SCC 737 that:

'[T]he writ jurisdiction of High Courts under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred.'

At the same time, it was observed that the licensees are not precluded from seeking to enforce the statutory provisions governing the contract. It must, however, be remembered that we are dealing with

parties to a contract, which is a business transaction, no doubt governed by statutory provisions. [Reference may also be made to the decision of this Court in Asstt. Excise Commr. Vrs. Issac Peter, (1994) 4 SCC 104.] While examining complaints of violation of statutory rules and conditions, it must be remembered that violation of each and every provision does not furnish a ground for the court to interfere. The provision may be a directory one or a mandatory one. In the case of directory provisions, substantial compliance would be enough. ***Unless it is established that violation of a directory provision has resulted in loss and/or prejudice to the party, no interference is warranted. Even in the case of violation of a mandatory provision, interference does not follow as a matter of course. A mandatory provision conceived in the interest of a party can be waived by that party, whereas a mandatory provision conceived in the interest of the public cannot be waived by him. In other words, wherever a complaint of violation of a mandatory provision is made, the court should enquire— in whose interest is the provision conceived.*** *If it is not conceived in the interest of the public, question of waiver and/or acquiescence may arise— subject, of course, to the pleadings of the parties. This aspect has been dealt with elaborately by this Court in State Bank of Patiala Vrs. S.K. Sharma, (1996) 3 SCC 364 and in Krishan Lal Vrs. State of J&K, (1994) 4 SCC 422 on the basis of a large number of decisions on the subject. Though the said decisions were rendered with reference to the statutory rules and statutory provisions (besides the principles of natural justice)*

governing the disciplinary enquiries involving government servants and employees of statutory corporations, the principles adumbrated therein are of general application. ***It is necessary to keep these considerations in mind while deciding whether any interference is called for by the court— whether under Article 226 or in a suit. The function of the court is not a mechanical one. It is always a considered course of action.****"*

8.6. Culling out distinction between invocation of "irregular" and "illegal" jurisdiction, in *Central Potteries Ltd. Vrs. State of Maharashtra, (1963) 1 SCR 166* it is succinctly explained as follows:

"It is contended that the jurisdiction of the Sales Tax Officer to take proceedings for assessment with respect to non-registered dealers depends, on the issue of a notice such as is prescribed by Section 10 and Rule 22 and that as no such notice had been issued in the case of the appellant, the assessment proceedings must be held to be incompetent, if the registration certificate is invalid. We see no force in this contention. ***The taxing authorities derive their jurisdiction to make assessments under Section 3 and 11 of the Act, and not under Section 10, which is purely procedural.*** *The appellant had itself, acting under Section 10(1) been submitting voluntarily returns on which the assessments had been made and it is now idle for it to contend that the proceedings taken on its own returns are without jurisdiction.*

In this connection it should be remembered that there is a ***fundamental distinction between want of***

jurisdiction and irregular assumption of jurisdiction, *and that whereas an order passed by an authority with respect to a matter over which it has no jurisdiction is a nullity and is open to collateral attack,* ***an order passed by an authority which has jurisdiction over the matter, but has assumed it otherwise than in the mode prescribed by law, is not a nullity.*** *Lt may be liable to be questioned in those very proceedings, but subject to that it is good, and not open to collateral attack. Therefore even if the proceedings for assessment were taken against a non-registered dealer without the issue of a notice under Section 10(1) that would be a mere irregularity in the assumption of jurisdiction and the order of assessment passed in those proceedings cannot be held to be without jurisdiction and no suit will lie for impeaching them on the ground that Section 10(1) had not been followed. This must a fortiori be so when the appellant has itself submitted to jurisdiction and made a return. We accordingly agree with the learned Judges that even if the registration of the appellant as a dealer under Section 8 is bad that has no effect on the validity of the proceedings taken against it under the Act and the assessment of tax made thereunder."*

8.7. In the context of irregular or erroneous orders touching limitation in the case of *Deepak Agro Foods Vrs. State of Rajasthan, (2008) 10 SCR 877* it has been stated thus:

> *"12. *** On a bare reading of the provision, it becomes abundantly clear that if an assessment order is set aside by an Appellate Authority, fresh assessment has to be completed within a period of two years from the date of communication of the order in appeal to the Assessing Authority and not from the*

date of order in appeal; as is·pleaded by the appellant.

***

15. *All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal.* ***Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be cured even by consent of the parties.*** *(See: Kiran Singh & Ors. Vrs. Chaman Paswan & Ors., (1955) 1 SCR 117).* ***However, exercise of jurisdiction in a wrongful manner cannot result in a nullity— it is an illegality, capable of being cured in a duly constituted legal proceedings****.*

16. *Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit inasmuch as the assessing officer does not adjudicate on a lis between an assessee and the State and, therefore, the law on the issue laid down under the civil law may not strict sensu apply to assessment proceedings. Nevertheless, in order to appreciate the distinction between a 'null and void' order and an 'illegal or irregular' order, it would be profitable to notice a few decisions of this Court on the point.*

17. *In Rafique Bibi (Dead) By LRs. Vrs. Sayed Waliuddin (Dead) By LRs. & Ors., 2003 Supp.3 SCR 100, explaining the distinction between 'null and void decree' and 'illegal decree', this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognisance of such a nullity based on want of jurisdiction.* ***The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable****.*

18. *In view of the above, in the present case, apart from the fact that on a plain reading of Section 29(8)(b) of the Act, it is manifestly clear that fresh assessment for the assessment year 1995-96, framed pursuant to the order passed by the appellate authority on 8th June, 2000, was well within the prescribed time, even otherwise, in the light of the afore-stated settled law,* ***the assessments orders in question could not be held to be null and void on account of the stated irregularities committed by the assessing officer during the course of assessment proceedings.*** *In our opinion, therefore, despite scathing observations by the Division Bench on the conduct of the Assessing Officer, it was a*

case of an irregularity in assessment proceedings by the Officer, who was not bereft of authority to assess the appellant. At best, it was an illegality, which defect was capable of and has been cured by the High Court by setting aside the orders and by granting consequential relief."

8.8. It is nobody's case that the Assessing Officer, namely the Deputy Commissioner of Income Tax, Circle 1(2), Bhubaneswar had no jurisdiction over the subject-matter— income stated to have escaped assessment as found mentioned on the Order dated 29.03.2017— for assessment. Nonetheless, the Assessing Officer exercised power seemingly without verifying whether service of Notice dated 29.03.2017 was in fact effected on the petitioner. Hence, it may be said that having "issued" Notice within the period stipulated under Section 149, it cannot be comprehended that the Assessing Officer had exercised power "illegally" and/or having lack of jurisdiction. As has already been stated, there is no denial of the fact that Notice dated 23.10.2017 was "issued" under Section 142(1) of the IT Act and sent by Speed Post *vide* Postal Acknowledgement No.EO941011095IN with postal tracking report "item delivered" on 26.10.2017. The service, hence, shall be deemed to have been effected in view of Order V, Rule 9 of the Code of Civil Procedure, 1908 read with Section 27 of the General Clauses Act, 1897. This apart, the petitioner has admitted to have participated in the

proceeding for penalty under Section 271C after passing of the Assessment Order *vide* Annexure-5. Thus, the Assessment undertaken by irregular assumption of jurisdiction, the same can be corrected at this stage as the initiation of assessment was within the period of limitation envisaged under Section 149 of the IT Act.

8.9. In such view of the matter, on the facts and in the circumstances of the case, the exercise of power to assess the petitioner under Section 147 by issue of Notice dated 29.03.2017 under Section 148 being within the period stipulated under Section 149, this Court is not persuaded to hold that there is infirmity or latent lack of jurisdiction on the part of the Assessing Officer. The mode of despatch for the purpose of ascertaining service of the Notice dated 29.03.2017 issued under Section 148 on the petitioner could not be demonstrated; as a result of which the assessment proceeding cannot be stated to be null and void. It may be stated at the cost of repetition that Notice dated 23.10.2017 under Section 142(1) despatched by Speed Post, which was stated to have been delivered at the addressee, would clinch the issue with regard to knowledge of proceeding. This case, thus, attracts *vice* of principles of natural justice warranting interference in the Assessment Order dated 14.11.2017 (Annexure-5) by exercise of power under Article 226 of the Constitution of India.

8.10. Under the above premises, the Assessment Order dated 14.11.2017 passed under Section 147 read with Section 144 of the IT Act (Annexure-5) and the consequential Demand Notice dated 14.11.2017 under Section 156 of the IT Act (Annexure-5A) are set aside.

8.11. The matter is, therefore, remanded to the Assessing Officer for fresh assessment upon affording opportunity of hearing and production of documents/evidence by the petitioner. For availing such opportunity, the petitioner is directed to appear before the Assessing Officer within a period of three weeks from date and upon such appearance, the Assessing Officer shall serve Notice under Section 148 on him.

8.12. Upon consideration of material placed by the petitioner and such other material available on record, the Assessing Officer shall pass Assessment Order in accordance with law within a period of three months from the date of appearance of the petitioner. Copy of such Assessment Order shall also be served on the petitioner forthwith.

8.13. Needless to indicate that no unnecessary adjournments shall be allowed and/or granted in order to give scope for protraction of the proceeding. The Assessing Officer is at liberty to take independent decision without being influenced by any of the observations made hereinabove

touching the merit of the assessment. In other words, nothing contained in the foregoing paragraphs shall be deemed to be opinion of the Court on the merit.

8.14. It goes without saying that in the event the petitioner defaults in carrying out the above direction(s), the Assessment Order dated 14.11.2017 (Annexure-5) and the Demand Notice dated 14.11.2017 (Annexure-5A) shall revive and thereby, there would be no impediment for the Authority concerned to proceed further with the matter in accordance with law.

9. *Ergo,* the writ petition stands allowed to the extent indicated above and pending interlocutory application(s), if any, shall be disposed of, but in the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE