03.11.2026-HC-Reassessment Based on Audit Objection Cannot Override Change of Opinion: Delhi HC

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Summary: The Delhi High Court examined a writ petition filed by Springer Healthcare Limited, a tax resident of the United Kingdom, challenging an order dated 28 October 2024 passed under **Section 148A(d) of the Income Tax Act, 1961** and the consequential reassessment notice issued under **Section 148** for Assessment Year 2017-18. The dispute concerned receipts of ₹1,44,34,773 from its Indian associated enterprise, Springer Nature India Private Limited, towards finance, sales and corporate service charges. The petitioner maintained that these receipts were not taxable in India under the India–UK Double Taxation Avoidance Agreement because it had no permanent establishment in India and the services did not satisfy the technical knowledge or skill transfer requirements under Article 13(4) of the treaty.

The petitioner had filed its return on 30 November 2017, declaring income of ₹53,88,600. During scrutiny assessment, the Assessing Officer specifically examined the taxability of the disputed receipts, issued questionnaires and a show-cause notice, and considered the petitioner's explanations. The assessment was completed under **Section 143(3)** on 27 December 2019, accepting the returned income. Subsequently, the Department initiated rectification proceedings under **Section 154** in February 2022 concerning the same receipts, but those proceedings were dropped. In March 2024, reassessment proceedings were initiated on the basis of an audit objection suggesting that the receipts constituted fees for technical services. The first reassessment order and notice were set aside by the High Court in September 2024 for violation of natural justice. However, the Department subsequently issued another notice based on the same audit information and passed the impugned order in October 2024.

The principal question before the High Court was whether an audit objection, treated as information suggesting escapement of income under Explanation 1 to Section 148, could justify reopening an assessment when the very same issue had already been examined and decided during the original scrutiny proceedings. The Revenue contended that an audit objection independently qualified as information for reassessment purposes. The petitioner argued that the proceedings constituted an impermissible review of a concluded assessment and were also barred by limitation. The Court examined the distinction between reassessment and review, the statutory significance of audit objections, the Assessing

Officer's obligation to independently evaluate the material, and the operation of Sections 147, 148, 148A and 149.

Relying on **Commissioner of Income Tax v. Kelvinator of India Limited**, **Jindal Photo Films Ltd. v. CIT** and **Commissioner of Income Tax v. Techspan India (P) Ltd.**, the High Court held that an audit objection does not enlarge the Assessing Officer's statutory power or convert reassessment jurisdiction into a power of review. Although an audit objection may constitute information under Explanation 1 to Section 148, it does not automatically require issuance of a reassessment notice. The Assessing Officer must independently consider the objection, the taxpayer's reply and the existing assessment record. Since the disputed receipts had already been examined during the original assessment and no new material had emerged, reopening the matter would amount to an impermissible change of opinion.

The Court additionally held that the reassessment proceedings were barred by limitation. There was no allegation that the petitioner had failed to disclose any material fact. Consequently, the extended six-year limitation period under the earlier reassessment provisions was unavailable, and the applicable period was four years from the end of AY 2017-18. Applying the first proviso to **Section 149(1)** and following **Ratnagiri Gas and Power Private Limited v. Assistant Commissioner of Income Tax**, the Court concluded that the impugned notices could not validly have been issued beyond that period. Accordingly, the writ petition was allowed, the impugned reassessment notice and consequential proceedings were set aside, and all pending applications were disposed of.

Cases Discussed
1. M/s Continental Construction Ltd. v. CIT (Supreme Court); (1992) 195 ITR 81.
2. Skycell Communications Ltd. & Anr. v. DCIT & Ors. (Madras High Court); (2001) 251 ITR 53.
3. Commissioner of Income Tax, Delhi v. Kelvinator of India Limited (Supreme Court); (2010) 2 SCC 723.
4. Jindal Photo Films Ltd. v. CIT (Delhi High Court); (1998) 234 ITR 170.
5. CIT v. Rao Thakur Narayan Singh (Supreme Court); (1965) 56 ITR 234.
6. Commissioner of Income Tax v. Techspan India (P) Ltd. (Supreme Court); (2018) 6 SCC 685.
7. Ratnagiri Gas and Power Private Limited v. Assistant Commissioner of Income Tax Circle 19(1), Delhi & Ors. (Delhi High Court); 2025 SCC OnLine Del 2904.

FULL TEXT OF THE JUDGMENT/ORDER OF DELHI HIGH COURT
1. The petitioner has filed the present petition, inter alia, impugning an

order dated 28.10.2024 [impugned order] passed under **Section 148A(d) of the Income Tax Act, 1961** [the Act] as well as the consequential notice issued under **Section 148** of the Act on the same date [impugned notice]. The petitioner also prays that directions be issued for declaring that the test of change of opinion also applies in cases, which are covered under Explanation 1 to Section 148 of the Act as in force prior to the Finance (No.2) Act, 2024 coming into force.

PREFATORY FACTS

2. The petitioner is a tax resident of the United Kingdom and had filed its return of income in respect of the Assessment Year [AY] 2017-18 on 30.11.2017, declaring an income of ₹53,88,600/-. During the previous year relevant to AY 2017-18, the petitioner had received an amount of ₹1,44,34,773/- on account of "finance, sales and corporate service charges" from its associated enterprise [AE] in India, M/s Springer Nature India Pvt. Ltd. [SNIPL]. According to the petitioner, the said receipts were not chargeable to tax in view of the Double Tax Avoidance Agreement between India and the United Kingdom [India-UK DTAA]. It is the petitioner's case that it did not have permanent establishment [PE] in India and the receipts from SNIPL could not be termed as royalty or 'fees for technical services' [FTS]. In any event, the petitioner claims that the said services did not transfer any technology, skill or knowledge and therefore, the same could not be termed as 'fee for technical services' within the meaning of paragraph 4 of Article 13 of the India-UK DTAA.

3. The petitioner's return was picked up for scrutiny and the Assessing Officer [AO] issued a notice dated 23.08.2018 under **Section 143(2)** of the Act. During the proceedings, the issue of whether the finance, sales and corporate services charges of ₹1,44,34,773/- received by the petitioner were taxable under provisions of the Act and Article 13 of the India-UK DTAA was examined. The assessment proceedings culminated in the assessment order dated 27.12.2019 passed under **Section 143(3)** of the Act, whereby the AO assessed the petitioner's income at ₹53,88,600/- (as returned by the petitioner). In the assessment order, the AO noted that during the course of the assessment proceedings, questionnaires were issued (which sought information and the petitioner's stand on whether the receipts in question were taxable) and the petitioner had furnished its responses.

4. Thereafter, the AO issued a notice on 16.02.2022 under **Section 154** of the Act calling upon the petitioner to explain why its income should not be treated as FTS (fees for technical services). Once again, the petitioner furnished a reply dated 14.04.2022 explaining that the said charges were not taxable under the Act and the India-UK DTAA. The petitioner also objected to the proposed relook at the issue of taxability of the said charges under the guise of the rectification proceedings. Admittedly, the said proceedings were dropped and no order was passed.

5. On 30.03.2024, the AO issued a notice under **Section 148A(b)** of the Act on the ground that it had information, which suggested that the petitioner's income for AY 2017-18 had escaped assessment. The petitioner responded to the said notice. However, the petitioner's response was not considered and the AO proceeded to pass an order dated 10.04.2024 under **Section 148A(d)** of the Act holding that it was a fit case for issuing notice under **Section 148** of the Act. Consequently, a notice dated 10.04.2024 was issued under Section 148 of the Act.

6. The petitioner pursued with its objections to the initiation of reassessment proceedings and, on 08.07.2024, filed its detailed submissions before the concerned authorities, in this regard. Thereafter, on 26.08.2024, the petitioner filed a writ petition under Article 226 of the Constitution of India before this Court being W.P. (C) No.12309/2024, inter alia, challenging the order dated 10.04.2024 passed under Section 148A(d) of the Act and the notice dated 10.04.2024 issued under Section 148 of the Act pursuant to the said order. This Court allowed the said writ petition by an order dated 04.09.2024 and set aside the order dated 10.04.2024 passed under Section 148A(d) of the Act and the consequential notice issued under Section 148 of the Act, on the ground of violation of the principles of natural justice. The Court found that the petitioner was not afforded an opportunity to be heard and its response to the notice issued under Section 148A(b) of the Act was not considered.

7. Thereafter, on 25.09.2024, the AO once again issued a notice under Section 148A(b) of the Act based on the same information that had triggered the earlier notice dated 30.03.2024. However, the Revenue contends that the notice dated 25.09.2024 was not a fresh notice but a continuation of the earlier proceedings.

8. The petitioner responded to the said notice on 03.10.2024, once again setting out its explanation as to why its receipts were not taxable as FTS or FIS. However, the AO rejected the said explanation and passed the impugned order, holding it a fit case for issuance of notice under Section 148 of the Act.

9. Aggrieved by the same, the petitioner has filed the present petition.

10. We have heard counsel for the parties.

REASONS AND CONCLUSION

11. It is material to note that the petitioner had objected to the notice dated 25.09.2024, inter alia, on the ground that the initiation of reassessment proceedings to examine whether the receipt of finance, sales and corporate services charges amounting to ₹1,44,34,773/- were taxable under the Act or the India-UK DTAA, would amount to a review of the assessment order, which is impermissible. The AO did not accept the said contention on the ground that the notice under Section 148A(b) of

the Act was based on audit observations and, in terms of clause (ii) of Explanation 1 to Section 148 of the Act, the same constituted information, which suggests that the income of the assessee had escaped assessment. The AO, in effect, held that it was permissible to revisit the issues examined during the assessment proceedings if an audit objection to the effect that assessment has not been made in accordance with the Act was raised. The question whether assessments can be reopened on the basis of audit observations notwithstanding that the issue has been examined threadbare by the AO, is the central controversy to be addressed in the petition. The petitioner also contends that the impugned notice has been issued beyond the period of limitation.

12. It is also relevant to refer to the information as available with the AO, which, according to the AO, suggested the petitioner's income for the relevant AY had escaped assessment. We consider it apposite to set out the annexure to the notice dated 30.03.2024 issued under Section 148A(b) of the Act. The same is reproduced below:

"ANNEXURE

In the instant case, information received from Audit that the assessee has entered into the following transaction during AY 2017-18

S No	Information Source Type	Information Source Description	Information Description	Amount (in INR)
1	Audit	Audit	Fees for Technical services	1,44,34,773/-

2. As per information received from Audit Objection, Delhi, during the F.Y 2016-17 relevant to A.Y 2017-18, the assessee is a tax resident of United Kingdom and is engaged in the business of publishing, manufacturing and selling of books and journals, reprints, business intelligence databases and consultation services through online, stand alone or package transactions. Further, the assessee has received an amount of Rs. 1,44,34,773/- from its AE M/s Springer Nature India Pvt. Ltd. (SNIPL) on account of Finance, sales and corporate service recharges.

3. In view of the above facts, receipt from Finance, sales and corporate service of Rs. 1,44,34,773/- provided under this agreement also comes under the purview of Fee for Technical services, both under provisions of Income-tax Act and Article-13 of Indo-UK DTAA. The same may be added to the income of the assessee for the A.Y. 2017-18 and charged to tax at prescribed rate.

4. Therefore, the aforesaid information suggests that income chargeable to tax in the case of the assessee for the given AY 2017-18 has escaped assessment.

5. Further, as is evident such income which is chargeable to tax and has escaped assessment is in the form of an asset amounting to Rs. 50 lakh or more as per the provisions of section 149(1)(b) of the Act.

ABHILASHA SHARMA
CIRCLE INT TAX 3(1)(2)DEL"

13. The above information is also set out in the notice dated 25.09.2024.

14. It is apparent from the record that the question whether amount of ₹1,44,34,773/- was chargeable to tax under the Act was examined by the AO during the assessment proceedings. During the assessment proceedings, the AO had specifically issued a notice dated 13.12.2019 under Section 142(1) of the Act, requiring the petitioner to furnish details in respect of both finance, sale and corporate services recharges amounting to ₹1,44,34,773/-. The petitioner responded to the said notice on 16.12.2019. The said response is not on record. However, it is stated that the petitioner had explained that the receipts were not chargeable to tax.

15. On 16.12.2019, the AO had issued a show cause notice calling upon the petitioner to show cause why its receipts amounting to ₹1,44,34,773/- from SNIPL be not charged to tax. The said notice is reproduced below:

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE INT TAX 3(1)(2)DEL

–

PAN	AY	Notice No.	Dated	Hearing Date and Time
AAVCS5304H	2017-18	ITBA/AST/F/143(3)(SCN)/2019-20/1022466655(1)	16/12/2019	19/12/2019 03:00 PM

SHOW CAUSE NOTICE

Vide notice u/s 142(1) of the IT Act, 1961 dated 13.12.2019, you were asked to furnish nature and complete details (complete details of finance

sales and complete details of different types of corporate service rendered) of amount earned on account of "finance sales and corporate service charge" amounting Rs. 1,44,34,773/- from SNIPL, which you have claimed not taxable under the beneficial provisions of the double taxation avoidance agreement between India and UK. You were also requested to explain the basis on which amount has been claimed to be not taxable under the beneficial provisions of the double taxation avoidance agreement between India and UK. Since there has been no compliance whatsoever, you are show caused as to why the amount of Rs. 1,44,34,773/- should not be treated as Fee for Technical Services and added to your total income and Taxed Accordingly.

MIKESH KUMAR SINHA
CIRCLE INT TAX 3(1)(2)DEL"

16. The petitioner had responded to the said notice by the letter dated 21.12.2019 once again setting out its explanation why receipts are not taxable under the Act. The relevant extract of the said response is set out below:

"Finance, sales and corporate service recharges' amounting to INR 14,434,773 received from SNIPL is not in nature of FTS:

It is submitted that the assessee had entered into a Shared Service Agreement, dated 1 January 2015, with SNIPL. By virtue of the agreement, the assessee provides certain general management and controlling, IT and business support services to SNIPL.

In this regard, we have also enclosed copy of sample invoices raised by the assessee on SNIPL during the year under consideration (enclosed as Annexure 5).

The assessee now proceeds to explain why 'Finance sales and corporate service recharges' received by it during the year under consideration, is not attributable as FTS.

(A) Taxability of Finance, sales and corporate service recharge as FIS under the provisions of the Act:

In this regard, your goodself's attention is now drawn towards **Section 9(1)(vii) of the Act** which deals with the stream of income by way of FTS, which shall be deemed to accrue or arise in India. The specific clause that merits consideration in the instant case reads, as follows:

"income by way of fees for technical services payable by-

(a) ……; or

(b) a person who to a resident, except where the fees are payable in respect of services utilised in a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

(c) ……..”

Further, FTS has been defined in Explanation 2 to section 9(1)(vi) of the Act, as under:

“consideration (including any lump sumi consideration for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable sunder the head “Salaries”” (Emphasis Supplied)

It may kindly be appreciated that for any payment to fall with the ambit of FTS under the Act. it should be made as a consideration for rendering of any managerial, ‘technical’ or ‘consultancy’ services.

However, as per **section 90(2) of the Act**, the taxability of a non-resident in India is governed by provisions of the Act or provisions of the Double Taxation Avoidance Agreement entered between India and the country of residence of the non-resident, whichever are more beneficial

Consequently, the assessee now proceeds to explain as to why the Finance, sales and corporate service recharge cost received by the assessee dung the year under consideration does not fall within the ambit of FTS under the relevant provisions of the DTAA

(B) Taxability of Finance, sales and corporate service recharge’ as FTS under the provisions of the DTAA:

(1) Firstly, your goodself’s kind attention is invited to Article 13(4) of the DTAA (enclosed as Annexure 6), which defines the term FTS, as follows:

“the term “fees for technical services” means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which:

(a) are ancillary and subsidiary to the application or enjoyment of the right property or information for which a payment described in paragraph 3(a) of this article is received, or

(b) are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of thus Article is received; or

(c) make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design (Emphasis Supplied)

Accordingly, a payment made for rendering any technical or consultancy service is considered as FTS under the DTAA, only if such services 'make available' technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

In other words, in order to categorize an income as FTS, the following twin tests must be cumulatively satisfied (and not alternatively):

-
  - Consideration is paid for rendering any technical or consultancy service; and
  - Such service should make available technical knowledge, experience, skill, know-how, or processes to the service recipient as a result of provision of such services.

Further, your goodself will appreciate that the terms technical and/or consultancy have not been defined under the Act and or the DTAA, and it is a well settled law that they need to be interpreted based on their understanding in common parlance, commentaries and various judicial precedents.

Therefore, the assessee now proceeds to explain as to why the services rendered by it does not fall under the ambit of technical and or consultancy' services under the provisions of both the Act and the DIAA in view of the meaning interpretation of the abovementioned terms by various Indian Courts and expressions defined m various Dictionaries."

17. In addition to the above, the petitioner also explained that the services rendered did not qualify as technical services as they were not of a technical nature. The petitioner referred to various authorities including the decision of the Supreme Court in **M/s Continental Construction Ltd. v. CIT: (1992) 195 ITR 81 (SC)** and the decision of Madras High Court in the case of **Skycell Communications Ltd. & Anr. v. DCIT & Ors.: (2001) 251 ITR 53**, in support of its contention. In view of the above, there can be no dispute that the focus of the assessment proceedings before the AO centred around the question of taxability of receipts in question. Thus, we find merit in the contention that the initiation of reassessment proceedings would effectively amount to initiating a review of the assessment proceedings, which is impermissible.

18. In **Commissioner of Income Tax, Delhi v. Kelvinator of India Limited: (2010) 2 SCC 723**, the Supreme Court had explained that the power under **Section 147 of the Act** is to reassess the income that has escaped assessment and cannot be misunderstood as a power of review. The following extract of the said decision is instructive:

"6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.

7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer."

[emphasis added]

19. We consider apposite to refer to the following observations made by the Division Bench in **Jindal Photo Films Ltd. v. CIT: (1998) 234 ITR 170**:

"16. The power to re-open an assessment was conferred by the legislature but not with the intention to enable the ITO to reopen the final decision made against the Revenue in respect of questions that directly arose for decision in earlier proceedings. If that were not the legal position it would result in placing an unrestricted power of review in the hands of the assessing authorities depending on their changing moods. (See **CIT v. Rao Thakur Narayan Singh, [1965] 56 ITR 234, 239**)."

20. In **Commissioner of Income Tax v. Techspan India (P) Ltd., (2018) 6 SCC 685**, the Supreme Court had reiterated the law that assessment could not be reopened on the basis of a change of opinion. The Court had referred to the earlier decision in **Commissioner of Income Tax, Delhi v. Kelvinator of India Limited (supra)** and explained the import of expression of "change of opinion" as under: –

"14. The language of Section 147 makes it clear that the assessing officer certainly has the power to reassess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153. However, the use of this power is conditional upon the fact that the assessing officer has some reason to believe that the income has escaped assessment. The use of the words "reason to believe" in Section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the assessing officer who may even initiate such reassessment proceedings merely on his change of opinion on the basis of same facts and circumstances which has already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the assessing authorities to reassess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order.

15. Section 147 of the IT Act does not allow the reassessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to reassess and not the power to review.

16. To check whether it is a case of change of opinion or not one has to see its meaning in literal as well as legal terms. The words "change of opinion" imply formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by an assessing officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection.

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18. Before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the reassessment proceedings."

21. In the present case, the fact that the petitioner had received an aggregate amount of ₹1,44,34,773/- during the previous year relevant to AY 2017-18, which was not surrendered to tax, was not only within the AO's knowledge, but was subject matter of examination as to whether the said amount was now held to be chargeable to tax under the Act. Concededly, all relevant facts regarding the aspect of taxability of the aforesaid amount were examined by the AO. There is no additional material that has been discovered subsequently, which was not within the knowledge of the AO at the material time.

22. Undeniably, this would be a case of change of opinion, if the said amount is now held as chargeable to tax under the Act.

23. We must, at this stage, note that there is no cavil that the exercise initiated pursuant to the impugned notice is for all intents and purpose an attempt to review the decision the AO in the assessment proceedings. However, it is contended by the Revenue that the same is permissible as the initiation was triggered by audit observations and the same constitutes information that can trigger the reassessment proceedings. We find no merit in the said contention. The fact that audit observation may be deemed to be information suggestive of the assessee's income escaping assessment does not enhance or expand the power available with the AO to assess/ reassess the assessee's income that has escaped assessment. It does not alter the very nature of power to assess/ reassess under Section 147 of the Act, to a power to review a concluded assessment.

24. We consider it relevant to refer to Section 148 of the Act and in particular the Explanation 1 to Section 148 of the Act, as was in force at the material time (that is, prior to the amendment by Finance Act, 2023). The relevant extract of said section is set out below: –

"148. Issue of notice where income has escaped assessment.— Before making the assessment, reassessment or recomputation under Section 147, and subject to the provisions of Section 148-A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of Section 148-A, 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 no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income

chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

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

Explanation 1.—For the purposes of this section and Section 148-A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or ."

25. It is clear from the above that in terms of clause (ii) to Explanation I to Section 148 of the Act, an audit objection to the effect that the assessment in the case of an assessee was not made in accordance with the provisions of the Act, is information for the purpose of Section 148 as well as Section 148A of the Act.

26. The contention advanced on behalf of the Revenue is founded on interpreting Explanation I as a mandatory command to issue a notice under Section 148 of the Act notwithstanding the issue flagged under the audit objection has been subject matter of the examination in assessment proceedings and a final decision in terms of an assessment order. This requires us to examine Section 148 of the Act in the light of the import of word "information" as used in the main provision.

27. The term "information" is used in the first proviso to Section 148 of the Act. The said proviso proscribes issuance of notice under Section 148 of the Act unless there is "information" with the AO, which suggests that an assessee's income chargeable to tax has escaped the assessment for the relevant AY. Thus, if the AO is in receipt of an audit objection, the same is required to be construed as information that suggests that the income of the assessee has escaped assessment. The proviso to Section 148 of the Act is couched in the negative. Whilst, the AO is proscribed from issuance of the notice under Section 148 of the Act, unless it has the "information" that suggests that the assessee's income has escaped assessment, it is not mandatory for the AO to issue such a notice, or to review the assessment order merely because issues were flagged in an

audit objection. The AO is required to apply its mind to the audit objection and form an independent, informed view.

28. The provisions of Section 148A of the Act are also required to be construed by imputing the meaning of the term "information" as provided under Explanation I to Section 148 of the Act. Section 148A of the Act prescribes the procedure to be followed prior to issuance of notice under Section 148 of the Act. Section 148A as was in in force prior to Amendment Act 15 of 2024, is reproduced below:-

"148-A. Conducting inquiry, providing opportunity before issue of notice under Section 148.— The Assessing Officer shall, before issuing any notice under Section 148,—

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, [* * *], by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

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

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

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

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

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion,

jewellery or other valuable article or thing, seized in a search under Section 132 or requisitioned under Section 132-A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

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

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

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in Section 151."

29. It is apparent from the above, the term "information" is used in clause (a), clause (b) of Section 148A of the Act and proviso (c) of the said Section. Clause (a) of Section 148A of the Act requires the AO to conduct the enquiry, if necessary, with respect to the information which suggests the income chargeable to tax has escaped assessment. Accordingly, when an audit objection is raised, the AO would have such information in respect of which an enquiry may be conducted under clause (a) of Section 148A of the Act, if required. However, this does not mandate that the AO proceeds to issue a notice under Section 148A of the Act merely on the basis of the audit objection. Clause (b) of Section 148A of the Act requires the AO to provide the assessee with the basis of the information, which suggests that the income chargeable to tax has escaped assessment, in order to enable to the assessee to respond to the said notice.

30. This clearly, establishes that the purpose of an audit objection cannot be considered as a command to issue a notice under Section 148A of the Act irrespective of what such information is. On the contrary, it requires the AO to furnish the information to the assessee and elicit the assessee's response. Thereafter, the AO is required – in terms of clause (d) of Section 148A of the Act – to take an informed decision whether it is a fit case for issuance of notice under Section 148 of the Act "on the basis of the material available on record including the reply of the assessee". Obviously, if the AO is satisfied with the reply furnished by the assessee and the material on record, the AO is bound to hold that it is not a fit case for issuance of notice under Section 148 of the Act.

31. In a case such as this, the AO was required to take an informed decision whether the issue raised had been considered and concluded in

the assessment proceedings as contended by the petitioner. The said issue cannot be brushed aside by construing an audit objection as a ground of issuing a notice under Section 148 of the Act regardless of whether the assessee's income had escaped assessment. The expression "escaped assessment" by its very nature, means that the income has not been subjected to an assessment. The expression would not include a case where the AO made an informed assessment of the assessee's income.

32. Clause (c) of the proviso to Section 148A of the Act excludes the procedure under Section 148A of the Act where the information available with the AO is contained in the books of accounts, documents or material seized in a search conducted under Section 132 of the Act or requisitioned under Section 132A of the Act on or after 01.04.2021. This clause is not applicable to the facts of the present case.

33. The next question that needs to be examined is whether the impugned notice has been issued beyond the period of limitation as stipulated under Section 149(1) of the Act. The first proviso to Section 149(1) of the Act proscribes the issuance of any notice under Section 148 of the Act for a period prior to 31.03.2021, which could not be issued at that time. This requires us to examine whether the impugned notice could be issued under Section 148 of the Act as it was in force prior to 31.03.2021.

34. There is no allegation that there was a failure on the part of the petitioner to disclose any material fact in its return. Thus, the extended period of limitation of six years for reopening assessment would not be available under Section 147 of the Act as it was in force prior to 31.03.2021. The period of limitation is, thus, limited to four years from the end of the relevant AY 2017–18, and concededly, the impugned notices have been issued beyond this period. Thus, by virtue of the first proviso of Section 149 of the Act, no notice could have been issued under Section 148 of the Act as no such notice could have been issued on the basis provisions for reassessment that were in force prior to 31.03.2021. This issue is covered in favour of the petitioner by a recent decision of this Court in **Ratnagiri Gas and Power Private Limited v. Assistant Commissioner of Income Tax Circle 19(1), Delhi & Ors.: 2025 SCC OnLine Del 2904.**

35. The petition is accordingly allowed. The impugned notice and further proceedings initiated thereto are set aside.

36. All pending applications are also disposed of.