

20.01.2026
Item No.19 (DL)
Court No.551
AJ.

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

W.P.A. 20687 of 2025

**IVL Dhunseri Petrochem Industries
Private Limited**
-Vs-

Union of India & Ors.

Mr. Pratyush Jhunjhunwala,
Ms. Sruti Datta,
Ms. Sakshi Singhi.
...for the petitioner.

Mr. Aryak Dutt,
Mr. Amit Sharma.
....for the respondents.

1. Affidavit of service filed on behalf of the petitioner be kept with the record.

2. This writ petition mounts challenge to a notice issued under Section 148 of the Income Tax Act, 1961 (in short 'the said Act of 1961') whereby proceedings for reassessment of the petitioner's income for the assessment year 2021-22 have been initiated.

3. Mr. Jhunjhunwala, learned Advocate appearing for the petitioner submits that the impugned notice has been issued without there being any information suggesting escapement of income from assessment which is a mandatory requirement under Section 148 of the said Act of 1961. Mr. Jhunjhunwala submits that by issuing such notice, the Assessing Officer has committed a jurisdictional error. It is further

submitted that upon receipt of the said notice, the petitioner wrote to the Assessing Officer asking for the information which formed the basis of issuance of the said notice and thereby also objected to the issuance of the notice impugned. It is submitted that neither any information as sought for has been provided to the petitioner nor has the petitioner's objection been dealt with.

4. Mr. Jhunjhunwala has taken this Court through a notice dated April 03, 2024 issued under Section 133 (6) of the said Act of 1961 and submitted that by the said notice certain information/clarifications were sought for from the petitioner. It is submitted that the petitioner issued a threadbare reply to the said notice (Annexure P-4 at pages 156 to 161 of the writ petition) along with all relevant documents in support of the petitioner's contention. It is submitted that despite the petitioner having responded to the said notice under Section 133(6) of the said Act of 1961 in details, the same do not appear to have been considered at all by the Assessing Officer prior to issuance of the impugned notice under Section 148 of the said Act of 1961. He submits that such non-application of mind to the explanation submitted by the petitioner in response to the notice under

Section 133(6) of the said Act of 1961 prior to issuance of the impugned notice under Section 148 of the said Act of 1961 would render the reopening notice without foundation. In support of his contention he relies on the following judgments :-

i) ***Benaifer Vispi Patel Vs. Income Tax Officer & Anr.*** reported at **[2025] 475 ITR 704 (Bom).**

ii) ***Vishal Garg Vs. Assistant Commissioner of Income Tax*** reported at **[2024] 167 taxmann.com 483 (Punjab & Haryana).**

5. He further relies on a judgment of the Hon'ble Allahabad High Court in the case of ***Arjun Sahu Vs. Assistant Commissioner of Income Tax*** reported at **[2025] 179 taxmann.com 581** in support of the propositions that principles laid down by the Hon'ble Supreme Court in the case of ***GKN Driveshafts (India) Ltd. Vs. Income-Tax Officer & Ors.*** reported at **(2003) 259 ITR 19** must be applied even in cases where Section 148A of the said Act of 1961 is not applicable and that it is obligatory on the part of the Income Tax Authorities to dispose of any objection raised by an assessee to a notice under

Section 148 of the said Act of 1961 before proceeding further.

6. Another judgment passed by the Hon'ble Delhi High Court in the case of **Monish Jagapati Raju -Vs- Assessment Unit of Income Tax Department** reported at **[2025] 171 taxmann.com 874 (Delhi)** has been cited to indicate that in the said case the Revenue Authorities dealt with the assessee's objection to the notice under Section 148 of the said Act of 1961 although the same had been issued under the new regime.

7. Mr. Dutt, learned senior Standing Counsel appearing for the respondent Revenue Authorities assisted by Mr. Sharma seeks time to file affidavit-in-opposition to the writ petition.

8. Heard learned Advocates appearing for the respective parties and considered the materials-on-record.

9. On a *prima facie* consideration of the material-on-record it appears that the replies furnished by the petitioner to the notice dated April 03, 2024 issued by the Revenue Authorities under Section 133(6) of the said Act of 1961 have not at all been considered by the Revenue Authorities. It is evident that by the notice under Section 133(6) of the said Act of 1961, the petitioner had been queried on two

counts i.e. (i) information regarding interest from deposit and (ii) information regarding interest on income tax return.

10. The petitioner had given detailed replies to the queries raised. There is nothing on record to suggest that the petitioner's answers have at all been considered by the Revenue Authorities prior to the issuance of the notice under Section 148 of the said Act of 1961. There is nothing to indicate as to why should the said answers not weigh with the Revenue authorities.

11. Since the notice impugned has, in the *prima facie* view of the Court, been issued without considering the petitioner's reply to the notice issued under Section 133(6) of the said Act of 1961, this Court is of the *prima facie* view that the same may not withstand scrutiny of the Court in case it turns out that the said notice was issued without applying mind to the petitioner's replies. This Court is also of the *prima facie* view that the principles established by the Hon'ble Supreme Court in the case of **GKN Driveshafts (India) Ltd.** (supra) should be applied to those cases where the procedure of Section 148A of the said Act of 1961 is not required to be mandatorily resorted to. In the case at hand, the objection filed by the petitioner to the notice under Section 148A of the said Act

of 1961 has not been dealt with/disposed of as yet. Such failure, in the *prima facie* opinion of this Court contravenes the principle laid down by the Hon'ble Supreme Court in the case of **GKN Driveshafts (India) Ltd.** (supra).

12. Having regard to the aforesaid, since the petitioner has made out a strong *prima facie* and arguable case, there shall be an interim order restraining the respondent Revenue Authorities from proceeding further in terms of the impugned notice dated June 03, 2025 issued under Section 148 of the said Act of 1961 for the assessment order 2021-22 till the end of March, 2026 or until further orders, whichever is earlier.

13. As prayed for by Mr. Dutt, learned senior Standing Counsel appearing for the respondent Revenue Authorities, let affidavit-in-opposition to the writ petition be filed within six weeks from date. Affidavit-in-reply thereto, if any, be filed within two weeks thereafter.

14. List this matter for further consideration immediately after expiry of the time fixed for exchange of affidavits.

(Om Narayan Rai, J.)