



AFR

ORISSA HIGH COURT : CUTTACK

W.P.(C) No.28067 of 2025

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

* * *

M/s. Sanjay Kumar Bijay Kumar
Adaspur, Cuttack - 754011
Represented through its partner
Sri Sudarshan Sahoo,
Aged about 72 years,
Son of Late Udayanath Sahoo. ... Petitioner

-VERSUS-

- 1.** Principal Commissioner of Income Tax-I
Aayakar Bhawan, Rajaswa Vihar
Bhubaneswar, Pin: 751 007.
- 2.** Deputy Commissioner of Income Tax
Circle-1(1), Cuttack
Aayakar Bhawan, Shelter Square
District: Cuttack
Odisha, Pin: 753 008.
- 3.** Joint Commissioner of Income Tax
Range-1, Aayakar Bhawan, Shelter Square
District: Cuttack
Odisha, Pin: 753 008.
- 4.** Income Tax Officer
Ward-1(1), Cuttack
Aayakar Bhawan, Shelter Square



District: Cuttack
Odisha, Pin: 753 008.

5. National Faceless Assessment Centre (NFAC),
Represented by Additional/joint/
Deputy/Assistant Commissioner of Income Tax/
Income Tax Officer,
National Faceless Assessment Centre
New Delhi. ... Opposite parties

Counsel appeared for the parties:

For the Petitioner : M/s. Pranaya Kishore Harichandan,
and Pragyant Harichandan,
Advocates

For the Opposite parties: Mr. Subash Chandra Mohanty,
Senior 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 : 05.02.2026 :: Date of Judgment : 24.02.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

The petitioner felt constrained to knock the doors of the writ court alleging lackadaisical attitude of the Deputy Commissioner of Income Tax, Circle 1(1), Cuttack (for short, “DCIT”), who wantonly seeks to proceed with



adjudication process under Section 147 by issue of Notice dated 30.06.2025 under Section 148 (Annexure-13) rejecting the explanation offered by it in connection with Order dated 24.06.2025 passed under Section 148A(3) (Annexure-2) in connection with Notice dated 18.03.2025 under Section 148A(1) of the Income Tax Act, 1961 (Annexure-1) on specious plea of information received in connection with income pertaining to Assessment Year 2019-20 (Previous Year 2018-19).

Facts culled out from writ petition:

2. The petitioner, a partnership firm carries on its business dealing in cattle feed and building material on wholesale and retail basis since 1985-86 in the name and style “M/S. SANJAY KUMAR BIJAY KUMAR”, being allotted with Permanent Account Numbers— “ABAFS4271L” (for convenience be referred to as “PAN-1”) and “AATFS3658P” (for convenience be referred to as “PAN-2”). It has been furnishing returns under the provisions of the Income Tax Act, 1961 (for short “IT Act”) disclosing PAN-2, since Assessment Year 2003-04, but it never utilized PAN-1 in connection with its business activities. However, due to inadvertence it disclosed PAN-1 in certain banking transactions with the Canara Bank, nonetheless, it requested the Bank to take out corrections in its records mentioning PAN-2.



- 2.1. On collecting information relating to the deposits made with the said Bank, a Notice under Section 148A(1) of the IT Act dated 18.03.2025 *qua* PAN-1 for the Assessment Year 2019-20 (Financial Year 2018-19) was issued by the DCIT, to which a response was submitted that on the advice of Commissioner a new PAN-2 being allotted, the returns have been filed, but the Bankers having not updated their system reflected PAN-1 in the alleged transactions. It is explained that the transactions in question were shown in the returns reflecting PAN-2. Notwithstanding such fact being placed before the DCIT, he passed Order dated 24.06.2025 under Section 148A(3) *vide* Annexure-2 contemplating assessment of escaped income under Section 147 by issue of Notice under Section 148 of the IT Act.
- 2.2. Accordingly, a Notice dated 30.06.2025 under Section 148 of the IT Act *vide* Annexure-13 is issued by the DCIT for assessment of escaped income under Section 147 as against PAN-1. Further intimation was also issued on 25.07.2025 in this regard.

Arguments of counsel for respective parties:

3. With the above factual narration, Sri Pranaya Kishore Harichandan, learned Advocate drew attention of this Court to Notice dated 23.02.2023 issued under Section 148A(b) of the IT Act with respect to banking



transactions with the Canara Bank to the tune of Rs.4,42,47,290/- pertaining to Financial Year 2018-19 (Assessment Year 2019-20), to which a response being furnished by the petitioner, an Order dated 22.03.2023 under Section 148A(d) came to be passed by the ITO, Ward 1(1), Cuttack for assessment under Section 147 by issue of Notice under Section 148 against PAN-1. It is forcefully submitted that after considering the reply and undertaking verification of the records, the ITO assessed the income to NIL.

- 3.1. The learned counsel highlighted that notwithstanding the ITO, Ward 1(1), Cuttack having verified the records, came to hold that the transactions with the Canara Bank was disclosed in the return furnished against PAN-2 and therefore, total income of the petitioner would not be taxed again against PAN-1. Hence, he urged that double taxation is anathema to the principles of taxation being beyond the purport envisioned in Article 265 of the Constitution of India. The petitioner-assessee cannot be subjected to double jeopardy.
- 3.2. Sri Subash Chandra Mohanty, learned Senior Standing Counsel appearing for the Income Tax Department submitted that the writ petition challenging the Notice dated 30.06.2025 under Section 148 (Annexure-13) read with intimation dated 25.07.2025 under Section 144B (Annexure-14) issued pursuant to Order dated



24.06.2025 (Annexure-2) passed under Section 148A(3) upon consideration of reply to Notice dated 18.03.2025 (Annexure-1) under Section 148A(1) of the IT Act is not maintainable and the writ petition is liable to be dismissed *in limine*.

3.3. Advancing argument further he would submit that the petitioner is not denied to avail ample opportunities before the Assessing Officer and other statutory authorities, if circumstances would so arise, in order to justify its claim of double taxation by adducing cogent evidence and demonstrating on facts that the transactions of deposit in the Canara Bank had already been considered against PAN-2 instead of PAN-1. Having not filed returns *qua* PAN-1, the DCIT is the competent authority to institute proceeding under Section 147 treating the transactions with the Canara Bank indicating PAN-1 as escaped assessment of income.

3.4. There is no plausible reason available for the petitioner to circumvent the procedure established in the IT Act, which is self-contained Code. Hence, it would not be appropriate for this Court to entertain the writ petition.

4. Heard Sri Pranaya Kishore Harichandan, learned counsel for the petitioner and Sri Subash Chandra Mohanty, learned Senior Standing Counsel appearing for the Income Tax Department.



Discussions:

5. On perusal of record and documents forming part of the writ petition, this Court is persuaded that relegating the petitioner to rigmarole of adjudicatory process of the IT Act would not only cause embarrassment and/or prejudice, but also give scope for the Assessing Officer to review the view already expressed leading to unfair burden to the assessee as well as the Revenue. Since the question posed by the petitioner touches upon the jurisdiction to re-do the exercise by the DCIT, which the ITO had already done upon participation of the assessee, this Court repels the contention of the learned Senior Standing Counsel with respect to his argument that the petition is not entertainable particularly when facts are not disputed and remained uncontroverted.
- 5.1. Taking note of decisions of the Hon'ble Supreme Court of India in the cases of *Commissioner of Income Tax Vrs. Chhabil Dass Agarwal*, (2014) 1 SCC 603 and *Godrej Sara Lee Ltd. Vrs. Excise and Taxation Officer-cum-Assessing Authority*, (2023) 3 SCR 871, there is no cavil that existence of alternative remedy is not an absolute bar for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Assessment Order dated 29.03.2023 of ITO, Ward 1(1), Cuttack reveals that considering the explanation of the petitioner that it had disclosed the alleged transactions



with the Canara Bank in the return mentioning PAN-2 and it abandoned PAN-1 and upon verification of records, he came to hold that the return of income was furnished in the return in PAN-2. Cursory glance at Notice dated 18.03.2025 issued under Section 148A(1) by the DCIT clearly shows that the self-same transaction with the Canara Bank was the subject-matter in the assessment proceeding under Section 147 before the ITO, Ward 1(1) pursuant to Notice dated 23.02.2023 issued under Section 148A(b) of the IT Act. Therefore, it can be safely inferred that same transaction ought not to be have been subjected to re-verification by a different authority by undertaking assessment proceeding under Section 147. Not entertaining the present writ petition would ensue prejudice as for the same cause of action the petitioner has to engage itself again for the purpose of assessment.

5.2. In *Muljibhai Patel Vrs. Nandlal Khodidas Barot*, AIR 1974 SC 2105, the Supreme Court held that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 of the Constitution merely in considering the petitioner's right to relief, question of facts at fault to be determined. The High Court has jurisdiction to try issues both on facts and law. In case complex question of fact is raised, which may for its determination require oral evidence to be taken, the



High Court may decline to entertain the writ petition. However, it is the discretion of the High Court to exercise on sound and in conformity with judicial principle.

5.3. In *State of Tripura Vrs. Manoranjan Chakraborty*, (2001) 10 SCC 740, it is held that if gross injustice is done and it can be shown that for good reason the Court should interfere, then notwithstanding the alternative remedy which may be available by way of appeal or revision, the writ Court can in an appropriate case exercise its jurisdiction to do substantial justice.

5.4. A Division Bench of this Court having referred to very many decisions of the Hon'ble Supreme Court of India in *VFPL ASIPL JV Company Vrs. Union of India*, 2020 (III) ILR-CUT 388 observed thus:

“32. The word “efficacious” is adjective according to Grammar and its noun is “efficacy”. The word “efficacy” is derived from Latin word “efficacie” which means capacity to produce results. The word ‘efficacious’ accordingly means able to produce the intended effect or result.

33. In *Abdul Sammad Vrs. Executive Committee of the Marigaon Mahkuma Parishad*, AIR 1981 Gau 15, the Gauhati High Court held that it is well-known that the meaning of the term “efficacious” is “able to produce the intended result”. It is, therefore, held that the preliminary objection raised by the opposite parties with regard to maintainability of the writ petition is hereby negated and as such, this Court



held that the writ petitions are maintainable and issue No.(i) is accordingly answered in affirmative.”

5.5. In the above perspective if the present case is analysed, the objection of the learned Senior Standing Counsel against entertainment of writ petition on the ground that efficacious remedy is available for the petitioner to participate in the proceeding to determine escaped assessment under Section 147 by issue of Notice dated 30.06.2025 under Section 148 (Annexure-13) and subsequent intimation dated 25.07.2025 for completion of assessment adhering to the procedure laid in Section 144B (Annexure-14) by the DCIT, Circle 1(1), Cuttack, is to be overruled.

6. This takes this Court to examine that both the proceedings of the DCIT and the ITO are based on self-same transactions with the Canara Bank.

6.1. The Notice dated 30.06.2025 issued by the DCIT under Section 148 (Annexure-13) emanates from Order dated 24.06.2025 passed under Section 148A(3) of the IT Act by the DCIT, Circle 1(1) of Cuttack, relevant portion of which reads as follows:

PAN: ABAFS4271L	A.Y.: 2019-20	DIN & Notice No.: ITBA/AST/F/148A/2025-26/1077734077(1)
*	*	*

During the Financial Year 2018-19, M/s. Sanjay Kumar Bijay Kumar [PAN: ABAFS4271L] has deposited cash in the following banks mentioned below:



Sl. No.	Name of transaction	Name of the bank	Amount (in Rs.)
1.	Cash deposits or cash withdrawals	Canara Bank	90,78,290
2.	-do-	-do-	3,51,69,000
Total			4,42,47,290

On verification by this office it is observed that the assessee M/s. Sanjay Kumar Bijay Kumar is filing its returns using PAN: AATFS3658P from Assessment Year 2007-08 onwards. However, the assessee has used PAN: ABAFS4271L in bank accounts maintained by it in Canara Bank during the Financial Year 2018-19. It is pertinent to mention here that for similar ground an Order under Section 147 read with Section 144 passed by the ITO, Ward-1(1), Cuttack on 29.03.2023 computing total income of the assessee as NIL. **Hence, this office treats that total amounts to the tune of Rs.4,42,47,290/- remains unexplained and thereby escaped assessment of income of Rs.4,42,47,290 within the meaning of Section 147 of the IT Act, 1961.**

Considering above facts and circumstances into account and on the basis of material available on record as well as to protect the interest of revenue, it is considered that the assessee's case is a fit case to issue notice u/s 148 of the Act, for the impugned Assess Year 2019-20.

This order is being issued after obtaining prior approval of the Joint Commissioner of Income Tax, Range-1, Cuttack as per Section 151 of the Income Tax Act, 1961."

- 6.2. Such a perception of the DCIT discarding merit of the explanation proffered by the petitioner smacks arbitrariness and tainted with whimsical exercise of power stemming on the same provision(s) which had already been invoked by the ITO while investigating into



the fact of deposit of cash to the tune of Rs.4,42,47,290/- in the Canara Bank by disclosing PAN-1 instead of PAN-2. This fact is discernible from the following factual details as obtained in Annexure-7, i.e., Order dated 22.03.2023 passed under Section 148A(d) by the ITO:

“In response, the assessee submitted written compliance as under:

‘The assessee like to inform that the PAN: ABSFS4271L is one old one which the assessee is not using since Assessment Year 2003-04. The assessee is regularly filing ITR under PAN: AATFS3658P disclosing its income. Photo copy of the ITR along with balance sheet for the Assessment Year 2003-04 is enclosed herewith and accordingly for the Assessment Year 2019-20 the assessee after auditing their books of accounts under Section 44AB of the Act by a CA filed the return by disclosing total income of Rs.51,12,820/- on 30.10.2019 under the PAN: AATFS3658P. In the meantime the assessee has filed an application dated 06.03.2023 explaining in details before jurisdictional authority for surrender of same as said PAN is de-duplicate one.’

The submission of the assessee is perused.

*No shred of evidence could be produced against said assertion. No Profits & Loss account and Balance Sheets were produced by the assessee for the impugned **Assessment Year 2019-20** to explain that the deposits made in the current account and the assessee shall have opportunity to furnish details during contemplated assessment proceeding.*



Thus, with regard to sources of cash deposits, the assessee's explanation without any supporting verifiable evidence is found unacceptable at this stage of the proceeding for which cash deposited in current account of the assessee for Rs.4,42,47,290/- remained unexplained. Similarly, in absence of any supporting evidence interest income of Rs.11,306/- also remained unexplained.

In the case of ACIT Vrs. Rajesh Javeri Stock Brokers Pvt. Limited, Civil Appeal No.2830 of 2007 (SC) in para 16 it is held that 'in other words, at the initiation stage, what is required is reason to believe, but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was a relevant material on which a reasonable person could have formed a requisite belief. Whether the material would conclusively proved the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction.'

Under the above facts and circumstances, the aggregate amount of Rs.4,42,58,596/- i.e. [Rs.4,42,47,290 + Rs.11,306] is prima facie considered to be assets available in its hand and income corresponding to said deposits has escaped assessment for the assessment year 2019-20 within the meaning of provisions of Section 147 of the IT Act. Accordingly, it is considered to be a fit case for issuance of notice under Section 148 of the Act."

- 6.3. After examining the genuineness of said cash deposits to the tune of Rs.4,42,47,290/-, the ITO passed Assessment Order dated 30.03.2023 under Section 147 of the IT Act with respect to Assessment Year 2019-20



enclosing therewith Computation Sheet with the following observation:

“In response to notice under Section 148, the assessee was required to file its return of income within 30 days. But the assessee did not file its return of income in response to the notice under Section 148 of the Act. In response, the assessee has explained through e-proceeding. The relevant portion is recast as under:

*‘That the assessee likes to state that, since A.Y. 2003-04, they are not using PAN: ABAFS4271L. They are using the PAN: AATFS3658P and regularly filing the IT return under said PAN.(2). Similarly the assessee has also filed IT has also filed IT return under PAN: AATFS3658P for the A.Y. 2018-19, disclosing the total income of Rs.37,04,680/- on 06.10.2018. **Before filing the IT return CA has audited the Books of accounts under Section 44AB, by considering the deposits, out of trading income, in Canara Bank current account No.0353214000010 & 0328201001453 amounting to Rs.3,31,79,990/- & Rs.4,99,76,500/- respectively.** The said current A/c. Nos. are mentioned in the balance sheet as well as IT return which are filed along with written submission in response to notice dated 06.01.2023. Copy of both the Canara Bank accounts are enclosed for reference. (3) Further the assessee has maintained day to day cash book relating to F.Y. 2017-18, wherein the deposit made under the Bank Accounts in question has been reflected and same has also been audited under Section 44AB of the Act under PAN: AATFS3658P. Copy of the cash book is enclosed for reference. (4) It is pertinent to mention here that while the bank started obtaining KYC from their customers, the assessee inadvertently mentioned the PAN: ABAFS4271L,*



but subsequently informed the banks to correct the PAN to AATFS3658P and while depositing the cheques, DD or cash, the assessee is also quoting the same in deposit slip which can be evident from copy of the deposit slip is enclosed for reference. (5) that the Branch Manager, Canara Bank has also given confirmation in writing that, the assessee firm is operating two banks A/c. bearing 0328201001453 and 0353214000010 against the PAN-AATFS3658P. A copy of the confirmation letter is enclosed for reference. (6) In view of the above submission, it is stated that, there is no escapement of assessment under Section 147 of the Act, as the amount deposited in Canara Bank Accounts has been considered, while filing the return under PAN: AATFS3658P for the Assessment Year 2018-19. As such the assessee submits that, the self-same amount and self-same period should not be taxed twice, which will amount to double taxation and prohibits under the law. This also incorporates the principles of 'autrefois convict' or double jeopardy, hence proceeding initiated under Section 148 of the Act may be dropped.'

The submission of the assessee is perused. On verification of the audited P&L, Balance Sheet, ITR and bank ledger, it is found the contention of the assessee is substantiated with corroborated documentary evidences. The current account bearing No.0353214000010 and CA No.0328201001453 of the firm maintained at Canara Bank and all transactions of deposits & withdrawals thereof were accounted for in the books of accounts for the Financial Year 2017-18 relevant to the Assessment Year 2018-19 of M/s. Sanjay Kumar Bijay Kumar, PAN-AATFS3658P which is certified by the Chartered Accountant and return of income has filed by the



assessee for the said Assessment Year in PAN-AATFS2358P.

Under the facts & circumstances of the case and in view of above discussion, no adverse inference is drawn after verifying of submission made by the assessee, bank authority and the auditors supported by documentary evidences. Total income of the assessee is assessed at Rs.NIL for the relevant Assessment Year 2018-19 in PAN-ABAFS4271L.”

6.4. A careful reading of contents of the Notice(s) and the Order(s) of the DCIT and the ITO would manifestly demonstrate that the ITO on earlier occasion for the self-same transaction relating to cash deposits with the Canara Bank having verified the books of accounts, returns and bank accounts taking note of explanation of the petitioner came to hold that the transaction was reflected in the return against PAN-2 and there was no escapement of income. On the contrary, the Notice/ Order of the DCIT indicates that for the same transactions respecting Assessment Year 2019-20 are premised on the basis that the petitioner used PAN-1 for banking transactions sought to initiate proceeding under Section 147 by issuing notice under Section 148 in the year 2025 which had already been adjudicated on facts by the ITO in the year 2023 under the same provisions.

6.5. The said fact remained uncontroverted by Sri Subash Chandra Mohanty, learned Senior Standing Counsel. He



conceded that deposit of Rs.4,42,47,290/- was subject-matter before the ITO and now the DCIT issued notice to examine the same transaction.

6.6. Hence, this Court is of the considered opinion that for the same transaction relating to deposit of Rs.4,42,47,290/- in the Canara Bank cannot be subject-matter of assessment under Section 147 twice; one by the ITO and the other by the DCIT.

6.7. The legal maxim, *Nemo debet bis vexari pro una et eadem causa*, meaning thereby, no man should be vexed twice over for the same cause would fit to the present context. In *Kunjan Nair Sivaraman Nair Vrs. Narayanan Nair*, (2004) 3 SCC 277 taking note of meaning of “cause of action”, it has been laid down as follows:

“13. Section 11 (of the Code of Civil Procedure, 1908) contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence “*interest reipublicae ut sit finis litium*” (it concerns the State that there be an end to law suits) and partly on the maxim “*nemo debet bis vexari pro una et eadem causa*” (no man should be vexed twice over for the same cause). The section does not affect the jurisdiction of the Court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a Court, competent to try the subsequent suit in which such issue has been raised.”



6.8. In *Commissioner of Central Excise, Nagpur Vrs. Shree Baidyanath Ayurved Bhawan Ltd.*, (2009) 5 SCR 879 it has been enunciated as follows:

“45. Before we part with the case, we may address to the plea of *res judicata* raised by the learned Senior Counsel for the Department. Mr. K. Radhakrishnan pressed into service few legal maxims in this regard. ***It is true that maxim Nemo debet bis vexari pro una et eadem causa is founded on principle of private justice as it states that no man ought to be twice put to trouble if it appear to the court that it is for one and the same cause. The maxim Interest republicae sit finis litium concerns the State that law suits be not protracted. This maxim is based on public policy. In our opinion, these maxims cannot be applied as a rule of thumb in the taxation matters.*** In the matters of classification of goods, the principles that have been followed, by the courts— which we endorse— are that there may not be justification for changing the classification without a change in the nature or a change in the use of the product; something more is required for changing the classification especially when the product remains the same. ***Earlier decision on an issue inter parties is a cogent factor in the determination of the same issue. The applicability of maxim Res judicata pro veritate occipitur in the matters of classification of goods has to be seen in that perspective.*** The interpretation given by this Court in *Shree Baidyanath Ayurved Bhawan Ltd. Vrs. Collector of Central Excise, Nagpur*, (1996) 9 SCC



402 with regard to this product has been considered and applied by us after amendment because Chapter Sub-heading 3003.31 does not contain definition of Ayurvedic Medicine and the product DML in nature, character and uses remains the same as it was prior to amendment.”

6.9. In the instant case, nothing is suggested by Sri Subash Chandra Mohanty, learned Senior Standing Counsel that the subject and context for adjudication before the ITO *vide* Assessment Order dated 30.03.2023 of the ITO, Ward 1(1), Cuttack passed under Section 147 read with Section 144 of the IT Act pertaining to Assessment Year 2019-20 *qua* PAN: ABAFS4271L (Annexure-10) was different and distinct from the present investigation to be continued pursuant to Notice dated 30.06.2025 issued under Section 148 by the DCIT (Annexure-13) in connection with his Order dated 24.06.2025 passed under Section 148A(3) of the said Act. Applying the principles as expounded by the Hon'ble Supreme Court of India referred to *supra* this Court is inclined to show indulgence in the matter by holding that the petitioner-assessee should not face trial for the same cause (subject-matter) twice.

6.10. It is manifested *ex facie* on the record that the ITO, Ward-1(1), Cuttack passed Order dated 22.03.2023 under Section 148A(d) of the IT Act relating to Assessment Year 2019-20 against PAN-1 stating clearly



therein that proceeding was initiated with respect to cash deposit of Rs.4,42,47,290/- with the Canara Bank and said proceeding upon verification of records culminated in passing of Assessment Order dated 30.03.2023 and Computation Sheet appended thereto clearly reflects the position in this regard. The petitioner enclosed evidences of deposits made in the said bank and copies of return(s) to demonstrate that the said amount(s) was disclosed in the return filed against PAN-2. Scrutiny of Order dated 24.06.2025 passed under Section 148(3) of the IT Act, it leads to depict unequivocally that the DCIT, Circle 1(1), Cuttack sought to initiate proceeding for assessment invoking Section 147 by issue of Notice dated 30.06.2025 under Section 148 and treating the same amount of deposit being made with the Canara Bank, *i.e.*, Rs.4,42,47,290/- as escaped income. Whereas the assessment under Section 147 came to be concluded by the ITO by passing Assessment Order and Computation Sheet attached thereto, the DCIT should not have rejected the explanation offered by the petitioner in response to Notice under Section 148A(1) for with respect to the same period and the same transaction treating it to be escaped income two assessments under same provision cannot be held tenable in the eye of law. It can thus seemly be held that the DCIT has initiated proceeding for assessment under Section 147 by issue of Notice under



Section 148 by rejecting mechanically the explanation proffered by the petitioner in connection with the Notice dated 18.03.2025 without ascribing plausible reason.

6.11. Nothing is placed on record by the learned Senior Standing Counsel to indicate that the Assessment Order dated 30.03.2023 of the ITO has ever been challenged and/or varied or reversed by any higher forum. Hence, the said order of ITO having attained finality, there was no scope or occasion for the DCIT to initiate another proceeding under the same provision.

6.12. Finality is attached to the finding of fact based on analysis of evidence on record by passing order of assessment and order passed by the *quasi* judicial authority is not a matter to be trifled with. It cannot also be stated that all finding of fact of the authorities concerned would be correct on all counts. Nonetheless, for functionality to exist and order to prevail, the doctrine of finality of adjudication often eclipses or overpowers concerns or considerations that otherwise exist in favour of accuracy or correctness of the fact-finding adjudicatory process. Once a proceeding is shown to have been concluded on participation of the assessee before the Assessing Officer, the finality of such adjudication must be maintained. In the same breath, so far as the State/Department is concerned, there can be no exception.



6.13. In view of the discussions made in the foregoing paragraphs on the facts and in the circumstances of the case, the Order dated 24.06.2025 under Section 148A(3) (Annexure-2) made with reference to Notice dated 18.03.2025 issued under Section 148A(1) (Annexure-1) along with Notice issued under Section 148 dated 30.06.2025 to proceed with assessment under Section 147 (Annexure-13) coupled with intimation dated 25.07.2025 for completion of assessment in accordance to the procedure laid down under Section 144B of the IT Act (Annexure-14) are bad in law and hence, the subsequent proceedings undertaken in the year 2025 by the DCIT as the Assessment Order of the ITO attained finality, being not shown to have been challenged and the view expressed by the ITO being not stated to have been overturned by any higher fora, the proceeding instituted by the DCIT is held as invalid.

6.14. To fortify the view so expressed, a reference to following observations contained in *CIT Vrs. Sanjay Kumar Garg, 2015 SCC OnLine Del 11714* may throw light on the issue at hand:

“10. The legal position appears to be fairly well settled. In S.B. Jain, Income Tax Officer, Nagpur Vrs. Mahendra (1972) 83 ITR 104 (SC) a notice was issued to the Assessee on 5th January 1962 under Section 34(1)(a) of the Income Tax Act, 1922 seeking to reopen the assessment for Assessment Year 1946-



47. While the said proceedings were pending, the Income Tax Act, 1961 came into force with effect from 1st April 1962. The challenge by the Assessee to the validity of the notice issued under the 1922 Act succeeded with the Bombay High Court quashing the said notice by the Order dated 6th March 1963. Thereafter the Income Tax Officer issued a fresh notice on 26th March 1963 under Section 148 of the Act in respect of the very assessment which had sought to be reopened by the earlier notice under Section 34(1)(a) of the 1922 Act. The Supreme Court held that the proceedings initiated under Section 34(1)(a) of the 1922 Act were pending at the time when the 1961 Act came into force and, therefore, the Income Tax Officer was not competent to issue a fresh notice under Section 148 of the Income Tax Act, 1961.

11. In *Nilofer Hameed Vrs. Income Tax Officer*, (1999) 235 ITR 161 (Ker) after referring to a number of judgments of the High Courts, it was held by the Kerala High Court that

*‘if an assessment is pending either by way of original assessment or by way of reassessment proceedings, the Assessing Officer cannot issue a notice under Section 148 but if no proceedings are pending either by way of original assessment or by way of reassessment, he can issue a notice under Section 148 within the time mentioned.’ ***”*

6.15. Referring to such decision, in the case of *Sanjay Kumar Garg (supra)* in *Kamdheni Enterprises Ltd. Vrs. Income Tax Officer, Ward 14-2, Delhi*, W.P.(C) No.8589 of 2022,



vide Judgment dated 27.10.2022 the Hon'ble Delhi High Court said as follows:

“3. Learned Counsel for the Petitioner further states that the assessment order dated 30th March, 2022, has been passed without disposing of the objections raised by the petitioner vide Letter dated 22nd July, 2021. He submits that non-disposal of objections before passing the assessment order is in disregard of the law laid down by the Supreme Court in the case of M/s. GKN Driveshafts (India) Ltd. Vrs. Income Tax Officers & Ors. (2003) 1 SCC 72.

7. Having heard learned counsel for the parties, this Court is of the view that it is settled law that during the subsistence of a reassessment proceedings, another reassessment notice cannot be issued for the same assessment year. The Division Bench of this Court in CIT Vrs. Sanjay Kumar Garg, (2015) 9 TMI 390 (Delhi High Court) = 2015 SCC OnLine Del 11714 has held as under:

‘9. The contention of the Assessee which has been accepted by the ITAT is that when the reassessment proceedings pursuant to the notices issued on 21st September 2005 were still pending and had not been completed by 31st December 2006 as was required by law, it was legally impermissible that fresh notices under Section 148 of the Act could be issued to the Assessee. The ITAT has after examining a large number of decisions of the High Court and the Supreme Court come to the conclusion that the issuing of fresh notices under Section



*148 of the Act for Assessment Years 2001-02 to 2004-05 was impermissible in law. The assessments for the said Assessment Years were annulled as being barred by limitation.***'*

- 11. This Court is further in agreement with the submission of the learned counsel for the Petitioner that non-disposal of petitioner's objections dated 22nd July, 2021, was contrary to the law laid down by the Supreme Court in the case of M/s. GKN Driveshafts (India) Ltd. (supra).*
- 12. This Court, is also in agreement with the contention of the learned counsel for the petitioner that there has been a violation of principles of natural justice inasmuch as the Petitioner was not given a reasonable opportunity to respond to the statement of Sh. Kewal Krishna Arora shared by the AO with the petitioner on 25th March, 2022."*

6.16. Being abreast of such ruling on the fact-situation obtained in *Sanjay Kumar Garg (supra)* and *Kamdhenu Enterprises Ltd. (supra)*, in the instant case, however, the Notice under Section 148 reached its destination on the Assessment Order being passed by the ITO, Ward 1(1), Cuttack under Section 147 on 30.03.2023 which had already attained finality and, hence, on the same grounds involving same transaction *qua* the same assessee *vis-a-vis* the same Canara Bank, the DCIT is not competent to initiate proceeding for assessment under said provision again by issuing Notice dated 30.06.2025 subsequently.



Conclusion:

7. Before concluding it deserves to be stated that it is well established that the material on which the Assessing Officer forms his opinion must not be the same material which had been considered at the time of the initial assessment, as in that case, the proceedings under Section 147 of the IT Act would amount to reviewing the Assessment Order merely on a change of opinion, which is not permissible.

7.1. It is also well settled principle in the context of assessment undertaken under Section 147 that whilst it is not necessary for the Assessing Officer to arrive at a firm conclusion that the assessee's income for the relevant Assessment Year has escaped assessment, which is to be drawn during the assessment proceedings, the Assessing Officer must have "reasons to believe" based on tangible material that has nexus with the belief that income indeed did escape assessment. Concluded and closed assessments cannot be reopened merely on suspicion or *ipse dixit* of the Assessing Officer.

7.2. It is well settled that a notice under Section 148 of the Act could not be issued on mere suspicion. In order to form opinion, the Assessing Officer has to have reasons to believe, and it is necessary for the authority concerned to examine the information and satisfy



himself regarding the same. It is, thus, stated in *Neelima Srivastava Vrs. State of Uttar Pradesh*, (2021) 8 SCR 167 as follows:

“Thus, it is very well settled that it is not permissible for the parties to re-open the concluded judgments of the Court as the same may not only tantamount to an abuse of the process of the Court but would have far reaching adverse effect on the administration of justice.”

8. Factual position remained uncontroverted as noticed hereinabove transpires that the ITO, Ward 1(1), Cuttack proceeded with the assessment under Section 147 read with Section 144 passed Assessment Order dated 30.03.2023 attaching Computation Sheet thereto (Annexure-10) in connection with Notice issued under Section 148 along with Order under Section 148A(b) with respect to Assessment Year 2019-20 in the context of deposits made in the Canara Bank depicting PAN-1; whereas the DCIT, Circle 1(1), Cuttack sought to proceed with assessment against the petitioner stating the self-same reason in relation to deposits made in Canara Bank as against PAN-1 for the said Assessment Year *vide* Notice dated 30.06.2025 issued under Section 148 (Annexure-13) read with Order dated 24.06.2025 passed under Section 148(3) of the IT Act (Annexure-2). It is also not denied by the learned Senior Standing Counsel that the ITO had taken into consideration the explanation of the petitioner that it has been filing returns using PAN-



2, but not PAN-1, and accepting such fact on verification of evidence and material on record, the ITO had reduced the assessment to NIL for the relevant Assessment Year.

8.1. With the aforesaid backdrop of factual conspectus, at this juncture it does need to be emphasised the following enunciation of the Hon'ble Supreme Court of India rendered in *Experion Developers Pvt. Ltd. Vrs. Himanshu Dewan and Sonali Dewan*, (2023) 12 SCR 1118:

“31. No doubt, in *Pawan Gupta Vrs. Experion Developers Private Limited* 2020 SCC OnLine NCDRC 788, this Court had not exercised the power or jurisdiction conferred by Article 136 of the Constitution of India, but had exercised its appellate power, which would, in terms of the ratio in *Kunhayammed and Others Vrs. State of Kerala and Another*, (2000) 6 SCC 359 = (2000) 1 Suppl. SCR 538, becomes the final order which is executable. **Thus, the dismissal of the appeal by this Court in the case of Pawan Gupta (supra), had put a finality and an end to the litigation in the said case. To this extent, therefore, the application of the general principle of res judicata would bar the party from raising the plea once again. The order passed by this Court, on the application of the principle of judicial discipline, bars and prevents any tribunal or parties from canvassing or taking a view which would have the effect of re-examination of the issues and points determined in the case of Pawan Gupta (supra) inter se the parties to the decision. However, dismissal of the appeal would not operate**



as res judicata in the case of the respondents against the appellant as they were not parties to the said case, and the proceedings initiated by Pawan Gupta were fact specific and not in a representative capacity”

9. With the above note, this Court is of the strong view that the DCIT, Circle 1(1), Cuttack while passing Order dated 24.06.2025 under Section 148A(3) of the IT Act, though recorded the fact to the effect that “*On verification by this office it is observed that the assessee M/s. Sanjay Kumar Bijay Kumar is filing its returns using PAN: AATFS3658P from Assessment Year 2007-08 onwards. However, the assessee has used PAN: ABAFS4271L in bank accounts maintained by it in Canara Bank during the Financial Year 2018-19. It is pertinent to mention here that for similar ground an Order under Section 147 read with Section 144 passed by the ITO, Ward-1(1), Cuttack on 29.03.2023 computing total income of the assessee as NIL.*”, tempted to proceed with the assessment again by issuing Notice under Section 148 on the pretext “to protect the interest of revenue”. The reason so assigned by the DCIT for initiation of proceeding for assessment is, thus, found to be self-conflicting. This Court may observe that a *quasi* judicial authority at a subsequent stage should not sit over the view expressed on facts in earlier assessment proceeding on the same subject matter adjudicated upon by another *quasi* judicial



authority. Factual narration of the ITO, Ward 1(1), Cuttack clearly spelt out that the petitioner has been filing returns using PAN: AATFS3658P, but not PAN: ABAFS4271L.

- 10.** In view of the analysis of undisputed facts and taking note of submissions of the counsel appearing for respective parties, this Court finds force in the submission of Sri Pranaya Kishore Harichandan, learned Advocate that the petitioner cannot be subjected to assessment under Section 147 of the IT Act again. *Ergo*, the Order dated 24.06.2025 passed under Section 148(3) of the IT Act by the DCIT, Circle 1(1), Cuttack (Annexure-2) is quashed and set aside. As a consequence thereto, not only Notice dated 30.06.2025 issued by the said DCIT invoking power under Section 148 to proceed with assessment under Section 147 (Annexure-13) is set aside, but also the intimation dated 25.07.2025 to complete the assessment in terms of procedure laid down in Section 144B of the IT Act (Annexure-14).
- 11.** It is made clear that as this Court has considered the arguments advanced by the learned counsel for the parties with respect to subsequent proceeding for assessment initiated by the DCIT and shown indulgence in such proceeding, it is not felt expedient to decide



other grounds available in the writ petition. However, question of law, if any, arises on the facts is left open.

- 12.** Accordingly, the writ petition is allowed and pending Interlocutory Application(s), if any, shall stand disposed of, but in the circumstances, there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE