



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE ALPESH Y. KOGJE,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 22nd OF OCTOBER, 2026

WRIT PETITION No. 41712 of 2026

CNR No.: MPHC020402382026

***INDO EDUCATION AND SERVICES FOUNDATION THROUGH ITS
DIRECTOR SHRI ACHAL CHOUDHARY***

Versus

CENTRAL CIRCLE 2 BHOPAL AND OTHERS

.....
AND

WRIT PETITION No. 41714 of 2026

CNR No.: MPHC020402412026

***INDORE EDUCATION AND SERVICES FOUNDATION THROUGH ITS
DIRECTOR SHRI ACHAL CHOUDHARY***

Versus

CENTRAL CIRCLE 2 BHOPAL AND OTHERS

.....
AND

WRIT PETITION No. 41716 of 2026

CNR No.: MPHC020402432026

***INDO EDUCATION AND SERVICES FOUNDATION (ERSTWHILE
KNOWN AS INDO EDUCATION AND SERVICE SOCIETY SAMITI)
THROUGH DIRECTOR SHRI ACHAL CHOUDHARY S/O SHRI TEJ
SINGH CHOUDHARY***

Versus

CENTRAL CIRCLE 2 BHOPAL AND OTHERS
.....



AND

WRIT PETITION No. 41717 of 2026

CNR No.: MPHC020402452026

***INDO EDUCATION AND SERVICES FOUNDATION THROUGH
DIRECTOR SHRI ACHAL CHOUDHARY S/O TEJ SINGH
CHOUDHARY***

Versus

***CENTRAL CIRCLE 2 BHOPAL DIRECTOR GENERAL OF INCOME
TAX AND OTHERS***

.....
AND

WRIT PETITION No. 41718 of 2026

CNR No.: MPHC020402472026

***INDORE EDUCATION AND SERVICES FOUNDATION (ERSTWHILE
KNOWN AS INDO EDUCATION AND SERVICE SOCIETY SAMITI)
THROUGH DIRECTOR SHRI ACHAL CHOUDHARY S/O SHRI TEJ
SINGH***

Versus

CENTRAL CIRCLE 2 BHOPAL AND OTHERS

.....
AND

WRIT PETITION No. 41719 of 2026

CNR No.: MPHC020402492026

***INDORE EDUCATION AND SERVICES FOUNDATION THROUGH ITS
DIRECTOR SHRI ACHAL CHOUDHARY***

Versus

***CENTRAL CIRCLE 2 BHOPAL DIRECTOR GENERAL OF INCOME
TAX AND OTHERS***

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Appearance in all the petitions:

*Shri Ashish Goyal and Shri Pranav Shukla - Advocates for the
petitioner(s).*



Mr. Harsh Parashar and Ms. Yashika Bondwal – Advocates for respondents on advance notice.

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ORDER

Per: Justice Vinay Saraf

This order will govern disposal of Writ Petition Nos. 41712/2026, 41714/2026, 41716/2026, 41717/2026, 41718/2026 and 41719/2026 as the issue involved in all the aforesaid Writ Petitions are similitude and arguments were heard analogously. For the sake of convenience, facts are taken from Writ Petition No. 41712/2016.

2) The assessee has challenged the notice dated 03/04/2025 issued by jurisdictional officer under Section 148 of the Income Tax Act, 1961 (hereinafter for short referred to as, '*IT Act*') upon the allegation that income has escaped from assessment, requiring the reply from the assessee before making the reassessment under Section 147 of the IT Act for the Assessment Year 2023-24.

3) Before issuance of notice under Section 148 of the IT Act, a show cause notice was issued under Section 148A(b) of the IT Act for the A.Y. 2023-24 referring the survey conducted on 21/12/2023 under Section 133A of the IT Act, whereby the documents, files and loose papers impounded during the survey and the statements were recorded.



4) The assessee submitted his reply to the show cause notice issued under Section 148A(b) of the IT Act and after considering the reply submitted by the assessee the proposal for reassessment was submitted before the specified authority for approval under Section 151 of the IT Act and the Principal Commissioner of Income Tax (Central), Bhopal accorded approval under Section 151 of the IT Act on 02/04/2025 after relying the records of survey and in accordance with the deemed information as per Explanation 2(ii) to Section 148 of IT Act.

5) Thereafter, the Assessing Officer passed the order on 03/04/2025 under Section 148A(d) of the IT Act holding that the case is fit for reassessment and issuance of notice under Section 148 and consequently, on 03/04/2025 impugned notice under Section 148 has been issued to the assessee. The assessee has impugned the notice as well as order passed under Section 148A(d) of the IT Act and all the consequential proceedings in this petition with a further relief to declare Explanation 2(ii) to Section 148 of IT Act as unconstitutional or alternatively read down. The assessee also challenged the action of the Revenue in conducting the survey under Section 133A of the IT Act on 21/12/2023.

6) Heard Mr. Ashish Goyal and Mr. Pranav Shukla, Advocates on the question of admission.



7) Mr. Goyal submits that the petitioner is registered Company named Indo Education and Services Foundation and registered pursuant to conversion of Indo Education and Services Society Samiti to whom the impugned notice under Section 148 of the IT Act has been issued. The Society was indulged in the educational activities and operating the Educational Institutions. In the year 2023, the Society was converted into a Company. Before conversion a survey was carried out by the Revenue under Section 133A(1) of the IT Act, which was commenced on 21/12/2023 in respect of Educational Institutions and Premises associated with the Indore and Indo Groups.

8) The survey was carried out at various premises of the Society and during the survey proceedings various documents, books of account and other files were impounded and statements of responsible Directors of the Society were recorded. Thereafter, on 22/03/2025 a notice was issued under Section 148A(b) for A.Y. 2023-24 in the name of the Society, whereas the Society was already converted into a registered Company and intimation of registration of Company had already been served to the Income Tax Department *vide* communication dated 10/05/2023.

9) The counsel for the petitioner submits that the notice under Section 148A(b) was issued to an entity, which has ceased to exist and thus,



the proceedings initiated on the basis of the said notice are illegal, incorrect and invalid. He submits that once the Society is converted into a registered Company, no notice could be issued in the name of the erstwhile Society.

10) He further submits that even the impugned notice under Section 148 of the IT Act has been issued in the name of erstwhile Society, which is not an entity in existence and the same is a substantive illegality and the whole action of the Revenue has been vitiated due to the aforesaid substantial defect.

11) He relied on the judgment delivered by the Supreme Court in the matter of **Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.** reported in [2019] 107 taxmann.com 375 (SC), wherein the Supreme Court while dealing with the issue of passing of an assessment order subsequent in the name of non-existing entity held that this is a substantive illegality and not a procedural violation of nature adverted to in Section 292B. He referred the following paragraphs of the judgment, which reads as under:

“33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme



of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment (supra) on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment (supra).

34. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.

The counsel further submits that the Supreme Court has held that where assessee Company amalgamated with the another Company, thereby lost its existence and assessment order passed subsequently in the name of



said non-existing entity would be without jurisdiction and is liable to be set aside.

12) He submits that notice under Section 148A(b) of the IT Act was issued in the name of a non-existing entity, order under Section 148A(d) has been passed in respect of a non-existing entity and notice under Section 148 has also been issued to a non-existing entity, therefore, the notice issued under Section 148 of the IT Act is nullity and liable to be quashed.

13) The counsel further submits that at the time of passing the order under Section 148A(d), the Assessing Officer relied upon the Explanation 2(ii) to Section 148 of the IT Act, treating the mere conduct of the survey as deemed information suggesting escapement of income and without supplying the supporting material and information issued notice under Section 148A(b) and called upon the assessee to file the reply. He submits that the instant case is not a fit case for issuance of notice under Section 148A(b) and no specific information, document or material having any nexus with the alleged escapement of income for the relevant assessment year is available with the Department and in the absence of supplying the copy of the same, the Assessing Officer cannot expect from the noticee to submit its reply, therefore, the issuance of notice under Section 148A(b) of the IT Act was a mere formality and consequently, the order passed under Section 148A(d)



without identifying any specific information, document or material is liable to be quashed.

14) He further submits that the recording of the satisfaction of the Assessing Officer on the basis of the material available is essential and in the absence of the sufficient material, no notice could be issued under Section 148 of the IT Act. He relied on the judgment delivered by the Supreme Court in the matter of **Union of India Vs. Rajeev Bansal** reported in [2024] 167 taxmann.com 70 (SC), wherein the Supreme Court has observed as under:

“101. Under Section 148A(b), the assessing officer has to comply with two requirements: (i) issuance of a show cause notice; and (ii) supply of all the relevant information which forms the basis of the show cause notice. The supply of the relevant material and information allows the assessee to (1992) 3 SCC PART F respond to the show cause notice. The deemed notices were effectively incomplete because the other requirement of supplying the relevant material or information to the assessee was not fulfilled. The second requirement could only have been fulfilled by the Revenue by an actual supply of the relevant material or information that formed the basis of the deemed notice.”

The counsel submits that Assessing Officer has failed to comply with the requirement enumerated by the Supreme Court in the aforesaid



judgment and therefore, proceedings initiated by the Department are liable to be quashed.

15) The counsel further submits that foundational material relatable to a particular assessment year have not been supplied to the assessee and even in the survey conducted on 21/12/2023 certain documents and loose papers were impounded and statements were recorded therein, were not relatable to the A.Y. 2023-24.

16) He further submits that the requirement to disclose the details of a particular document, transaction, entry or statement of allegedly representing income escaping assessment for the relevant assessment year is mandatory and only by virtue of Explanation 2(ii) to Section 148, the deeming fiction cannot be construed as dispensing with the mandatory safeguards prescribed under Section 148A. He submits that the deeming fiction has been applied in Explanation 2(ii) to Section 148 and the same is unconstitutional and liable to be struck down. He submits that the petitioner has challenged the legality and constitutionality of Explanation 2(ii) to Section 148, which is violative of Article 14 of the Constitution of India.

17) The counsel further submits that the different notices have been issued to the assessee and the assessee has been harassed by the Department. The counsel prays for quashment of the notice issued under Section 148A(b),



order passed under Section 148A(d) and notice issued under Section 148 of the IT Act with all subsequent proceedings. He prays for declaring the Explanation 2(ii) to Section 148 as unconstitutional.

18) The counsel appearing on behalf of the Revenue on advance copy opposed the petition on various grounds *inter alia* the survey was conducted validly under Section 133A of the IT Act by the Revenue and large number of loose papers and material documents were impounded during survey. He submits that the statement of the relevant persons were recorded during survey and after examining the documents and the material the Assessing Officer formed a view that the assessee has escaped income from assessment and therefore, it is a fit case for reassessment under Section 148 of the IT Act.

19) He submits that the show cause notice under Section 148A(b) was issued by the Assessing Officer calling upon the assessee to submit its reply against the proposed reassessment of escaped income. He submits that after affording opportunity of hearing to the assessee, an order under Section 148A(d) was passed by the Assessing Officer and before that approval under Section 151 was also accorded by the specific authority on 02/04/2025, thereafter, the order was passed under Section 148A(d) and notice has been issued under Section 148 of the IT Act on 03.04.2025.



20) The counsel for the Revenue submits that sufficient materials are available before the Assessing Officer for reaching to the conclusion *prima facie* that this is a fit case for reassessment in respect of escaped income and the notice under Section 148 of the IT Act has been issued after being satisfied by the Assessing Officer. The documents impounded during survey were not mere dumb documents and their authorship, ownership and authenticity have been duly established.

21) He submits that as the assessment was submitted by the erstwhile Society, the notice of reassessment can be issued only to the assessee, which had filed the return for the relevant assessment year. The petitioner Company has been permitted to defend the erstwhile Society as the erstwhile Society has been converted into a Company.

22) He submits that the judgment delivered by the Supreme Court in the matter of **Maruti Suzuki India Ltd. (Supra)** is not helpful to the petitioner as in the said judgment the assessment was passed against an entity, which was not in existence, whereas in the case in hand, the reassessment proceedings are still pending and the petitioner Company is participating in the reassessment proceeding.

23) He submits that the petitioner is having opportunity to raise all these objections before the Assessing Officer and as the reassessment is



required to be completed within the time limit prescribed, and the present petition has been filed with an ulterior motive to delay the reassessment proceeding so that within the time limit the reassessment proceeding could not be completed.

24) He submits that the Supreme Court in the matter of **Anshul Jain Vs. Principal Commissioner of Income Tax** reported in [2022] 143 taxmann.com 38 (SC) has held that when the reassessment proceedings are at its intermediate stage and not concluded by statutory authority, there is no reason to warrant interference in exercise of jurisdiction under Article 226 / 227 of the Constitution of India. Relevant paragraphs of the judgment are extracted as under:

“8. Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ Court should not interfere at such a pre-mature stage. Moreover it is not a case where from bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of order under Section 148A(d) is being challenged on the factual premise contending that jurisdiction though vested has been wrongly exercised. By now it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided.



9. In the light of aforesaid settled proposition of law, we find that there is no reason to warrant interference by this Court in exercise of the jurisdiction under Article 226/227 of the Constitution of India at this intermediate stage when the proceedings initiated are yet to be concluded by a statutory authority. Hence the writ petition stands dismissed.”

25) He further relied upon the judgment delivered by the co-ordinate Division Bench in **Writ Petition No. 15244 of 2023 (M/s. Amrit Homes Private Limited Vs. Deputy Commissioner of Income Tax and Another)** on 09/08/2023, wherein the co-ordinate Bench in similar circumstances held that the veracity and genuineness of the material / evidence forming opinion of the Assessing Officer suggesting reassessment proceeding should not be gone into while exercising writ jurisdiction. Relevant paragraph reads as under:

“11. Pertinently, the question of going into the veracity and genuineness of material/evidence forming the opinion of the Assessing Officer suggesting that income of petitioner/assessee has escaped assessment ought not to be gone into while exercising writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution. Thus the ground of reliability and tenability of the evidence/material is not considered herein.”



26) He further relied on the judgment delivered by the co-ordinate Division Bench in **Writ Petition No. 24681 of 2026 (Saurabh Agrawal Vs. Union of India and Others)** on 08/09/2026, wherein the co-ordinate Bench has held that at the stage of pendency of the reassessment proceedings, no interference by the writ Court is warranted in the order passed under Section 148A(d) or the notice under Section 148 of the IT Act. The relevant paragraphs are reads as under:

“18. The main and foremost reason for invoking the jurisdiction of this High Court is that the entries of the unsecured loans aggregating to Rs.3,13,84,101/- relied upon relate to Financial Years 2023-24 and 2024-25, corresponding to AYs 2024-25 and 2025-26, and not to FY 2022-23 corresponding to the assessment year in question, i.e. AY 2023-24. During the course of argument, the query regarding completion of assessment of Financial Years 2023-24 and 2024-25 was raised, and it was answered that it is still ongoing. In such a situation no prejudice is going to be caused to the petitioner, and the petitioner can participate before the Assessing Officer. We are of the considered opinion that at this stage no interference by the writ court is warranted in the order passed under section 148A(d) of the Act, as all the grounds of challenge to such order would be available to the petitioner while challenging the order passed in reassessment proceedings consequent to the



notice issued under section 148 of the Act, 1961, if occasions so arises in future.

19. The limited scope available under Article 226 of the Constitution of India to adjudicate an order passed under section 148A(d) of the Act, 1961 would be confined to the existence of the information only, in view of the scheme of the Act of 1961. Examining the scope of proceedings under section 148A vis-a-vis reassessment proceedings under section 148 of the Act, it is observed that by the very nature of proceedings, the examination would remain more exhaustive at the stage of reassessment proceedings, with elaborate remedies available under the statute to the assessee.

20. The order passed by the Assessing Officer under Section 148A(d) of the Act regarding existence of information suggesting that income chargeable to tax has escaped assessment would otherwise remain subject to reassessment order passed under Section 148 of the Act. Thus, any observations of the assessing authority while passing order under Section 148A(d) about merits of assessment of income would remain subject to the order to be ultimately passed in reassessment proceedings under Section 148 and would not be to the prejudice of rights and contentions of the assessee under Section 148 as well as departmental remedies in respect thereof.”

27) The counsel further relied upon the order passed by the co-ordinate Division Bench on 05/08/2026 in **Writ Petition No. 25484 of 2026**



(Anil Doriya Vs. Union of India Through Ministry of Finance and Others), wherein the co-ordinate Bench after relying upon the judgment of Supreme Court in **Anshul Jain (Supra)** declined to interfere in the reassessment proceedings by holding that when a notice has been issued to the assessee regarding the commencement of reassessment proceeding, assessee will have opportunity to raise all the grounds during the reassessment proceeding. The counsel for the Revenue prays for dismissal of the petition.

28) Having heard the learned counsel for the parties and after perusal of the documents available on record, it transpires that after carrying out the survey and impounding the large number of documents, the Assessing Officer issued show cause notice under Section 148A(b) to the assessee intimating that the Assessing Officer is intended to initiate reassessment in respect of the escaped income for the A.Y. 2023-24 and in the said notice, it was specifically mentioned that this notice has been issued on the basis of material, evidence and documents impounded during the survey and an opportunity was granted to the assessee to satisfy the Assessing Officer that no case for reassessment is made out.

29) After examining the reply and obtaining permission under Section 151 of the IT Act from specified officer, the Assessing Officer passed order under Section 148A(d), wherein he recorded satisfaction that there are



sufficient material and evidence available regarding the alleged escaped income for the A.Y. 2023-24 and therefore, this is a fit case for initiation of reassessment and consequentially to issue notice under Section 148 of the IT Act.

30) The main contention of the petitioner is that the notice has been issued to the erstwhile Society, which is not in existence. This issue can be raised by the petitioner before the Assessing Officer and the Assessing Officer is competent to deal with this issue. The returns were filed by the Society for the relevant assessment year, therefore, the notices of reassessment were issued in the name of the Society. However, the petitioner Company has been permitted by the Assessing Officer to participate in the proceedings on behalf of the Society.

31) The judgment delivered by Supreme Court in the matter of **Maruti Suzuki India Ltd. (Supra)** is in respect of the final assessment order and is distinguishable on facts. However, this objection can be raised by the petitioner before the Assessing Officer.

32) In so far, the supply of material, evidence and information to the assessee along with the notice is concerned, in the notice it was mentioned that the proceedings have been initiated on the basis of the material collected during survey under Section 133A and therefore, sufficient information



regarding availability of the evidence has been supplied by the Assessing Officer to the noticee.

33) It is not a case of no evidence, however, this Court refrain itself from considering the material and recording its observation in respect of sufficiency of the material as the reassessment proceedings are underway and if any observation is made by this Court on merits, the same may prejudice any of the party.

34) In view of this Court, this case is not fit for interference during the reassessment proceedings, which are mainly based on survey carried out by the Department. If the material supplied to the assessee is not sufficient, the assessee may raise this objection before the jurisdictional Assessing officer and this issue also cannot be considered at this stage.

35) Though in this petition, the assessee has challenged the constitutional validity of Explanation 2(ii) to Section 148 of the IT Act but no specific facts have been pleaded in the petition, therefore, this Court is not examining the constitutional validity of Explanation 2(ii) to Section 148. The petitioner has not approached this Court promptly, notice under Section 148A(b) was issued on 22/03/2025 considering the deemed information as per the explanation and thereafter, on 03/04/2025 order under Section 148A(d) was also passed by virtue of Explanation 2(ii) to Section 148. Notice under



Section 148 was also issued on the same day i.e. on 03/04/2025 based on the deemed information provision. Even then this petition has not been filed promptly by the petitioner to challenge the validity of Explanation 2(ii) to Section 148 and the same has been filed at the fag end of reassessment proceedings and therefore, it is not a fit case to examine the constitutionality of Explanation 2(ii) to Section 148 of the IT Act.

36) Furthermore, merely saying that a particular provision is unconstitutional will not do. At least *prima facie* acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading and material the challenge to the constitutional validity of a statute or statutory provision cannot be examined. The present reassessment is triggered by a survey under Section 133A invoking the deeming provisions of Explanation 2(ii) to Section 148. In the absence of proper pleadings and availability of facts, we do not deem it proper to enter into the question of constitutional validity of Explanation 2(ii) to Section 148. The petitioner has challenged the provision, however, no facts material could be brought on record by the petitioner to substantiate the challenge to the constitutional validity of Explanation 2(ii) to Section 148 of the IT Act.

37) In view of this Court, the present case is not a fit case on the basis of the pleadings and material available to examine the question of



constitutional validity of the said provision, therefore, the said issue is left open.

38) Consequently, this Court is not inclined to entertain this petition, as there is no valid reason available to warrant interference by this Court in exercise of the jurisdiction under Article 226 / 227 of the Constitution of India at this intermediate stage, when the proceedings initiated are yet to be concluded by the statutory authority.

39) Hence, admission declined. The Writ Petitions 41712/2026, 41714/2026, 41716/2026, 41717/2026, 41718/2026 and 41719/2026 are dismissed. No order as to costs.

(ALPESH Y. KOGJE)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE

Tej