

**MAHARASHTRA NATIONAL LAW UNIVERSITY, MUMBAI INCOME
TAX APPELLATE TRIBUNAL BAR ASSOCIATION, MUMBAI & ALL
INDIA FEDERATION OF TAX PRACTITIONERS (WEST ZONE)**

PRESENT

**14TH PADMA VIBHUSHAN N.A. PALKHIVALA MEMORIAL
NATIONAL (VIRTUAL) MOOT COURT COMPETITION & RESEARCH
PAPER COMPETITION, 2024**

1. ABC Co. Private Limited (hereinafter referred to as “ABCPL”) is a company which belongs to the ABC Group of Companies (hereinafter referred to as “ABC Group”).
2. The said ABC Group comprises of Companies which are engaged in various sectors such as manufacturing, financial services, service industry, etc. Some of the Companies are listed on stock exchanges such as Bombay Stock Exchange and National Stock Exchange.
3. ABCPL is a company which is engaged mainly in providing back-office support services to the various companies of the ABC group. Back-office support services involve activities such as accounting, information technology support services, payroll processing, recruitment of employees for group companies, etc.
4. The recruited employees would be on the payroll of the respective group company for which they are working.
5. ABCPL recovers costs plus a mark-up of 10% from the group companies for the cost it incurs in providing the back-office services. As a group policy to have better bargaining power with the supplier, fixed assets such as computers, computer software, etc. are purchased by ABCPL. Such purchases are reimbursed at cost on an actual basis with specific identification.
6. For the assessment year 2017-18, the case of ABCPL was selected for scrutiny assessment under the Income-tax Act, 1961 (hereinafter referred to as “the Act”). In the assessment, the Assessing Officer (hereinafter referred to as “AO”) raised queries in respect of the nature of business. Considering that certain recoveries are made at cost and certain at cost plus mark-up, the AO asked ABCPL to provide a bifurcation of recoveries made at cost and recoveries made with mark-up. During the assessment, the AO also analysed the items which go to form the costs based on which ABCPL carries out the recovery (with and without mark-up). During the assessment, the AO had also raised various queries in respect of items such as the books of account, audited financial statement, etc. In response to the queries raised by the AO, ABCPL furnished a detailed response in respect of every issue raised by the AO. After careful analysis of the details provided by ABCPL, the AO has passed an assessment order, and he has recorded that the details submitted by the Assessee are found to be in order. It is only after satisfying himself that the income declared in the return of income has been accepted by the AO.
7. Being a private company, the books of accounts of ABCPL are regularly audited in accordance with the provisions of the Companies Act, 2013. ABCPL is also subject to a tax audit under section 44AB of the Act. As a part of the audit exercise, certain back-up

documents of ABCPL such as ledger accounts, trial balance, previous year's audited financial statements, unaudited financial statements for the year of audit, etc. were with the auditor of ABCPL.

8. A search action under section 132 of the Act was carried out on the premises of the auditor of ABCPL by the Income-tax Department (hereinafter referred to as "the Department"). The auditor being a Chartered Accountant, various documents pertaining to several clients of the said auditor were found and seized by the Department.
9. The AO has not invoked the presumption under section 292C of the Act in the hands of the auditor of ABCPL and thus, based on the documents seized from the auditor of ABCPL, reassessment proceedings were initiated by issuance of notice under section 148 of the Act in the case of various group companies of ABC Group including ABCPL.
10. It is an admitted fact that based on the documents found during search, the AO has not been able to point out as to what is the income chargeable to tax that has escaped assessment.
11. The AO has issued a notice under section 148 of the Act on March 28, 2024 without complying with the provisions of section 148A of the Act. Section 148A of the Act require the AO to first issue the show cause notice under section 148A(b) of the Act, provide an opportunity to the Assessee to submit a reply in response to the show cause notice issued by the AO and after considering the entire material on record, pass an order under section 148A(d) of the Act and decide whether it is a fit case to issue notice under section 148 of the Act.
12. In the Section obtained under section 151 of the Act, there is a mention of documents of the assessee found in the searched premises but it is silent whether the documents are incriminating or not. The sanction does not contain a digital signature or a manual signature but bears a valid DIN.
13. 13. Proviso to section 148A provides an exception to the provision of section 148A of the Act. As per clause (c) of the said proviso, section 148A of the Act shall not apply in a case where the AO is satisfied with prior approval of the Principal Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A in case of any other person on or after 1 April 2021 pertains or pertain to, or any information contained therein, relate to, the Assessee.
14. Further, clause (iv) of explanation 2 to section 148 of the Act is identical to clause (c) of the proviso to section 148A of the Act. Clause (iv) to explanation 2 to section 148 of the Act

deems that the AO has information in his possession that income chargeable to tax has escaped assessment.

15. The notices issued under section 148 of the Act by the AO in the case of ABCPL and other group companies (hereinafter referred to as “the Petitioner”) have been challenged before the Hon’ble Bombay High Court on the ground that the provisions of clause (c) to the proviso to section 148A of the Act read with clause (iv) of explanation 2 to section 148 of the Act are unconstitutional.
16. After hearing the Petitioners, the Hon’ble Court has framed the following question for consideration.
 - i. Whether the provisions of clause (c) to the proviso to section 148A of the Act read with clause (iv) of explanation 2 to section 148 of the Act constitutionally valid?
 - ii. Whether the existence of a valid DIN is sufficient to suggest that proper sanction is obtained?
 - iii. Whether a change of opinion a valid ground for quashing proceedings when the deeming provision that there is ‘information’ that suggests income chargeable to tax has escaped assessment?