

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 3681 of 2024

Date of decision: 14.05.2025

Neena Singh Thakur

...Petitioner

Versus

Pr. Commissioner of Income Tax & Anr.

...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting? Yes.

For the Petitioner: Mr. Vishal Mohan, Sr. Advocate with Mr. Praveen Sharma and Mr. Abhinav Bazwaria, Advocates.

For the Respondents: Mr. Neeraj Sharma, Advocate.

Tarlok Singh Chauhan, Judge (Oral)

The instant petition has been filed for grant of the following substantive reliefs:-

*“(i) That this Hon'ble Court may be pleased to issue a writ in the nature of certiorari and quash the orders dated 29.02.2024 passed under Section 148A(d) (Annexure P-6) of the Income Tax Act, 1961 holding the same to be illegal, arbitrary and contrary to the provisions of law.
(ii) This Hon'ble Court may further be pleased to issue a writ in the nature of certiorari and quash the notice under Section 148 of the Income Tax Act, 1961 (Annexure P-7) holding the same to be illegal and not sustainable in the eyes of law.”*

2. Normally, the Courts are vary to interfere with the notice of the instant kind, however, the peculiar facts and circumstances of this case warrants interference given the fact

that the petitioner was served with the notice under Section 148A(d), the relevant portion whereof reads as under:-

*"To
Neena Singh Thakur
C/O Naveen Tanwar, Advocate
Gompa road Manali, Model Town,
Manali,
Kullu-175131
India*

PAN ACAPT9245J	A.Y. 2017-18	Dated: 15/01/2024	DIN & Notice No. ITBA/AST/F/ 148A(SCN)/2023
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Notice under Clause (b) of Section 148A of the Income Tax, Act, 1961

Sir, Madam/M/s

Whereas I have information which suggests that income chargeable to tax for the Assessment Year 2017-18 has escaped assessment within the meaning of Section 147 of the Income tax Act, 1961. the details of the information/enquiry conducted on which reliance is being placed, alongwith the supporting documents, are enclosed with this notice.

2. You are required to show cause as to why, in view of the details contained in enclosures mentioned in point number 1 above, a notice under Section 148 of the Income Tax Act, 1961 should not be issued.

3. You may submit your reply to this notice alongwith supporting documents (if any) on the above mentioned issues on or before 25/01/2024 electronically at www.incometax.Gov.in.

Annexure

Smt. Neena Singh Thakur PAN:-ACAPT9245J A.Y. 2017-18

As per the information available with this office it is noticed that during the Financial Year 2016-17 relevant to the Assessment Year 2017-18, you have purchased immovable property worth Rs. 1,21,00,000/-. In addition, you have also made payment of Rs. 1,21,00,000/- for purchase of immovable property and also earned interest

income worth Rs. 35,109/- from Axis Bank Ltd. The details of which is as under:-

<i>Sr. No.</i>	<i>Information Code</i>	<i>Information Description</i>	<i>Information Source</i>	<i>Information Value</i>
1	SFT-012(B)	<i>Purchase by any person of immovable property</i>	<i>Joint Sub Registrar (MSD). Andheri 1</i>	<i>1,21,00,000/-</i>
2	TD-1941A(P)	<i>TDS Statement- Payment of consideration for purchase of immovable property (Section 1941A)</i>	<i>Neena Singh Thakur</i>	<i>1,21,00,000/-</i>
3	TDS-194A	<i>TDS Statement- Interest other than interest on securities (Section 194A)</i>	<i>Axis Bank Ltd.</i>	<i>35,109/-</i>
<i>Total</i>				<i>2,42,35,109/-</i>

2. However, as per the record, no such transactions related to purchase of immovable properties (as mentioned above) appears to be declared in the Income Tax Return which has been filed by you manually on 22.09.2017 for the Assessment Year 2017-18. therefore, in the absence of proper record, the transactions related to purchase of immovable properties (as mentioned above) remained undisclosed and unexplained on your part. In this regard, to verify the above transactions you are requested to please furnish the following information/documents:-

<i>i)</i>	<i>Please provide/mention the details of your occupation/nature or business/source of income for the Financial Year 2016-17 relevant to the Assessment Year 2017-18.</i>
<i>ii)</i>	<i>Please furnish the details of all bank accounts (alongwith complete name and address of the bank branch as well as type of account and account number) maintained by you during the Financial Year 2016-17 relevant to the Assessment Year 2017-18. Please also furnish the copies of all bank account statements for the period 01-04-2016 to 31.03.2017 with narration of each credit and credit entries.</i>
<i>iii)</i>	<i>In respect of immovable properties purchase, please explain the source of investment with supporting evidence. Please also furnish the copies of purchase deed. Please also furnish the complete details alongwith supporting documents consisting of</i>

	<i>nature/type of property purchased, location of properties, total area involved, year and date of purchase/acquisition as well as mode and cost of acquisition/purchase, complete name and address of persons/parties from whom properties in question purchased etc.</i>
<i>iv)</i>	<i>Please also provide your e-mail ID and contact number for record purchase and for future correspondence. Further to communicate with the department in an electronic manner, please firstly register yourself through e-filing portal (i.e. if not registered)</i>

3. You are, therefore, requested to please furnish the requisite information along with supporting documents (ie. complete in all respects) on or before 25.01.2024 to this office either through your e-filing portal or through e-mail at kullu.ito@incometax.gov. In or through speed post so that same may reach this office by the given time."

3. The petitioner has not only replied to the show cause notice but submitted all the necessary documents in support of its case and further pointed out that the immovable property purchased by her is not of the value of Rs. 1,21,00,000/- but of Rs. 1,31,63,935/-. The Assessing Officer though passed a detailed order running into almost 10 pages, however, unfortunately no reason whatsoever has been given in support of the conclusion that the escaped income is more than Rs. 50,00,000/-.

4. What the Assessing Office has done is to simply observe that the case was at a preliminary stage and, therefore, the contention of the petitioner is not acceptable and the same requires detailed examination.

5. There is no law which provides that an inquiry contemplated under Section 148A must essentially culminate into a notice under Section 148. Rather, it was incumbent upon the Assessing Officer to decide the case in terms of sub Section (d) of Section 148A on the basis of the material on record including the 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 the specified authority.

6. The Assessing Officer cannot shirk away from his responsibility of deciding the case on the material available on record by simply observing that *"at the preliminary stage, the contention of the assessee is not acceptable and the same requires a detailed examination"*.

7. The Assessing Officer needs to realise that notice under Section 148 does have serious civil or evil consequences and cannot be passed so lightly and reasons for the same have to be recorded in the order itself.

8. Failure to give reasons amounts to denial of justice. Reasons are live links between the minds of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the *"inscrutable face of the sphinx"*, it can, by its silence, render it

virtually impossible for the Courts to perform the appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system.

9. The necessity of assigning reason has been repeatedly emphasized by the Hon'ble Supreme Court and reference in this regard can conveniently be made to the judgment of the Hon'ble Supreme Court in ***Kranti Associates Pvt. Ltd. and another versus Masood Ahmed Khan and Others (2010) 9 SSC 496***, wherein after taking into consideration the entire law on the subject, the position of law was summarized as under:-

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*

(i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) *Insistence on reason is a requirement for both judicial accountability and transparency.*

(k) *If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

(l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber stamp reasons" is not to be equated with a valid decision making process.*

(m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-37).*

(n) *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA C 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires. "adequate and intelligent reasons must be given for judicial decisions.*

(o) *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".*

10. In **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others (2012) 4 SCC 407**, the Hon'ble Supreme Court held as under:-

38. It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.

39. In Shrilekha Vidyarthi Vs. U.P. (1991) 1 SCC 212 this Court has observed as under: (SCC p. 243. para 36).

"36.....Every State action may be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is the trite law that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

40. In LIC Vs. Consumer Education and Research Centre (1995) 5 SCC 482 this Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in Union of India Vs. Mohan Lal Capoor (1973) 2 SCC 836 and Mahesh Chandra Vs. U.P. Financial Corpn. (1993) 2 SCC 279.

41. In State of W.B. Vs. Atul Krishna Shaw 1991 Supp (1) SCC 414, this Court observed that: (SCC p. 421, para 7)

7....Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."

42. In S.N, Mukherjee Vs. Union of India 1990) 4 SCC 594, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as to it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is

expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. *In Krishna Swami Vs. Union of India (1992) 4 SCC 605. this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne out from the record. The Court further observed: (SCC p. 637, para 47).*

"47.....Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21.

44. *This Court while deciding the issue in Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd.(2010) 13 SCC 336, placing reliance on its various earlier judgments held as under: (SCC pp. 345-46, para 27).*

"27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

3....The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind".

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before the higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It

ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

45. In Institute of Chartered Accountants of India Vs. L.K. Ratna (1986) 4 SCC 537, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held: (SCC p. 558, para 30).

30.....In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilty of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a finding. Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

46. The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx", it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi judicial performance."

11. Earlier to the aforesaid decisions, a Constitution Bench of the Hon'ble Supreme Court, in **S. N. Mukherjee vs. Union of India. (1990) 4 SCC 594**, after an exhaustive review of its earlier pronouncements as also the views expressed in

other jurisdictions and by expert committees, summarized and explained the law as under:-

"The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity at the decisions; and (iii) minimize chances of arbitrariness in decision making. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as

elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority. If it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law. 6th Edn. P. 548)."

12. In **Pankaj Garg vs. Meenu Garg & Anr. (2013) 3 Supreme Court Cases 246**, the Hon'ble Supreme Court reiterated the settled position of law holding that an order, which does not contained any reason, is no order in the eyes of law.

13. Since the order passed by the Assessing Officer is bereft of any cogent or plausible reasons, the same is set aside. The matter is remanded back to the Assessing Officer to decide

the same afresh in accordance with law. If the Assessing Officer still comes to the conclusion that notice under Section 148 is necessary, then he shall record detailed reasons for arriving at such conclusion. The Assessing Officer is directed to decide the case as expeditiously as possible and in no event later than 31.08.2025.

14. The petition stands disposed of in the aforesaid terms, so also pending applications, if any.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

14th May, 2025
(sanjeev)