IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3711 OF 2023

Venus Jewel
EC – 5021/22,
BDB, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051 ...Petitioner

Versus

1. Assistant Commissioner of Income Tax,
Circle 19(3), Mumbai
Room No.206, 2nd Floor, Matru Mandir
Tardeo Road, Mumbai
Maharashtra – 400 007

2. Principal Commissioner of Income-tax – 19
Room No. 228, 2nd Floor, Matru Mandir
Tardeo Road, Mumbai
Maharashtra – 400 007 …Respondents

Mr. Rahul Sarda a/w Mr. Akshay Pawar, for the Petitioner.
Ms. Mamta Omle a/w Mr. Pritish Chatterjee, for the Respondent.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE 02 JULY 2024

Oral Judgment (Per G. S. Kulkarni, J.) :-

1. Rule. Rule made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

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2. This petition under Article 226 of the Constitution of India has prayed for a relief that the action as taken by the respondents in regard to re-opening of the petitioner's assessment, by resorting to the procedure under Section 148A(a) and (d) of the Income Tax Act, 1961 (for short, the "Act") and culminating into a final notice dated 25 April 2023 being issued under Section 148 of the Act be quashed and set aside. The assessment year in question is 2019-20.

3. The substantive prayers as made in the petition are required to be noted which reads thus:

> "(a) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside (i) Notice dated March 28, 2023, issued by the Respondent No.1 under Section 148A(b) of the Act (Ex-A); (ii) the impugned order dated April 25, 2023, passed under section 148A(d) passed by the Respondent No. 1 (Ex - B); (iii) the impugned Notice dated April 25, 2023, issued under section 148 of the Act (Ex - C) and, the final assessment order, if any, passed or to be passed in relation to the Petitioner pursuant to the proceedings initiated under section 148 r/w 148A of the Act;
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> (b) This Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction, directing the Respondents, its servants, subordinates, agents and successors in office to forthwith withdraw and/or cancel (i) Notice dated March 28, 2023, issued by the Respondent No.1 under Section 148A(b) of the Act (Ex - A) (ii) the impugned order dated April 25, 2023, passed under section 148A(d) passed by the Respondent No. 1 (Ex - B) (iii) the impugned Notice dated April 25, 2023, issued under section 148 of the Act (Ex - C) and, the final assessment order, if any, passed or to be passed in relation to the Petitioner pursuant to the proceedings initiated under section 148 r/w 148A of the Act;

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> (c) This Hon'ble Court may be pleased to permanently forbear from taking any steps whatsoever pursuant to or in implementation of (i) Notice dated March 28, 2023, issued by the Respondent No.1 under Section 148A(b) of the Act (Ex - A) (ii) the impugned order dated April 25, 2023, passed under section 148A(d) passed by the Respondent No. 1 (Ex - B) and, (iii) the impugned Notice dated April 25, 2023, issued under section 148 of the Act (Ex – C);"

4. Learned counsel for the petitioner, at the outset would submit that the impugned notice as issued by the Jurisdictional Assessing Officer (for short, "JAO") is in the teeth of the provisions of Section 151A of the Income Tax Act, 1961, in as much as the scheme for faceless assessment as notified by the Central Government by notification dated 29 March 2022 as made applicable for taking an action under such provisions, has not been followed. It is submitted that the JAO had no authority to issue such notice as the same is outside the mandatory faceless assessment provisions, which stand implemented by the Central Government in introducing the faceless assessment scheme.

5. Learned counsel for the petitioner would submit that such issue being raised by the petitioner would stand concluded by the decision of the Division Bench of this Court in **Hexaware Technology Ltd. Vs. Assistant Commissioner of Income Tax, Circle 15(1)(2), Mumbai & Ors**[1]. He has drawn our attention to issue no.4 as framed by the Court in such decision, which reads thus:

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1 Writ Petition No.1778 of 2023 decided on 3 May 2024

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> "Whether the impugned notice dated 27 August 2022 is invalid and bad in law being issued by the JAO as the same was not in accordance with Section 151A of the Act?"

6. In answering this issue, the Court has held that the provisions of Section 151A of the Act have clearly brought a regime of faceless assessment. The Court has held that it was not permissible for the JAO to issue a notice under Section 148A(b), as the same would amount to breach of the provisions of section 151A of the Act. The relevant observations of the Court reads thus:

> "32 As regards issue no.4, Section 151A reads as under :
>
> Faceless assessment of income escaping assessment.
>
> 151A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or recomputation under section 147 or issuance of notice under section 148 [or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A] or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—
>
> (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
>
> (b) optimising utilisation of the resources through economies of scale and functional specialisation;
>
> (c) introducing a team-based assessment, reassessment, recomputation or issuance or sanction of notice with dynamic jurisdiction.
>
> (2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:
>
> Provided that no direction shall be issued after the 31st day of March, 2022.

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(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Section 151A of the Act gives the power to the Central Board of Direct Taxes ("CBDT") to notify the Scheme for :

(i) the purpose of assessment, reassessment or recomputation under Section 147; or

(ii) issuance of notice under Section 148; or

(iii) conducting of inquiry or issuance of show cause notice or passing of order under Section 148A; or

(iv) sanction for issuance of notice under Section 151;

so as to impart greater efficiency, transparency and accountability by inter alia eliminating the interface between the Income Tax Authorities and assessee. Sub-section 3 of Section 151A of the Act also provides that every notification issued under sub-section (1) and (2) of Section 151A of the Act shall be laid before each House of Parliament.

In exercise of the powers conferred by sub-sections (1) and (2) of Section 151A of the Act, CBDT issued a notification dated 29th March, 2022 [Notification No.18/2022/F. No.370142/16/2022-TPL and formulated a Scheme. The Scheme provides that -

(a) the assessment, reassessment or recomputation under Section 147 of the Act,

(b) and the issuance of notice under Section 148 of the Act, shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the Act for issuance of notice and in a faceless manner, to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee. The impugned notice dated 27th August, 2022 has been issued by respondent no.1 (JAO) and not by the NFAC, which is not in accordance with the aforesaid Scheme.

35 Further, in our view, there is no question of concurrent jurisdiction of the JAO and the FAO for issuance of notice under Section 148 of the Act or even for passing assessment or reassessment order. When specific jurisdiction has been assigned to either the JAO or the FAO in the Scheme dated 29th March, 2022, then it is to the exclusion of the other. To take any other view in the matter, would not only result in chaos but also render the

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> whole faceless proceedings redundant. If the argument of Revenue is to be accepted, then even when notices are issued by the FAO, it would be open to an assessee to make submission before the JAO and vice versa, which is clearly not contemplated in the Act. Therefore, there is no question of concurrent jurisdiction of both FAO or the JAO with respect to the issuance of notice under Section 148 of the Act. The Scheme dated 29th March 2022 in paragraph 3 clearly provides that the issuance of notice "shall be through automated allocation" which means that the same is mandatory and is required to be followed by the Department and does not give any discretion to the Department to choose whether to follow it or not. That automated allocation is defined in paragraph 2(b) of the Scheme to mean an algorithm for randomised allocation of cases by using suitable technological tools including artificial intelligence and machine learning with a view to optimise the use of resources. Therefore, it means that the case can be allocated randomly to any officer who would then have jurisdiction to issue the notice under Section 148 of the Act. It is not the case of respondent no.1 that respondent no.1 was the random officer who had been allocated jurisdiction.
>
> 37 When an authority acts contrary to law, the said act of the Authority is required to be quashed and set aside as invalid and bad in law and the person seeking to quash such an action is not required to establish prejudice from the said Act. An act which is done by an authority contrary to the provisions of the statue, itself causes prejudice to assessee. All assessees are entitled to be assessed as per law and by following the procedure prescribed by law. Therefore, when the Income Tax Authority proposes to take action against an assessee without following the due process of law, the said action itself results in a prejudice to assessee. Therefore, there is no question of petitioner having to prove further prejudice before arguing the invalidity of the notice."

7. Learned counsel for the revenue would also not dispute the factual as also the legal position. In the present case, admittedly the impugned notice under Section 148A(b), the orders thereon and the impugned notice under Section 148 have been issued by the JAO. Thus, as to what has been held by the Division Bench in **Hexaware Technologies Limited** (supra) on such issues, becomes squarely applicable.

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8. In the light of the above discussion, the writ petition needs to succeed. It is allowed in terms of prayer clause (a).

9. Rule is made absolute in the above terms. No order as to costs.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI , J.)

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