IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.12538 of 2023
and
W.M.P.12368 of 2023

M/s Babatek.
Shop No.9, M.M.T. Complex,
22, Officers Line, Vellore,
VLR Dt-632001, Tamil Nadu.
Represented by its Managing Partner,
M.Saravanan ... Petitioner

Vs.

1.The Assessment Unit,
National Faceless Assessment Centre,
Income Tax Department,
Mayur Bhawan, Connaught Lane, Barakhamba,
New Delhi-110001.

2.The Income Tax Officer,
Ward-1, II Floor, Vellore,
Income Tax Officer, No-2, Barracks,
Cross Street, Officers Line, Vellore,
Tamil Nadu – 632001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the files of the 1st respondent herein in Order dated 22.03.2023 bearing ITBA/AST/S/147/2022-23/1051190368 and consequently quash the same.

For Petitioner : Mr.K.Senguttuvan
For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The writ petition has been filed challenging the impugned order dated 22.03.2023 passed by the 1st respondent.

2. The case of the petitioner/company is that the impugned order came to be passed by the Faceless Assessment Officer without assuming any jurisdiction.

3. The learned Counsel for the petitioner would submit that Section 148 proceedings are initiated and notice under Section 148A(b) was issued on 13.03.2022 and a reply was filed and thereafter, an order was passed again under Section 148A(d) on 31.03.2022 and the reassessment order was passed on 22.03.2023.

4. The learned Counsel for the petitioner would further that the

Faceless Assessment Officer assumes jurisdiction to make assessment under Section 143(3) and 144 with effect from 01.04.2021 and for making reassessment under Section 147, the amendment came into effect from 01.04.2022.

5. Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondent would vehemently contend that by virtue of the amendment dated 01.04.2021, Section 144B(iii)(a) and 144B(iii)(c) were brought, in which, it deals with the notice issued under Section 148 of the Act. Therefore, the purpose for introduction of the faceless assessment with effect from 01.04.2021 was to include reassessment proceedings under Section 147 as well. Further, in his counter affidavit, it is stated as follows:-

> "*1. ....*
>
> *2. Prior to Finance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in the case* ***GKN Driveshaft(India)LTD Vs ITO 259 ITR 19) (SC)****.*
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> *3. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and*

benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Cours have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.

4. The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended Section 148 of the IT Act irrespective of whether they have been assailed before this Court or ***Union of India Vs. Ashish Agrwal [2022] 135 Taxmann64(SC) (Para2 and page number 26)***

5. In subsection (1) of Section 151A of the Income Tax Act, in the opening portion, after the words and figures "issuance of notice under Section 148", the words, figures and letters "or conducting of enquiries or issuance of showcase notice or passing of order under Section 148A" are inserted ***Union of India Vs. Ashish Agrwal***

[2022]135 Taxmann 64 (SC) (Para2 and page number 26)

6. ....”

5.1 Therefore, it is clear that pursuant to amendment made w.e.f. 01.04.2021, re-assessment could be made only under the provisions of Section 143(3) and 144 alone. However, in the procedure they have mentioned, it is also for the 148 notice as well. Therefore, the intention to include Section 148 is to empower the Faceless Assessment Officer to make reassessment.

5.2 Further he would submit that Since the 148A(b) notice issued by Faceless Assessment Officer dated 13.03.2022 construed as notice issued by Physical Assessment Officer and reply was also filed, the Physical Assessment Officer may consider the reply. In the event of accepting the reply, the proceedings would go on. In the event of rejection, whatever notice issued under Section 148A(d) as on 31.03.2022, shall be construed as notice issued by Physical Officer. If any adverse orders is going to be passed, in which case, the petitioner may be provided opportunity of personal hearing. In which case, any documents if he wants to file subject to the same, the hearing date may be fixed and thereafter, appropriate order may be passed.

6. I have given due consideration to the submission of the learned counsel for the petitioner as well the respondent and perused the materials available on record.

7. In the present case, it has to be decided whether the Faceless Assessment Officer assumes jurisdiction to issue Section 148 notice or not to make reassessment under Section 147 prior to 01.04.2022?

8. On a reading of the Section 144B, it appears that only the Faceless Assessment Officer assumes jurisdiction to issue notices under Section 143(3) and 144 alone. Thereafter, in the sub-clauses, they have provided the procedures to be adopted in the process of making the faceless assessment, where they have included 148 notice also. Therefore, the confusion arises. Unless, in the main Section, if the power is given for re-assessment and in the procedure nothing mentioned, that would not be construed as power for making reassessment. That is the reason, why the respondent came with the new amendment with effect from 01.04.2022, whereby, to empower the Faceless Assessment Officer to make reassessment and also re-computation. Therefore, it is clear that the Faceless Assessment Officer can assume jurisdiction under Section 148 with effect from

01.04.2022.

8.1 Under these circumstances, it is clear that he assumes the jurisdiction to issue the notice under Section 148, to make reassessment under Section 147 without having any jurisdiction and issued Section 148A(b) notice dated 13.03.2022 and 148A(d) notice on 31.03.2022, which is a date much prior to the date of commencement of faceless assessment, which is applicable, whereby, the jurisdiction that the Officer assumes is not legal.

8.2 However, the petitioner has participated in the entire proceedings without questioning the jurisdiction and filed a reply and thereafter, the impugned order was passed. Merely participating in the proceedings before the Officer without having jurisdiction and without raising the question of jurisdiction, does not give any jurisdiction to the said Officer and the said order would be against law.

9. Since, the learned Senior Standing Counsel Dr.B.Ramaswamy, would submit that in such view of the matter, this notice issued under Section 148A may be construed as issued by the Physical Officer and said Officer shall proceed with the assessment proceedings in accordance with law.

10. In view of the above, the impugned order dated 22.03.2023 is quashed and the 148A(b) notice dated 13.03.2022 issued by Faceless Assessment Officer shall be construed as the notice issued by the physical assessment officer and reply filed by the petitioner shall be considered and appropriate orders may be passed after providing opportunity of personal hearing. It is made clear that subject to the direction of the concerned jurisdictional Physical Officer, the petitioner may be permitted to file the consolidated papers with the convenience of the Officer concerned. The Officer will not act unless and otherwise the papers are immediately transferred from the faceless officer to the Physical Officer.

11. In the event, 148A notice dated 31.03.2022 is construed to be a notice issued by the Physical Officer the same may be proceeded in accordance with law. In which case, the respondent is directed to consider the reply filed by the petitioner before the Physical Assessment Officer. In the event, if the petitioner wants to file any additional reply or documents, the Officer concerned is directed to accept the same and thereafter fix the final hearing and pass appropriate reassessment orders in accordance with law.

12. Accordingly, the Writ Petition stands allowed. This Court directs

the respondents to transfer all the papers and files lying with the Faceless Assessment Officer to the Physical Assessment Officer at the earliest point of time. As much as possible, the petitioner is directed to make his submissions, so that precious time is not wasted and the entire exercise is directed to be completed within 3 months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2023

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Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order
Neutral Citation : Yes / No

To

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2.The Income Tax Officer,
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KRISHNAN RAMASAMY, J.

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