



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9586 OF 2024

Sri Mukund Bhavan Trust

... Petitioner

vs.

The Assistant Commissioner of Income Tax
(Exemption) Circle, Pune & Ors.

... Respondents

Mr. Raturaj H. Gurjar for the petitioner.

Mr. A.K. Saxena for the respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATED: 29 July, 2024

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

1. Rule. Rule made returnable forthwith. Learned counsel for the respondents waives service. By consent of the parties, heard finally.
2. Reply affidavit on behalf of the revenue is taken on record.
3. This Writ Petition under Article 226 of the Constitution of India is filed challenging notice dated 25 April, 2023 issued by respondent no.1 to the Petitioner under Section 148 of the Income Tax Act, 1961 ("***the Act***"), and also a prior notice under Section 148A(b) and an order passed thereon under Section 148(A)(d) of the Act. The Assessment Year in question is AY 2016-17.

4. It is apparent that the impugned notice dated 25 April, 2023 issued under Section 148 of the Act and the order of the same date under Section 148A(d) of the Act are issued by the Jurisdictional Assessing Officer (“JAO”) and not under the mandatory faceless mechanism as per the provisions of Section 151A of the Act. For a notice to be validly issued under Section 148 of the Act, the Respondent-Revenue would be required to comply with the provisions of Section 151A of the Act, so as to adhere to the faceless mechanism, as notified by the Central Government by notification dated 29 March 2022. A Division Bench of this Court in the case of *Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors.*¹ had considered the effect and interpretation of the said provision. The relevant extract of the said decision reads thus:-

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 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.

36. With respect to the arguments of the Revenue, i.e., the notification dated 29th March 2022 provides that the Scheme so framed is applicable only 'to the extent' provided in Section 144B of the Act and Section 144B of the Act does not refer to issuance of notice under Section 148 of the Act and hence, the notice cannot be issued by the FAO as per the said Scheme, we express our view as follows:-

Section 151A of the Act itself contemplates formulation of Scheme for both assessment, reassessment or recomputation under Section 147 as well as for issuance of notice under Section 148 of the Act. Therefore, the Scheme framed by the CBDT, which covers both the aforesaid aspect of the provisions of Section 151A of the Act cannot be said to be applicable only for one aspect, i.e., proceedings post the issue of notice under Section 148 of the Act being assessment, reassessment or recomputation under Section 147 of the Act and inapplicable to the issuance of notice under Section 148 of the Act. **The Scheme is clearly applicable for issuance of notice under Section 148 of the Act and accordingly, it is only the FAO which can issue the notice under Section 148 of the Act and not the JAO.** The argument advanced by respondent would render clause 3(b) of the Scheme otiose and to be ignored or contravened, as according to respondent, even though the Scheme specifically provides for issuance of notice under Section 148 of the Act in a faceless manner, no notice is required to be issued under Section 148 of the Act in a faceless manner. In such a situation, not only clause 3(b) but also the first two lines below clause 3(b) would be otiose, as it deals

with the aspect of issuance of notice under Section 148 of the Act. Respondents, being an authority subordinate to the CBDT, cannot argue that the Scheme framed by the CBDT, and which has been laid before both House of Parliament is partly otiose and inapplicable.”

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 statute, itself causes prejudice to assessee. All assesseees 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.

[Emphasis Supplied]

5. It is hence apparent that in the present case, the impugned order and the notices issued by respondent no.1 are not in compliance with the Scheme notified by the Central Government implementing the provisions of Section 151A of the Act. The Scheme, as tabled before the Parliament as per the requirements of the said provision, is in the nature of a subordinate legislation, which governs the conduct of proceedings under Section 148A as well as Section 148 of the Act. Thus in view of the explicit declaration of the law in **Hexaware Technologies Limited** (supra), the grievance of the petitioner- assessee insofar as it relates to an invalid issuance of the impugned order and the notice is required to be accepted. Learned Counsel for the parties agree that in this view of the matter, the proceedings initiated under Section 148 of

the Act would not be sustainable and are rendered invalid in view of the judgment rendered in **Hexaware Technologies Limited** (supra).

6. In the light of the above discussion, and when there is no dispute that the Jurisdictional Assessing Officer had no jurisdiction to issue the impugned order and the impugned notices, the writ petition is required to be allowed. It is accordingly allowed in terms of prayer clause (b), which reads thus:-

“(b) Issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction quashing the impugned order under section 148A(d) of the Act dated 25 April, 2023 (Exhibit-F), the impugned notice under section 148 of the Act dated 25 April, 2023 (Exhibit-G), the notice under section 142(1) dated 2 June, 2024 (Exhibit J) and all consequential notices.”

7. We make it clear that having disposed of this petition on the ground of non-compliance with Section 151A of the Act, we have not expressed any opinion on the other issues as raised in the Writ Petition, which are expressly kept open.

8. Rule is made absolute in the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)