IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10849 OF 2024

Vidyadhar Shetty … Petitioner

Versus

Income Tax Officer, Ward 28(1)(1), Mumbai & Ors. …Respondents

Mr. Sham Walve a/w. Mr. Sameer G. Dalal for the petitioner.
Mr. Arjun Gupta for the respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
Date : 6 August, 2024

PC:

1. Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waives service. By consent of the parties, heard finally.

2. This Writ Petition under Article 226 of the Constitution of India has been filed to challenge a notice dated 29 July, 2022 ("***impugned notice***") issued to the Petitioner under Section 148 of the Income Tax Act, 1961 ("***the Act***"), and also the underlying prior notice and order under Section 148A(b) and Section 148A(d) of the Act, respectively. The reassessment under Section 148 of the Act has been initiated in respect of returns filed by the Petitioner-Assessee for the Assessment Year 2017-18.

3. On perusal of the record, it is apparent that the impugned notice dated 27 May, 2022 issued under Section 148A(b), the order passed thereon under Section 148A(d) dated 29 July, 2022 and the consequent notice dated 29 July, 2022 issued under Section 148 of the Act are all issued by the Jurisdictional Assessing Officer ("**JAO**") and not by a Faceless Assessing Officer ("**FAO**"), as is required by the provisions of Section 151A of the Act.

4. To give effect to the provisions of Section 151A, the Central Government has issued a Notification dated 29 March 2022 whereby a faceless mechanism has been introduced. Thus, necessarily in resorting to a procedure under Section 148A and the consequent notice to be issued under Section 148 of the Act, the Assessing Officer is required to adhere to the provisions of Section 151 read with the Notification. Thus, for a notice to be validly issued for reassessment under Section 148 of the Act, the Respondent-Revenue would need to be compliant with Section 151A, which has been interpreted and analysed in detail by a Division Bench of this Court in the case of *Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors.*[1] (***"Hexaware"***). The Division Bench has clearly declared the law as follows :

"35. Further, in our view, there is no question of concurrent jurisdiction of

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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.** ……..”
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> 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.
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> [**Emphasis Supplied**]

5. In the present case, it is apparent that the Respondent-Revenue has not complied with the Scheme notified by the Central Government pursuant to Section 151A(2) of the Act. The Scheme has also been tabled before the Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings under Section 148A as well as Section 148 of the Act. In view of the explicit declaration of the law in ***Hexaware***, the grievance of the Petitioner-Assessee insofar as it relates to an invalid issuance of a notice is

sustainable and consequently, the very manner in which the proceedings have been initiated, vitiates the proceedings.

6. Learned Counsel for both the parties agree that the proceedings initiated under Section 148 of the Act would not be sustainable in view of the judgment rendered in ***Hexaware.*** Learned Counsel for the Petitioner-Assessee has also drawn our attention to a recent decision of this Court in *Nainraj Enterprises Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax, Circle-4(3)(1), Mumbai & Ors.*[2], whereby in similar circumstances, this Court has allowed the petition considering the provisions of Section 151A of the Act.

7. Apart from the petitioner's contention that the proceedings would stand covered by the decision of this Court in **Hexaware Technologies Limited** (supra), another contention as raised by the petitioner is in regard to the impugned notice also being contrary to the decision of this Court in ***Siemens Financial Services Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Circle 8(2)(1), Mumbai & Ors.***[3] for the reason that the proceedings were initiated well after the expiry of three years from the end of the relevant assessment year. If this be so, the contention as urged on behalf of the petitioner is that the sanction for initiating the reassessment ought to have been granted by the

[2] Writ Petition (L.) No. 16918 of 2024 dt. 2-07-2024

[3] Writ Petition No. 4888 of 2022

authorities of the rank referred to in Section 151(ii) of the Act and not by the authorities of the relatively lower rank under Section 151(i) of the Act. It is submitted that the issue in this regard is no more res integra in view of the pronouncement of this Court in **Siemens Financial Services Pvt. Ltd.** (supra) as relied on behalf of the petitioner.

8. In **Siemens Financial Services Pvt. Ltd.,** this Court held that the sanction as granted by the authority would be rendered invalid in the case it is not issued by the authorities specified in Clause (ii) in the event reassessment proceedings were initiated well after the expiry of three years from the end of the relevant assessment year. The following observations as made in **Siemens Financial Services Pvt. Ltd.** are required to be noted, which reads thus:

> "24. As per section 151 of the Act, the 'specified authority' who has to grant his sanction for the purposes of section 148 and section 148A is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year. The present petition relates to the AY 2016-17, and as the impugned order and impugned notice are issued beyond the period of three years which elapsed on 31 st March, 2020 the approval as contemplated in section 151(ii) of the Act would have to be obtained which has not been done by the Assessing Officer. The impugned notice mentions that the prior approval has been taken of the 'Principal Commissioner of Income-tax – 8' ('PCIT-8') which is bad in law as the approval should have been obtained in terms of section 151(ii) and not section 151(i) of the Act and the PCIT-8 cannot be the specified authority as per section 151 of the Act. Further, even in the affidavit-in-reply, the department has accepted that the approval obtained is of the 'Principal Commissioner of Income-tax – 8' and, hence, such an approval would be bad in law.

> 25. TOLA, enacted on 29th September 2020 and came into force on 31st March 2020. It inter alia, provided for a relaxation of certain provisions of the Income-tax Act, 1961. Where any time limit for completion or compliance of an action such as completion of any proceedings or passing of any order or issuance of any notice fell between the period 20th March 2020 to 31st December 2020, the time limit for completion of such action stood extended to 31st March 2021. Thus, TOLA only seeks to extend the period of limitation and does not affect the scope of section 151.
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> 26. The Assessing Officer cannot rely on the provisions of TOLA and the notifications issued thereunder as section 151 has been amended by Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, w.e.f., 1st April 2021. Hence, the Assessing Officer cannot seek to take the shelter of TOLA as a subordinate legislation cannot override any statute enacted by the Parliament. Further, the notification extending the dates from 31st March 2021 till 30th June 2021 cannot apply once the Finance Act, 2021 is in existence. The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained and, therefore, the sanction is required to be obtained by applying the amended section 151(ii) of the Act and since the sanction has been obtained in terms of section 151(i) of the Act, the impugned order and impugned notice are bad in law and should be quashed and set aside."

9. Learned counsel for the petitioner has also drawn our attention to the decision of this Court in ***Kairos Properties Pvt. Ltd. vs. Assistant Commissioner of Income-tax and Ors.***[4] where the Court considered the effect of scheme as notified by the Central Government under the notification dated 29 March, 2022. The Court, considering the relevant provisions, has held that this scheme as notified in paragraph 3 of the notification would take within its ambit steps taken by the Revenue in issuing notice under section 148A(b) as also an order passed under Section 148A(d), so as to be included within the

4 Writ Petition (L) No. 22686 of 2024 dated 05.08.2024

ambit of Section 151A of the Act. In this view of the matter, on both applicability of the law as laid down by this Court in *Hexaware* (supra) as also considering the observations of this Court in *Kairos Properties Pvt. Ltd.* (supra), the petition would be required to be allowed.

10. In the light of the above discussion, and as there is no dispute that the JAO had no jurisdiction to issue the impugned notice, the Writ Petition is accordingly allowed in terms of prayer clause (c) which reads thus :

> "c) that this Hon'ble Court be pleased to issue a Writ of Certiorari or an appropriate Writ, Order or Direction under Article 226 of the Constitution of India calling for all papers and records of the petitioner's case leading to initiation of reassessment proceedings by respondents and after going through the same and examining the validity, legality and propriety thereof quash, cancel and set aside the, (i) Show Cause Notice dated 27 May, 2022 issued under section 148A(b) of the Act (Ex. E), (ii) Order dated 29 July, 2022 passed under section 148A(d) of the Act (Ex. F), (iii) Notice dated 29 July, 2022 issued under section 148 of the Act (Ex.G), (iv) Assessment Order dated 29 May, 2023 passed under section 147 r.w.s. 144B(Ex. H) and all consequential Notices/Orders."

11. 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 raised in the Writ Petition. The other questions raised in this petition are not being answered since it is not necessary to do so.

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

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