# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 12078 OF 2024
## WITH
## WRIT PETITION NO. 12079 OF 2024

Vibs Corporate Services Pvt. Ltd. … Petitioner

*Versus*

The Income-tax Officer, Ward -15(3)(1) & Anr. …Respondents

Mr. Rahul Hakani for the petitioner.
Mr. Akhileshwar Sharma for the respondents.

**CORAM: G. S. KULKARNI &**
**SOMASEKHAR SUNDARESAN, JJ.**
**Date : 4 September, 2024**

**PC:**

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

2. Reply affidavit filed by the revenue is taken on record.

3. In both the petitions, the petitioner is common. These petitions are filed assailing the notice issued to the petitioner under the provisions of Section 148 of the Income-tax Act. Writ Petition No. 12079 of 2024 pertains to assessment year 2019-20 and Writ Petition No. 12078 of 2024 pertains to assessment year 2020-21. As challenge raised in both these petitions is common, we propose to dispose of the petitions by this common order.

4. The impugned notice issued to the petitioner under Section 148 of the Income Tax Act, 1961 ("***the Act***") in Writ Petition No. 12079 of 2024 is dated 7 April, 2023 and in Writ Petition No. 12078 of 2024 is dated 20 March, 2024 and also the underlying prior notice and order under Section 148A(b) and Section 148A(d) of the Act, respectively. The prayers made in both the petitions are common, but pertain to different notices and different assessment years. For convenience, we note the prayers as made in the Writ Petition No. 12079 of 2024, 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 u/s. 148 dated April 7, 2023 (Ex-A) issued by respondent no. 1 for AY 2019-20, (ii) the impugned order dated April 7, 2023 passed under section 148A9d) (Ex-B) by respondent no.1 for AY 2019-20 and (iii) Notice u/s. 148A(b) dated March 10, 2024 (Ex-C) for AY 2019-20 issued by respondent no. 1."

5. On perusal of the record, it is apparent that the impugned notice issued under Section 148A(b), the order passed thereon under Section 148A(d) and the consequent notice 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.

6. 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 151A read with the Notification. For a notice to be validly issued for reassessment under Section 148 of the Act, the Respondent-Revenue, it was required to be in compliance 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 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

[1] (2024) 464 ITR 430

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**

> **<u>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.</u>** 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. **<u>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.</u>** Therefore, there is no question of petitioner having to prove further prejudice before arguing the invalidity of the notice.
>
> [<u>Emphasis Supplied</u>]

7. 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.

8. 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 *<u>Nainraj Enterprises Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax, Circle-</u>*

*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.

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***.[3] 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 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. Learned counsel for the revenue fairly does not dispute the aforesaid position.

10. Mr. Sharma, learned counsel for the revenue has, however, made an additional submission. He submits that the petition ought not to be entertained merely because this Court has rendered a decision in **Hexaware**,.

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

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

He submits that for such reason, the petitioner would not have a locus to maintain the prayers as made in the petition and seek such relief. In support of such submission, Mr. Sharma has placed reliance on the decision of the Constitutional Bench of Supreme Court in **Mafatlal Industries Ltd. vs. Union of India**[4] and more particularly paragraph 108(iv) wherein the Supreme Court in the context of one of the issue which had arisen before the Supreme Court on refund, had observed that it was not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person and further that such claim cannot be made that the decision of the Court/Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. The observations of the Court as relied by Mr. Sharma as laid down in paragraph 108(iv) are required to be noted, which reads thus:

> "108(iv) It is not open to any person to make a refund claim on the basis of a decision of a Court or Tribunal rendered in the case of another person. He cannot also claim that the decision of the Court /Tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can be claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can be claim refund without reopening such

4 (1997) 5 SCC 536

> assessment/ order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well-established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund."

11. In our opinion, the contention as urged by Mr. Sharma cannot be accepted. The context in which the aforesaid observations were made by the Supreme Court in **Mafatlal Industries Ltd.** (supra) was totally distinct from the context which has arisen in the present case, which is to the issuance of notice under Section 148 and before the assessment order could be passed. Further more, we may observe that what is before us is not an issue on refund but a contention of the petitioner that the clear mandate of law as required to be followed in the process of assessment, namely, the mandate being as prescribed under Section 144B read with Section 151A as explicitly provided by the Income-tax Act, 1961, and which was subject matter of consideration and interpretation in the decision in **Hexaware** be followed. This Court considering the provisions as also the scheme which was formulated under section 151A dated 29 March, 2022 has come to a conclusion that it was not permissible for the JAO to initiate any proceedings under section 148 outside the faceless mechanism. Hence, what is sought to be urged by the petitioner is a challenge to an action of the respondents, which according to the petitioner is contrary to

law and such contention is certainly permissible to be raised by the assessee referring to the principle of law as laid down in the decision of a Constitutional Court. Thus, plainly in the context of the present case, the observation of the Supreme Court as rendered in **Mafatlal Industries Ltd.** (supra) certainly would not be applicable to the facts in hand. Moreover, in our view there can be no comparison as to what had fell for consideration before the Supreme Court in **Mafatlal Industries Ltd.** (supra) and the facts of the present case. Mr. Sharma's submission accordingly is rejected.

12. In the aforesaid circumstances, the proceedings stand covered by the decision of this Court in **Hexaware** (supra) as also in **Kairos Properties**(supra). The petitioner is entitled to a relief. Both the Writ Petitions are accordingly allowed in terms of prayer clause (a).

13. It is clarified 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.

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

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