IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3166 of 2024

Joitkumar Bhomchand Jain
Aged about 59 years and having his
address at Room No.12,
New Municipal Building,
RS Nimkar Marg,
Mumbai – 400 008.
PAN : AABPJ9794M ....Petitioner

Vs.

1. The Income Tax Officer
Ward-20(1), Mumbai
Room No.113, 1st Floor,
Lal Baug, Parel,
Mumbai – 400 012.

2. The Principal Commissioner of
Income Tax, Mumbai-2
Aayakar Bhavan,
Maharshi Karve Road,
Mumbai – 400 020.

3. The Union of India,
Through the Secretary,
Department of Finance,
Ministry of Finance,
North Block,
New Delhi – 110 001. ....Respondents

Mr. Prakash Shah a/w. Mr. Jas Sanghavi & Mr. Suyog Bhava i/b. PDS Legal for the Petitioner.

Mr. Akhileshwar Sharma for the Respondents.

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

DATE : 15 JULY, 2024

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

1. Rule. Rule made returnable forthwith. Respondents waive notice. By consent of the parties, heard finally. Reply affidavit filed on behalf of the respondents is taken on record.

2. This petition under Article 226 of the Constitution of India has been filed in the context of a notice issued to the petitioners under Section 148 of the Income Tax Act, 1961 ("***the IT Act***") praying for the following reliefs :-

> *"(i) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof be pleased to quash and set aside (i) the impugned notice dated 21.03.2024 issued by the Respondent No.1 (**Exhibit "A"**) and (ii) the impugned order dated 21.03.2024 passed by the Respondent No.1 (**Exhibit "B"**).*
>
> *(ii) this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondents to forthwith refrain from taking any steps or proceedings pursuant to and in furtherance of or in implementation of (i) the impugned notice dated 21.03.2024 issued by the Respondent No.1 (Exhibit "A") and (ii) the impugned order dated 21.03.2024 passed by the Respondent No.1 (**Exhibit "B"**).*
>
> *(iii) this Hon'ble Court be pleased to issue a Writ or Prohibition or a writ in the nature of Prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondent No.1 from taking any further steps or proceedings pursuant to or in furtherance of (i) the impugned notice dated 21.03.2024 issued by the Respondent No.1 (**Exhibit "A"**) and (ii) the impugned order dated 21.03.2024 passed by the Respondent No.1 (**Exhibit "B"**).*

*(iv) that pending the hearing and final disposal of the above Petition, this Hon'ble Court be pleased to restraint he Respondents by themselves, their successors in office, subordinates, servants and agents by an interim order and injunction of this Hon'ble Court from taking any further steps or proceedings pursuant to or in furtherance of or in implementation of (i) the impugned notice dated 21.03.2024 issued by the Respondent No.1 (**Exhibit "A"**) and (ii) the impugned order dated 21.03.2024 passed by the Respondent No.1 (**Exhibit "B"**).*

3. The primary contention as urged by Mr. Shah, learned counsel for the petitioner is that the impugned notice for Assessment Year 2019-20 has been issued by the Jurisdictional Assessing Officer (**"the JAO"**). He submits that the JAO would not have jurisdiction to issue such notice as it would be in the teeth of the provisions of Section 151A of the IT Act. In pursuance of Section 151 A of the IT Act, the Central Government has notified the Scheme by a Notification dated 29th March, 2022 introducing a Faceless Assessment Scheme and which is required to be mandatorily adhered in adopting any procedure under Section 148A and Section 148 of the IT Act. He submits that admittedly in the present case, the impugned notices have been issued by the JAO, which is outside the Faceless Assessment Scheme as introduced by law. He would submit that such issue had fallen for consideration of the Division Bench of this Court in the case of ***Hexaware Technology Ltd. Vs. Assistant Commissioner of Income Tax, Circle 15(1)(2), Mumbai & Ors.***[1]. The question No.4 as framed by the Court reads thus :-

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

4. In such decision, the Court has held that the provisions of

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

Section 151A of the IT Act has clearly brought about a regime of faceless assessment. The Court has hence held that it was not permissible for the JAO to issue notice under Section 148, as the same would amount to breach of the provisions of Section 151A of the IT Act.

5. Learned Counsel for the Respondents would not dispute that the impugned notice has been issued by the JAO and it was outside the Faceless Assessment Scheme which was set into motion under the provisions of Section 151A of the IT Act.

6. Mr. Suresh Kumar, learned counsel for the respondents-revenue has also drawn our attention to a recent decision of this Court in the case of ***Nainraj Enterprises Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax, Circle-4(3)(1), Mumbai & Ors.***[2], whereby on similar circumstances the Court has allowed the petition considering the provisions of Section 151 of the IT Act as also the decision in the case of *Hexaware Technology Ltd. (supra).*

7. 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 required to be allowed.

8. The Writ Petition is accordingly allowed in terms of prayer clause (i).

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

2 Writ Petition (L) No.16918 of 2024 decided on 2 July 2024

[SOMASEKHAR SUNDARESAN, J.] [G. S. KULKARNI, J.]