

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3412 OF 2024

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Sprite Investment Pvt. Ltd.
1-Hitex Industrial Area, S V Road,
Dahisar (East), Mumbai-400038

... Petitioner

Versus

1. Union of India, through Secretary,
Ministry of Finance, Department of Revenue,
Room No. 46, North Block,
New Delhi-110 001

2. Assessing Officer
National Faceless Assessment Center
New Delhi 110001.

3. Assistant Commissioner of Income tax
Circle 13(2)(2), Mumbai.

4. Principal Commissioner of Income-tax-13,
Mumbai.

5. Commissioner of Income tax (Appeal)
National Faceless Appeal Center,
New Delhi-110001

...Respondents

Mr. Rajendra, Advocate for Petitioner.

Mr. Vikas T. Khanchandani a/w. Mr. Eshaan Saroop, Advocates for
Respondents.

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

Date : 22 July, 2024

P.C. :

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 7th April, 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 148(A)(d) of the Act, respectively. The reassessment under Section 148 of the Act was initiated in respect of returns filed by the Petitioner-Assessee for the Assessment Year 2018-19, and resulted in the passing of a reassessment order dated 22nd March, 2024, which is also impugned in this Writ Petition.

3. From a plain reading of the record, it is apparent that the notice dated 7th April, 2022 issued under Section 148 of the Act and indeed the underlying order of the same date under Section 148A(d) of the Act are 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. It is now well settled that 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 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 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

¹ (2024) 464 ITR 430

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 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.

[Emphasis Supplied]

5. Therefore, it is apparent that the Respondent-Revenue is not in compliance with the Scheme notified by the Central Government pursuant to Section 151A(2) of the Act. The Scheme has also been tabled in 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**. Our attention has also been drawn 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. Learned Counsel for the Petitioner has also submitted that the instant case would also be covered by the judgement in Siemens Financial Services Pvt. Ltd. Vs. Deputy Commissioner of Income Tax, Circle-8(2)(1), Mumbai & 3 Ors.³ (“**Siemens**”), inasmuch as the impugned notice has been issued beyond the prescribed limitation. Be that as it may, since the notice under Section 148 has been issued in direct conflict with the law declared in **Hexaware**, the reassessment proceedings and all actions consequential to the defective notice deserve to be quashed and set aside.

8. Learned Counsel for the Respondent-Revenue has highlighted that in the facts of the case, the reassessment has in fact been completed and an order dated 22nd March, 2024 has been passed, which has also been challenged before the Learned Commissioner of Income-tax (Appeals), with a stay application. These developments took place prior to the filing of this Writ Petition, which was affirmed in June 2024.

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

³ (2023) 247 ITR 647 Bom

9. Learned Counsel for the Petitioner has pointed out that the judgement in ***Hexaware*** was pronounced on 3rd May, 2024. Our attention has also been drawn to a decision in the case of *Vikram Developers Private Limited vs. Income Tax Officer 8(3)(1) and Others*⁴ (“***Vikram Developers***”) dated 10th May, 2024, where the Division Bench of this Court that rendered judgement in ***Hexaware*** had also ruled that any reassessment order passed pursuant to the foundationally-defective notice under Section 148 would also stand quashed. So also, the Division Bench ruled in ***Vikram Developers*** that any consequential demand notices or penalty notices will also stand quashed and set aside.

10. In the light of the above discussion, since there is no dispute that the JAO had no jurisdiction to issue the impugned notice, the Writ Petition deserves to be allowed and the impugned notice and all consequential proceedings including the reassessment order, as indeed any recovery notices or penalty notices, as a result, deserve to be quashed and set aside.

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

⁴ *Writ Petition (L) No. 14777 of 2024*

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 and the Writ Petition is hereby disposed of. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI , J.)