

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

WRIT PETITION NO. 3670 OF 2024

Shailesh Motilal Shah

...Petitioner

Vs

Income Tax Officer Ward-41 (3)(4) & Ors.

...Respondents

Mr. Nishit Gandhi for Petitioner.

Mr. Ravi Rattesar for Respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATED: 02 September 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 26 April, 2023 (“*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 2019-20.

3. On perusal of the record, it is apparent that the impugned notice

dated 30 March, 2023 issued under Section 148A(b), the order passed thereon under Section 148A(d) dated 26 April 2023 and the consequent notice dated 26 April 2023 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 151A 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 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 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. 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 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***. 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. 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.

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

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

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.

8. The Learned counsel for the petitioner has also contended that the notice under Section 148 as impugned which is also required to be held to be illegal inasmuch as it does not satisfy the requirement of a three months notice as incorporated in Section 148 vide Finance Act, 2023 w.e.f. 1 April 2023. His contention is that the order under Section 148A(d) of the Act was passed on 26 April 2023 which is on a day after the amendments to Section 148 as effected by Finance Act, 2023 were brought into effect that is from 1 April 2023. He submits that once the provision itself ordains that a notice of period of three months from the end of the month in which such notice was issued in that case, the impugned notice under Section 148 cannot provide for a period of merely 30 days as set out in paragraph two of the impugned notice under Section 148 which reads thus:

“2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2019-20 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2019-20.”

9. We find substance in the contention as urged on behalf of the

petitioner. Certainly, by the Finance Act, 2023 Section 148 has stood amended whereby a period of three months from the end of the month in which such notice under the provision is issued or such further period as may be allowed by the Assessing Officer on the basis of an application made in that regard by assessee, was inserted. It would be appropriate to extract the relevant part of Section 148 to note the effect of the amendment as brought about by Finance Act, 2023 which reads thus:

“[Issue of notice where income has escaped assessment.

148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within [a period of three months from the end of the month in which such notice is issued, or such further period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee], a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

[Provided also that any return of income, required to be furnished by an assessee under this section and furnished beyond the period allowed shall not be deemed to be a return under section 139.]”

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 (a) which reads thus :

“(a) That this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorari', calling for the records of the case and, after satisfying itself as to the legality thereof, quash and set aside the Order u/s 148A(d) dated 26.04.2023, Ex. "E" herein and the Notice u/s 148 dated 26.04.2023, Ex. "F" herein and the Notice / communication dated 26.06.2024, Ex. "H" herein issued / passed by the First and the Second Respondents and all consequential proceedings thereto.”

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.)