

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3699 OF 2024**

Digitally
signed by
SHRADDHA
KAMLESH
TALEKAR
Date:
2024.08.21
18:55:17
+0530

Shreenath Finstock Private Limited

A/120, Gokul Arcade,

Sahar Road, Vile Parle (E),

Mumbai – 400 057.

... Petitioner

Versus

1. Union of India

Through the Secretary, Ministry
of Finance,

2. Assistant Commissioner of Income Tax,
Circle 3(2)(1), Mumbai

3. Additional/Joint/Deputy Commissioner of
Income Tax/Income Tax Officer,
National E-Assessment Centre,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

... Respondents

Mr. Sham Walve a/w. Ms. Sweta Upadhyay i/b India Law Alliance, for
Petitioner.

Mr. Vipul Bajpayee, for Respondents-Revenue.

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

Date : August 09, 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 19 April 2024 (“*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 14th March 2024 issued under Section 148A(b), the order passed thereon under Section 148A(d) dated 19 April 2024 and the consequent notice dated 19 April 2024 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 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**

¹ (2024) 464 ITR 430

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 assesseees 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. There is yet another facet of the matter which also flows from the judgment rendered in the case of **Hexaware**, namely whether the notice issued under Section 148 in the instant case is barred by limitation under Section 149 of the Act. In **Hexaware**, this was framed as issue No.2 and was empathetically answered by stating that the deadline for issuing a notice under Section 148 must be considered by applying the provisions of Section 149 at the time of issuance of the notice. Therefore, the version of Section 149 as it stood at the time of issuance of the notice under Section 148 must be examined. In the instant case, the notice under Section 148 was issued on 19 April, 2014. By this time, the time limit for issuance of the notice as stipulated under Section 149 had expired, i.e., three year period under

Section 149 expired on 31 March, 2021. Therefore, on this ground too, the re-assessment proceedings had called for interference. For felicity, paragraphs 26, 27 and 30 in **Hexaware** are extracted below :

26 The purpose of the first proviso to Section 149 of the Act is consistent with the stated object of the government to make prospective amendments in the Act. Accordingly, the proviso provides that up to Assessment Year 2021-2022 (period before the amendment), the period of limitation as prescribed in the erstwhile provisions of Section 149(1)(b) of the Act would be applicable and only from Assessment Year 2022-2023, the period of ten years as provided in Section 149(1)(b) of the Act, would be applicable. The submission of the Revenue to interpret the first proviso to Section 149 of the Act to be applicable only for Assessment Years 2013-2014 and 2014-2015, i.e., for assessment years where the period of limitation had already expired on 1st April 2021 is not sustainable. The interpretation canvassed by the Revenue is clearly contrary to the plain language of the proviso. When the language in the statute is clear, it has to be so interpreted and there is no scope for interpreting the provision on any other basis. The taxing statute should be strictly construed. [Godrej & Boyce Manufacturing Company Ltd. vs. DCIT].

27 The interpretation as canvassed by the Revenue would render the first proviso to Section 149 of the Act redundant and otiose. The time limit to issue notice under Section 148 of the Act had already expired on 1st April 2021 for Assessment Year 2013–2014 and 2014–2015, when Section 149 of the Act was amended. Therefore, reopening for Assessment Years 2013-2014 and 2014-2015 had already been barred by limitation on 1st April 2021. Accordingly, the extended period of ten years as provided in Section 149(1)(b) of the Act would not have been applicable to Assessment Years 2013-2014 and 2014-2015, de hors the proviso. It is a settled principle of law that when limitation has already expired, it cannot be revived by way of a subsequent amendment and, hence, for Assessment Years 2013-2014 and 2014-2015 proviso to Section 149 of the Act was not required. Hence, to give meaning to the proviso it has to be interpreted to be applicable for Assessment Years upto 2021-2022. In Commissioner of Income Tax vs. Onkarmal Meghraj (HUF), the Hon'ble Apex Court was dealing with the question

whether a proviso could be applied without reference to any period of limitation. It held that " it is a well-settled principle that no action can be commenced where the period within which it can be commenced has expired. It is unnecessary to cite authorities in support of this position. Does the fact that the second proviso says that there is no period of limitation make a difference?"

The interpretation canvassed by the Revenue would render the following parts of the proviso redundant -

- (i) 'at any time' in the first line of the proviso.*
- (ii) 'beginning on or before 1 st day of April, 2021,' in the second line of the proviso.*
- (iii) 'at that time' in the fourth line of the proviso.*

If we have to give effect to the interpretation suggested by the Revenue, then the proviso would have read as under :

"Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under Section 148 or Section 153A or Section 153C could not have been issued at that time [on 1st day of April, 2021] on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this Section or Section 153A or Section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021;

OR

Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under Section 148 or Section 153A or Section 153C could not have been issued at that time [on 1st day of April, 2021] on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this Section or Section 153A or Section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

30 *With respect to applicability of the fifth proviso and the sixth proviso*

to Section 149(1)(b) of the Act for extension of limitation for issuing the notice under Section 148 of the Act, fifth and sixth provisos are only applicable with respect to the period of limitation prescribed in Section 149(1) of the Act, i.e., three years or ten years, as the case may be. Fifth proviso or sixth proviso extend limitation for issuing notice under Section 149 of the Act, however, the first proviso is an exception to the period of limitation and provides for a restriction on the notices under Section 148 being issued for Assessment Years upto 2021-22 beyond a certain date. Therefore, the way the Section would operate, is first to decide whether a notice issued under Section 148 of the Act is within the period of limitation in terms of Section 149(1)(a) or (b) of the Act. To decide whether the notice is within the period of limitation under Section 149(1)(a) or (b) of the Act, the extension of time as per the fifth and/or sixth proviso would be considered. Once, the notice is otherwise within the period of limitation, thereafter one has to see whether the said time limit is within the restriction provided in the first proviso or not. If the notice is beyond the restriction period, the notice is invalid. The fifth and/or the sixth proviso cannot apply at this stage to extend the period of restriction as per the first proviso. Hence, if a notice is not within the time prescribed under the first proviso to Section 149(1) of the Act, then such period cannot be extended by fifth proviso and sixth proviso. In *Godrej Industries Ltd. (Supra)* paragraph 15 reads as under :

15. Based on petitioner's facts, the show cause notice under Section 148A(b) of the Act was issued on 24th May 2022 asking petitioner to furnish a reply by 8th June 2022. Petitioner filed a detailed reply in response to the show cause notice on 8th June 2022 and, therefore, only the period from 24th May 2022 to 8th June 2022 could be excluded by virtue of the first limb of the fifth proviso to Section 149 of the Act. Subsequently, petitioner received another letter dated 28th June 2022 which annexed certain details and provided further time for making detailed submissions upto 8th July 2022. Petitioner replied to the letter and made detailed submissions on 2nd July 2022. Therefore, even assuming this period is to be excluded, the period which could be excluded is only from 24th May 2022 to 8th June 2022. Even after considering the letter dated 28th June 2022 and the reply dated 2nd July 2022, at the highest a further period from 28th June 2022 to 8th July 2022 could be excluded but the period of time from 8th June 2022 to 28th June 2022 cannot be excluded as per the fifth proviso. This is because petitioner on 8th June 2022 did not

request for any further time and furnished its response to the show cause notice under Section 148A(b) of the Act. It is the Assessing Officer who has suo moto issued another letter on 28th June 2022 asking petitioner to furnish further details by 8th July 2022. Therefore, even assuming a period of 27 days (i.e., 16 days from 24th May to 8th June and 11 days from 28th June to 8th July) are excluded from the date of the impugned notice under Section 148 of the Act issued on 31st July 2022, the impugned notice would yet be barred by limitation and could not have been issued by virtue of the first proviso to Section 149 of the Act.

Even if the fifth and sixth provisos are held to be applicable, the impugned notice would still be beyond the period of limitation. The fifth proviso extends limitation with respect to the time or extended time allowed to an assessee as per the show cause notice issued under Section 148A(b) of the Act or the period, during which the proceeding under Section 148A of the Act are stayed by an order of injunction by any Court. Hence, in the present case, in view of the fifth proviso, the period to be excluded would be counted from 25th May 2022, i.e., the date on which the show cause notice was issued under Section 148A(b) of the Act by respondent no.1 subsequent to the decision of the Hon'ble Apex Court in the case of Ashish Agarwal (Supra) and upto 10th June 2022, which is a period of 16 days. Further, the time period from 29th June 2022 upto 4th July 2022 cannot be excluded as the same was not based on any extension sought by petitioner, but at the behest of respondent no.1. Even if the same was to be excluded, still it will mean further exclusion of 5 days. Considering the said excluded period as well, the impugned notice dated 27th August 2022 is still beyond limitation. The fact that the original notice dated 8th April, 2021 issued under Section 148 of the Act, was stayed by this Court on 3rd August 2021, and its stay came to an end on 29th March 2022 on account of the decision of this Court, will not be relevant for providing extension as per the fifth proviso. The fifth proviso provides for extension for the period during which the proceeding under Section 148A of the Act is stayed. The original stay granted by this Court was not with respect to the proceeding under Section 148A of the Act, but with respect to the proceeding initiated as per the erstwhile provision of Section 148 of the Act and, hence, such stay would not extend the period of limitation as per the fifth proviso to Section 149 of the Act. The question of applicability of the sixth proviso does not arise on the facts of the present case. We find support for this in Godrej Industries Ltd. (Supra).

In view of the aforesaid, the impugned notice dated 27th August 2022 is clearly barred by the law of limitation."

6. In the instant case, the notice for re-opening, the assessment for returns for the Assessment Year 2017-18 had been issued more than after six years of the end of the relevant assessment year. The re-opening is purported to be on the basis of information available on the Revenue's insight portal which is essentially based on the thesis of allegedly bogus artificial passing capital gains arising out of trading in the script of M/s. Frontline Business Solution Ltd. The six years period expired on 31 March, 2024 while the three year period expired on 31 March, 2021. In the result, on this ground too, the Petition deserves to be allowed.

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 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.

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 *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.

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.

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 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

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

³ Writ Petition (L.) No. 22686 of 2024 dated 05-08-2024

aside the (i) Impugned Notice dated 19th April 2024 passed by Respondent No. 2 u/s 148 of the Act; (ii) Impugned Order dated 19th April 2024 passed by Respondent No. 2 u/s 148A (d) of the Act; (iii) Notice dated 14th March 2024 issued u/s 148A (b) of the Act by the Respondent No. 2 for the AY 2017-18.”

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.)