



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

WRIT PETITION NO. 4001 OF 2024
WITH
WRIT PETITION (L) NO. 25561 OF 2024
WITH
WRIT PETITION (L) NO. 25593 OF 2024

Volkswagen Fiduciary Services Pvt. Ltd.

... Petitioner

Versus

Deputy Commissioner of Income Tax Circle-3(3)(1), ... Respondents
Mumbai & Ors.

Mr. Madhur Agrawal a/w. Mr. Atul K. Jasani for the petitioner.
Mr. Arjun Gupta for the respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
Date : 2 September, 2024

PC:

1. Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waives service. By consent of the parties, heard finally.
2. These petitions are filed assailing the notice issued to the petitioner under the provisions of Section 148 of the Income-tax Act. Writ Petition (L) No. 25561 of 2024 pertains to assessment year 2017-18, Writ Petition No. 4001 of 2024 pertains to assessment year 2018-19 and Writ Petition (L) No. 25593 of 2024 pertains to assessment year 2019-20. As challenge raised in both these petitions is common, we propose to dispose of the petitions by

this common order.

3. The impugned notice issued to the petitioner under Section 148 of the Income Tax Act, 1961 (“*the Act*”) in Writ Petition (L) No. 25561 of 2024 is dated 22 April, 2024. In Writ Petition No. 4001 of 2024 such notice is dated 24 April, 2024. In Writ Petition (L) No. 25593 of 2024 such notice is 14 April, 2024. The prayers in all these petitions are same. For convenience we extract prayer clause (a) in Writ Petition (L) No. 25561 of 2024, which reads thus:

“a) that 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, calling for the records of the case leading to the issue of the initial impugned notice (Exhibit F) dated 29 March, 2024 passing of the impugned order (Exhibit H) dated 22 April, 2024 and the issue of the impugned notice (Exhibit I) dated 22 April, 2024 and after going through the same and examining the question of legality thereof, quash, cancel and set aside the initial impugned notice (Exhibit F) dated 29.03.2024, passing of the impugned order (Exhibit H) dated 22 April, 2024 and the issue of the impugned notice (Exhibit I) dated 22 April, 2024.”

4. 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.

5. 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

¹ (2024) 464 ITR 430

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 assessee 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]

6. 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.

7. 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.

8. 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

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

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

considering the observations of this Court in *Kairos Properties Pvt. Ltd.* (supra), the petitions would be required to be allowed.

9. In the light of the above discussion, and as there is no dispute that the JAO had no jurisdiction to issue the impugned notice, Writ Petitions are accordingly allowed and the impugned notices under Section 148A(b), the orders passed thereon under Section 148A(d) of the Act and the consequent notices under Section 148 of the Act are quashed and set aside.

10. 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.

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

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)