

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.13564 OF 2024

Aristo Pharmaceuticals Private Limited Petitioner
Vs.

Assistant Commissioner of Income-tax,
Central Circle-8(3), Mumbai & Ors. Respondents

Mr. Ravi Sharma a/w. Ms Neha Shama & Mr. Samyak Navedia for
the Petitioner.

Mr. Suresh Kumar a/w. Ms Shreya Singhi i/b. Ms Sushma Nagraj
for the Respondents.

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

DATE : 09 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 29 February, 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 3 January, 2024 issued under Section 148A(b), the order passed thereon under Section 148A(d) dated 29 February, 2024 and the consequent notice dated 29 February, 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 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 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. 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. However, learned counsel for the respondents would submit that as the present case pertains to the central charges, the same would stand covered by the order dated March 31, 2021 passed under section 144B(2) read with section 119 of the Act, and the further order dated September 6, 2021, passed under these sections. Consequently, the contention is that this case would fall outside the purview of the scheme made under Section 151A of the Act, which, but for being under the central charge, would otherwise be covered by the decision of this Court in ***Hexaware***.

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 (“***Kairos Properties***”), where the Court considered the effect of scheme as

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

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

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*** as also considering the observations of this Court in ***Kairos Properties***, the petition would be required to be allowed.

8. In a decision rendered by us in the case of *Abhin Anilkumar Shah Vs. Income Tax Officer, International Tax, Ward Circle 4(2) (1) & Ors.*⁴ (“***Abhin Anilkumar Shah***”) in the context of the objections as raised on behalf of the revenue that the petitioner’s case pertains to the central charges and hence impugned notice issued under Section 148 of the Act would stand excluded from the applicability of the provisions of Section 144B read with Section 151A of the Act and the Scheme as notified by the Central Government under the notification dated 29 March, 2022, we have considered the issue of applicability of the said provisions in respect of these exceptions sought to be urged by the revenue,

⁴ Writ Petition (L.) No. 16750 of 2024 dated 28-08-2024

namely, central charges and international tax charges. The Court in the said case made the following observations:-

“12. Having heard the learned counsel for the petitioner and Mr. Mistry, the learned amicus, it is clear to us that although the objection of Ms. Goel at the first blush appeared to be attractive, when we first heard the matter on earlier occasion, however on a deeper scrutiny, such objection needs to fail. Ms Goel’s contention that the category of cases as notified under order(s) dated 31 March, 2021 and 6 September, 2021 issued under section 119 of the Act providing for exclusion of cases assigned to the central and international charges from the applicability of Section 144B of the Act is concerned, certainly cannot be accepted to be the correct position in law.

*13. Such contention of Ms Goel needs to fail for more than one reason. **Firstly**, the order dated 31 March, 2021 issued under sub-section (2) of Section 144B of I.T. Act and order dated 6 September, 2021 issued under section 119 of the Act apply only in respect of “assessment orders to be passed, as clearly seen from the content of both such orders, which we have extracted hereinabove; **Secondly**, the scheme notified under section 151A under notification dated 29 March, 2022 applying the procedure of faceless mechanism to the proceedings under Section 148A and Section 148 is neither subject to the applicability of the prior order dated 31 March, 2021 read with 6 September, 2021 nor is it explicit so as to include the applicability of the said orders to the scheme as notified under section 151A; **Thirdly**, it would be doing violence to the language of the notification/scheme dated 29 March, 2022 to read into such notification what has not been expressly provided for and/or something which is kept outside the purview of the said notification, namely, the orders dated 31 March, 2021 and 6 September, 2021. It would be uncalled for as also not appropriate for the Court to read into the scheme dated 29 March, 2022, something which is not included. It cannot be said that the Central Government was not aware as to what was provided for in the orders dated 31 March, 2021 and 6 September, 2021 so as to not include the same under the scheme dated 29 March, 2022. It would thus be not correct, that the Court nonetheless reads into the scheme dated 29 March, 2022 the applicability of orders dated 31 March, 2021 and 6 September, 2021. In fact such approach would also be contrary to the mandate of Section 151A and to the scheme framed thereunder.*

14. Thus, accepting Ms Goel’s contention to read into the scheme as contained in the notification dated 29 March 2022, the applicability of the order dated 31 March, 2021 and 6 September, 2021 would in fact amount to not only rewriting such scheme issued by the Central Government but reading something into the provisions of section 151A which the legislature itself has not provided for. Section 151A and the Scheme notified below it stand independent under the notification dated 31 March 2022. Further, as rightly pointed out by Mr. Mistry, Section 151A is not subject to the other provisions of the Act when it empowers that the Central Government to make a scheme in the context of section 147 or for issuance of notice under section 148A and for conducting a prior enquiry by issuance of a show-cause notice or passing order under section 148A of the Act. The provisions is intended with an object of achieving efficiency, transparency and accountability inter alia by eliminating the interface between the

income tax authority, optimizing utilization of the resources through economies of scale and functional specialization, and by introducing a team based assessment, reassessment, recomputation or issuance or sanction of notice with dynamic jurisdiction, as set out in clauses (a), (b) and (c) of sub-section 151A of the Act.

15. Thus, on a bare reading of section 151A as it stands, read with the scheme notified thereunder, we are of the clear opinion that the observations as contained in Paragraphs 10 and 11 of our decision in CapitalG LP do not require any reconsideration.

16. In the above context, Mr. Mistry has also drawn our attention to the decision of the Division Bench of the High Court of Telangana in **Sri Venkataramana Reddy Patloola Vs. Deputy Commissioner of Income Tax, Circle 1(1), Hyderabad & Ors.** (2024 SCC OnLine TS 1792) to contend that such decision fortifies the view taken by us in CapitalG LP (*supra*) to submit that such decision takes a similar view, when an identical issue had fallen for consideration of the Division Bench of the High Court of Telangana, namely, whether the show-cause notice issued under section 148 of the Act in matters relating to international taxation charges are exempted to follow the procedure of faceless proceedings. In an elaborate judgment, their Lordships considering the provisions of section 151A as also the Notification dated 6 September, 2021 and the scheme notified by the Central Government under Notification dated 29 March, 2022 have held that only the actual assessment or reassessment would be laid in a face to face mode while the selection of cases and issue of notices could be in the faceless mode.

18. The result of the above discussion is to the effect that this Court not only in Hexaware and thereafter in CapitalG LP but also the Division Bench of the High Court of Telangana in Sri Venkataramana Reddy Patloola (*supra*), to have consistently held that in respect of central charges and international taxation charges, the proceedings under Section 148A read with Section 148 of the Act would be required to be held in a faceless manner, applying the provisions of section 144B and as effected under the provisions of section 151A read with scheme notified by the Central Government vide a Notification dated 29 March, 2022. We accordingly reject the contentions as urged by the revenue that the present case would fall outside the applicability of the said provisions and the scheme.”

9. In this view of the matter, learned counsel has urged on behalf of the revenue that as the present case pertains to the central charges, it would be required to be excluded, cannot be accepted and it would be required to be rejected. 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 under Article 226 of the Constitution of India calling for the records of the case leading to the illegal issuance of the impugned notice dated 23rd December 2023 u/s.148A(a) of the Act (Ex. ‘X’), issuance of the impugned notice dated 03rd January 2024 u/s. 148A(b) of the Act (Ex. ‘AA’), passing of the impugned order u/s.148A(d) of the Act dated 29th February 2024, deciding the case to be fit for reopening u/s. 148 of the Act (Ex. ‘CC’), and issuance of the impugned notice dated 29th February 2024 u/s. 148 of the Act, re-opening the assessment of the Petitioner for A.Y. 2017-18 (Ex. ‘DD’) and after going through the same and examining the question of legality thereof to quash, cancel and set aside the survey action conducted on the Petitioner u/s. 133 A of the Act, issuance of the impugned notice dated 23rd December 2023 u/s.148A(a) of the Act (Ex.‘X’), the impugned notice dated 3rd January 2024 issued u/s.148A(b) of the Act (Ex. ‘AA’), the impugned order passed u/s.148A(d) of the Act dated 29th February 2024, deciding the case to be fit for reopening u/s. 148 of the Act (Ex.‘CC’), and the impugned notice issued u/s.148 of the Act dated 29th February 2024, re-opening the assessment of the Petitioner for A.Y. 2017-18 (Ex. ‘DD’).

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.]