



W.P.Nos.25223 of 2024 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.10.2024
Pronounced on	20.12.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.25223 & 25227 of 2024
and W.M.P.Nos.27545, 27547, 27549 & 27550 of 2024

Mark Studio India Private Limited,
No.11/6, First Floor Ramanathan Street,
Mahalingapuram, Nungambakkam,
Chennai 600 034, Tamil Nadu.

...Petitioner in both petitions

versus

1.Income Tax Officer,
Non-Corporate Ward 10(6),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034

2.National Faceless Assessment Unit,
New Delhi.

...Respondents in both petitions

Common Prayer:

The Writ Petition is filed under Article 226 of the Constitution of India, to call for the records on the file of the 1st respondent in PAN



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No.AAHCM5005B and quash the impugned order in ITBA/AST/F/148A/2024-25/1064082954(1) and ITBA/AST/F/148A/2024-25/1064083220(1) dated 15.04.2024 under Section 148A(d) of the Income Tax Act, 1961, and the consequential impugned notice in ITBA/AST/S/148_1/2024-25/1064084739(1) and ITBA/AST/S/148_1/2024-25/1064084684(1) dated 15.04.2024 under Section 148 of the Act passed by the 1st respondent for the Assessment Year 2017-18 an 2019-20 respectively as illegal and not in accordance with law.

For Petitioner
in both petitions : Ms.G.Vardhini Karthik,

For Respondents
in both petitions : Dr.B.Ramaswamy,
Senior Standing counsel

& Mr.V.Mahalingam,
Senior Standing counsel
Assisted by Ms.S.Premalatha,
Junior Standing counsel

COMMON ORDER

These writ petitions have been filed challenging the impugned orders dated 15.04.2024 and the consequential impugned notices dated 15.04.2024 issued by the 1st respondent.



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2. Submission made by the learned counsel for the petitioner:

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2.1 Ms.G.Vardhini Karthik, learned counsel appearing for the petitioner would submit that the present writ petitions were filed challenging the jurisdiction of the Jurisdictional Assessment Officer (JAO) to issue notice under Section 148 of the Income Tax Act, 1961 (hereinafter called as “IT Act”). Initially, she would submit that the JAO will not have any power to issue any notice under Section 148 subsequent to the incorporation of Section 151A of the IT Act and introduction of two Schemes, viz., “E-Assessment of Income Escaping Assessment Scheme, 2022, dated 29.03.2022” and “Faceless Jurisdiction of Income-tax Authorities Scheme, 2022, dated 28.03.2022” (hereinafter called as “Scheme”).

2.2 She would submit that the aforesaid Schemes were brought in, in terms of the provisions of Section 151A of the IT Act, which enables the Central Government to bring in a Scheme to conduct assessment, re-assessment or re-computation in faceless manner. Accordingly, the aforesaid two Schemes were brought in by the Central Government. Once if



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such Scheme was brought in to conduct assessment, re-assessment or re-computation under Section 147 of the IT Act in faceless manner, the JAO will have no role to play and all the process has to be carried out only by Faceless Assessment Officer (FAO). In the present case, Scheme was introduced for conducting assessment, re-assessment or re-computation under Section 147 of the IT Act and for issuance of notice under Section 148 of the IT Act. Hence, by referring the Scheme, she would contend that Section 148 or 148A notices shall be issued only by NaFAC. However, in this case, the impugned notices were issued by JAO, by mentioning his name. Thus, she would submit that the said impugned notices were issued without any jurisdiction and the same is liable to be quashed.

2.3 Further, she would submit that the re-assessment procedure would only commence when the notice under Section 148A/148 of the IT Act is issued calling for the return of income and that is why, Section 144B of the IT Act does not refer to Section 148 notice. In the Scheme dated 29.03.2022, it has been specifically directed to issue the Section 148 notice in faceless manner.



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2.4 After the issuance of Section 148 notice, the Assessee shall be permitted to file their returns. On the other hand, if any assessee had intended to file the return of income voluntarily upon receipt of show cause notice, it would be impossible since the portal would not be upon for him to file his returns at that stage.

2.5 By referring the Scheme dated 29.03.2022, she would submit that the said Scheme was issued only in the nature of guidelines for internal circulation.

2.6 Therefore, she would strongly contend that there is no concurrent jurisdiction for JAO as well as FAO for issuance of notice under Section 148 or 148A for making assessment under Section 147 of the IT Act and only the FAO will have the authority to issue such notice in faceless manner.

2.7 She would also submit that she has filed her return submissions and insisted this Court to take the same into consideration and pass appropriate orders.



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2.8 For all these reasons, she would submit that the show cause notices issued by the respondent are liable to be quashed. In support of her contentions, she referred the following judgements:

i) the judgment of the Telangana High Court in ***Kankanala Ravindra Reddy vs. Income-Tax Officer*** reported in (2023) 156 taxmann.com 178 (TELANGANA).

ii) the judgment of the Hon'ble Bombay High Court in ***Hexaware Technologies Limited vz. Asistant Commissioner of Income Tax and others*** reported in 2024 SCC OnLine Bom 1249.

iii) the judgment of the Hon'ble Gujarat High Court in ***Talati and Talati LLP vs. Office of Assistant Commissioner of Income Tax*** reported in 2024: GUJHC: 54567-DB.

3. Submissions made by the learned Senior Standing counsel for the respondent:

3.1 Dr.B.Ramaswamy, learned Senior Standing counsel, has strongly opposed the submissions made by the learned counsel for the petitioner and would submit that the Scheme as well as the provisions of Section 144B had explicitly provide that the JAO will have the jurisdiction in the process of issuing the notice under Section 148 and 148A of the IT Act.



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3.2 By referring the Scheme, he has made an elaborate submissions on the aspect of Automated Allocation System based on the risk management strategy formulated by the Board from time to time to the extent provided in Section 148 of the IT Act and also as to how the notices were sent in faceless manner.

3.3 Further, he referred the impugned notices and would submit that the impugned show cause notices were not served physically. The cases were selected by the Directorate of Income Tax (Systems) through Automated Allocation System based on the risk management strategy formulated under Section 148 of the IT Act and thereafter, the same was forwarded to the JAO based on the PAN card jurisdiction and the said JAO will have no role to play in selection of cases. Subsequently, the notices have been sent to the e-mail id of the registered account of the assessee through the web portal of ITBA. Hence, he would submit that the impugned notices have been sent by the respondents in faceless manner.



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3.4 Further, he would submit that in terms of the provisions of the Scheme, three requirements have to be complied with for issuance of notice under Section 148 of the IT Act:

- i) Automated Allocation System
- ii) Risk management strategy formulated by the Board as referred to in section 148 of the Act.
- iii) Faceless manner.

3.5 In this case, all the aforesaid three requirements have been duly complied with while sending the impugned notice. Therefore, at no stretch of imagination, one could say that the notices have been sent in any manner, other than the faceless manner.

3.6 By referring the guidelines dated 24.05.2023, he would submit that in terms of the power available under Section 144B(2) of the IT Act, the Board has been specifically excluded the cases of international taxation, central circle charges and also for search and seizure from the purview of the faceless assessment. Further, he would submit that the said guidelines had prescribed the manner as to how the JAO has to collect reply,



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information and documents subsequent to the issuance of Section 148 notice and upload the same on the ITBA portal for the access by NaFAC. After uploading the Section 148 notice along with the relevant documents, which were collected by the JAO, the Directorate of Income Tax (Systems) shall forward the cases to the NaFAC. Subsequently, the NaFAC shall issue notice, under Section 143(2) or 142(1) of the IT Act, in appropriate cases in terms of Clause (iii) of Sub-Section (1) of Section 144B of the IT Act.

3.7 Therefore, he would contend that in the process of assessment, re-assessment or re-computation under Section 147 of the IT Act by the NaFAC, the FAO would come into picture only from the stage of issuance of notice under Section 143(2) or 142(1) of the IT Act and allocation of cases by NaFAC to the assessment unit, subsequent to the receipt of information from the Directorate of Income Tax (Systems). Therefore, he would contend that the Board had issued the guidelines within the power available to them under Section 144B(2) of the IT Act.



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3.8 Further, by referring Clause (iv) of Sub-Section (1) of Section 144B of the IT Act, he would submit that if any additional information is required, after the allotment of Section 148 cases along with the documents to the respective assessment units by virtue of Automated Allocation System by NaFAC, the concerned assessment unit shall request the NaFAC to send notice to get additional information from the Assessee. By referring the word “additional information”, he would submit that at the time of allotment , Section 148 notice and its reply and Section 148A notice and its reply along with all the other documents will be made available with the concerned assessment unit, by the NaFAC. Therefore, Section 144B makes it very clear that the proceedings at NaFAC level would commence only from the stage of issuance of notice under Section 142(1) or 143(2) of the IT Act. Before the said stage, only JAO will have power to issue Section 148/148A notice. Thereafter, the Directorate of Income Tax (Systems) shall forward these cases to NaFAC to take further action. The guidelines has been issued by the Board on this aspect elaborately.



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3.9 He would also contend that the said guidelines had been issued by the Board, within the power available to them under Section 144B of the IT Act, without touching upon the Scheme and issuance of such guidelines will not amount to making exemptions, modification or alteration in the Scheme. Hence, he would submit that the power of Central Government to bring any modification and alteration to the Scheme is entirely different from the notification brought in by the Board through guidelines, which was issued in terms of the provisions of Section 144B(2) of the IT Act.

3.10 Further, he has filed his written submissions and insisted this Court to take the same into consideration and pass appropriate orders. All the other learned Standing counsel have adapted the submissions made by Dr.B.Ramaswamy, learned Senior Standing counsel. In support of their contentions, they had referred to the following judgements and requests this Court to dismiss these writ petitions:

i) the judgment of Hon'ble Delhi High Court in ***T.K.S.Builders Private Limited vs. Income Tax Officer*** rendered in ***W.P.(C).No.1968 of 2023***.

ii) the judgment of Hon'ble Calcutta High Court in ***Dhiraj Lakhota vs. Union of India and another*** rendered in ***W.P.(A).No.1458 of 2024***.



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4. I have given my anxious consideration to the submissions made by the respective learned counsel for the petitioners and the learned Senior Standing counsel for the respondents.

5. The central issue that arises for consideration in these Writ Petitions is, who is the appropriate authority to issue Notice under Section 148 of the IT Act after the introduction of E-Assessment of Income Escaping Assessment Scheme, 2022, dated 29.03.2022 and Faceless Jurisdiction of Income-tax Authorities Scheme, 2022, dated 28.03.2022?

6. Ms.G.Vardhini Karthik, learned counsel appearing for the petitioner would submit that after the introduction of E-Assessment of Income Escaping Assessment Scheme, 2022 vide notification SO 1466(E) dated 29.03.2022 with effect from 01.04.2022, the assessment, re-assessment or re-computation under Section 147 of the IT Act shall be made in faceless manner in terms of the provisions of the Scheme read with Section 144B of the IT Act.



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7. On the other hand, Dr.B.Ramaswamy, learned Senior Standing counsel and other learned Standing counsel appearing for the respondents would submit that the assessment, re-assessment or re-computation under Section 147 of the IT Act, with regard to the income escaped assessment, has to be carried out in faceless manner in terms of the provisions of Section 144B of the IT Act. However, Section 144B of the IT Act shall not enable the National Faceless Assessment Centre (NaFAC) to issue the notice under Section 148A and 148 of the IT Act in the faceless manner.

8. In reply, the learned counsel for the petitioner had consistently submitted that notice under Section 148A and 148 shall be issued by the NaFAC in terms of the provisions of Section 144B of the IT Act read with the Scheme.

9. Now, let me analyze the provisions of Section 144B of the IT Act, which was introduced, vide the Finance Act, 2022, with effect from 01.04.2022, which is both in substantive and procedural in nature. For ready reference, Section 144B of the IT Act is reproduced hereunder:



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“Faceless Assessment.

144B.(1) Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case referred to in Sub-Section (2) shall be made in a faceless manner as per the following procedure, namely:-

(i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system;

(ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;

(iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub- section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit;



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(iv) where a case is assigned to the assessment unit, under clause (1), it may make a request through the National Faceless Assessment Centre for-

(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;

(b) conducting of enquiry or verification by verification unit;

(c) seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit;

(v) where a request under sub-clause (a) of clause (iv) has been initiated by the assessment unit, the National Faceless Assessment Centre shall serve appropriate notice or requisition on the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit and the assessee or any other person, as the case may be, shall file his response to such notice within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre which shall forward the reply to the assessment unit;



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(vi) where a request.-

(a) for conducting of enquiry or verification by the verification unit has been made by the assessment unit under sub-clause (b) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a verification unit through an automated allocation system; or

(b) for reference to the technical unit has been made by the assessment unit under sub-clause (c) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a technical unit through an automated allocation system;

(vii) the National Faceless Assessment Centre shall send the report received the National Faceless Assessment Centre verification unit or the technical unit, as the case may be, based on the request referred to in clause (vi) to the concerned assessment unit;

(viii) where the assessee fails to comply with the notice served under clause (v) or notice issued under sub-section (1) of section 142 or the terms of notice issued under sub-section (2) of section 143, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(ix) the assessment unit shall serve upon such assessee, as referred to in clause (viii), a notice, through the National



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Faceless Assessment Centre, under section 144, giving him an opportunity to show-cause on a date and time as specified in such notice as to why the assessment in his case should not be completed to the best of its judgment;

(x) the assessee shall, within the time specified in the notice referred to in clause (ix) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre which shall forward the same to the assessment unit;

(xi) where the assessee fails to file response to the notice served under clause (ix) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xii) the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing,-

(a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre; or



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(b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;

(xiii) the assessee shall file his reply to the show cause notice served under sub-clause (b) of clause (xii) on a date and time as specified therein or such time as may be extended on the basis of an application made in this regard, to the National Faceless Assessment Centre, which shall forward the reply to the assessment unit;

(xiv) where the assessee fails to file response to the notice served under sub- clause (b) of clause (xii) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xv) the assessment unit shall, after considering the response received under clause (xiii) or after receipt of intimation under clause (xiv), as the case may be, and taking into account all relevant material available on record,



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prepare an income or loss determination proposal and send the same to the National Faceless Assessment Centre;

(xvi) upon receipt of the income or loss determination proposal, as referred to in sub-clause (a) of clause (xii) or clause (xv), as the case may be, the National Faceless Assessment Centre may, on the basis of guidelines issued by the Board,-

(a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order, or

(b) assign the income or loss determination proposal to a review unit through an automated allocation system, for conducting review of such proposal;

(xvii) the review unit shall conduct review of the income or loss determination proposal assigned to it by the National Faceless Assessment Centre, under sub-clause (b) of clause (xvi), whereupon it shall prepare a review report and send the same to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving the review report under clause (xvii), forward the same to the assessment unit which had proposed the income or loss determination proposal;



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(xix) the assessment unit shall, after considering such review report, accept or reject some or all of the modifications proposed therein and after recording reasons in case of rejection of such modifications, prepare a draft order;

(xx) the assessment unit shall send such draft order prepared under sub- clause (a) of clause (xvi) or under clause (xix) to the National Faceless Assessment Centre;

(xxi) in case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee, as mentioned in sub-section (1) under section 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;

(xxii) in any case other than that referred to in clause (xxi), the National Faceless Assessment the final assessment order in accordance with such draft order, which order and proceedings, if any, and send it to the National Faceless Assessment Centre;



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(xxiii) upon receiving the final assessment order as per clause (xxii), the National Faceless Assessment Centre shall serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxiv) where a draft order is served on the assessee as referred to in clause (xxi), such assessee shall,-

(a) file his acceptance of the variations proposed in such draft order to the National Faceless Assessment Centre; or

(b) file his objections, if any, to such variations, with-

(I) the Dispute Resolution Panel, and

(II) the National Faceless Assessment Centre,

within the period specified in the sub-section (2) of section 144C

(xxv) the National Faceless Assessment Centre shall,-

(a) upon receipt of acceptance from the eligible assessee; or

(b) if no objections are received from the eligible assessee, within the period specified in sub-section (2) of section 144C,

intimate the assessment unit to complete the assessment on the basis of the draft order,



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(xxvi) the assessment unit shall, upon receipt of intimation under clause (xxv), pass the assessment order, in accordance with the relevant draft order, within the time allowed under sub-section (4) of section 144C and initiate penalty proceedings, if any, and send the order to the National Faceless Assessment Centre;

(xxvii) where the eligible assessee files objections with the Dispute Resolution Panel, under sub-clause (b) of clause (xxiv), the National Faceless Assessment Centre shall send such intimation along with a copy of objections filed to the assessment unit;

(xxviii) the National Faceless Assessment Centre shall, in a case referred to in clause (xxvii), upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the assessment unit;

(xxix) the assessment unit shall, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, complete the assessment within the time allowed in sub-section (13) of section 144C and



initiate penalty proceedings, if any, and send a copy of the assessment order to the National Faceless Assessment Centre,

(xxx) the National Faceless Assessment Centre shall, upon receipt of the assessment order referred to in clause (xxvi) or clause (xxix), as the case may be, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice. specifying the sum payable by, or the amount of refund due to the assessee on the basis of such assessment;

(xxxi) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act;

(xxxii) if at any stage of the proceedings before it, the assessment unit having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon



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recording its reasons in writing. refer the case to the National Faceless Assessment Centre stating that the provisions of sub-section (2A) of section 142 may be invoked and such case shall be dealt with in accordance with the provisions of sub-section (7).

(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.

(3) to (10).....”

10. A reading of the Sub-Section (1) of Section 144B of the IT Act would show that notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, in the cases referred to in Sub-Section (2) shall be made in faceless manner. Therefore, it is clear that the assessment, re-assessment or re-computation under Section 147 of the IT Act shall be made in terms of provisions of Section 144B to the extent provided under Sub-Section (2) of Section 144B of the IT Act.



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11. A reading of the Sub-Section (2) of Section 144B would show that for the purpose of making faceless assessment in terms of Section 144B of the IT Act, the Board (Central Board of Direct Taxes) can specify territorial area, or persons or class of persons, or income or class of income, or cases or class of cases. Therefore, Sub-Section (2) enables the Board to specify area or class of cases to be handled in faceless assessment in terms of Section 144B. Further, this Sub-Section (2) empowers the Board to include or exclude certain type of cases from the purview of the faceless assessment. Therefore, based on the circular, guideline or notification issued from time to time, the Authorities shall conduct the faceless assessment.

12. That apart, Sub-Section (1) of Section 144B further provides the procedure for conducting the faceless assessment.

12.1 Clause (i)

(a) In terms of Clause (i) of Sub-Section (1) of Section 144B of the IT Act, the NaFAC shall assign the cases selected for the purpose of faceless assessment to a specific assessment unit through Automated Allocation System.



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(b) Thus, it is clear that the NaFAC is doing the process of selection of cases for faceless assessment and thereafter, it will be assigned to various assessment unit through Automated Allocation System.

(c) The “Automated Allocation System” has been defined in Explanation to Section 144B, which reads as follows:

“(a)...

(b)...

(c) “*automated allocation system*” means 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”

(d) Therefore, in the manner stated above, the NaFAC will select the cases and thereafter, assign the same through the Automated Allocation System.

12.2 Clause (ii)

(a) In terms of Clause (ii) of Sub-Section (1) of Section 144B of the IT Act, the NaFAC shall send intimation/notice to the Assessee stating that



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the assessment in his/her case shall be completed in accordance with the procedure laid down under Section 144B of the IT Act.

12.3 Clause (iii)

(a) In terms of Clause (iii) of the Sub-Section (1) of Section 144B of the IT Act, a notice under Section 143(2) or 142(1) of the IT Act shall be served on the assessee, through NaFAC and the assessee shall file his/her response to such notice, within the date specified therein, to the NaFAC and thereafter, the NaFAC shall forward the same to the respective assessment unit.

(b) Out of the cases selected for the purpose of faceless assessment by the NaFAC, the NaFAC shall send notice to the respective Assessee under Section 143(2) or 142(1) of the IT Act. After receipt of the responses from the respective Assessee, the said responses along with the notice shall be forwarded to the respective assessment unit by the NaFAC. Therefore, Clause (iii) of Sub-Section (1) of Section 144B of the IT Act enables the NaFAC to send notice under Section 143(2) or 142(1) of the IT Act.



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13. Now, let me examine the situation, under which, the notice shall be sent by NaFAC under Section 143(2) or 142(1) of the IT Act. For ready reference, Section 142(1) and 143(2) of IT Act are extracted hereunder:

“142.-Inquiry before Assessment.

(1) For the purpose of making an assessment under this Act, the [Assessing] Officer may serve on any person who has made a return under Section 115WD or Section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired, a notice requiring him, on a date to be therein specified,-

(i) where such person has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. or

Provided that where any notice has been served under this sub. section for the purposes of this clause after the end of the relevant assessment year commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance with the provisions of this sub-section:



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Provided further that a notice under this sub-section for the purposes of this clause may also be served by the prescribed income-tax authority,

[(ii)] to produce, or cause to be produced, such accounts or documents as the [Assessing] Officer may require, or

[(iii)] to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the [Assessing] Officer may require:

143.- Assessment

(1)....

(2) Where a return has been furnished under Section 139 or in response to a notice under sub-section (1) of Section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return”



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14. A reading of the above provisions of Section 142(1) would show that for the purpose of assessment under this Act, the Assessing Officer may serve on any person, who has made returns under Section 115WD or Section 139 or in whose case the time allowed under Sub-Section (1) of Section 139 for furnishing the returns expires a notice requiring him as on the date to be therein specified in the manner stated in Section 142(1) of the IT Act to the NaFAC.

15. Further, a reading of Section 143(2) of the IT Act would state that where the return has been furnished under Section 139 or in response to a notice under Section 142(1) of the IT Act, the NaFAC, if considered it necessary or expedite to ensure that the Assessee has not understated the income or has not computed excessive loss or has not under-paid taxes in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return



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16. Upon reading the provisions of Section 144B of the IT Act, it is clear that Section 144B of the IT Act would enable the NaFAC alone to send notice under Section 142(1) and Section 143(2) of the IT Act, to the cases to the extent provided under Sub-Section (2) of Section 144B of the IT Act, by the Board, for the purpose of assessment, reassessment or re-computation of profit or loss. The said Sections 142(1) and 143(2) deal with the sending of notices when the Assessee has not filed returns in time or the Assessee have filed the returns and to ensure the correctness of the details furnished in the returns.

17. As far as the income escaping assessment is concerned, it is also equally necessary to send notice under Section 142(1) or 143(2) of the IT Act. This would arise in the following point of time:

i) After serving notice under Section 148 of the IT Act, if no returns has been furnished in response to the said notice, in such case, the notice will be send under Section 142(1) of the IT Act.



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ii) In cases, where the returns were furnished after the receipt of notice issued under Section 148 of the Act, in such case, the notice under Section 143(2) of the IT Act will be sent.

18. In the above two cases of income escaping assessment, i.e., whether the return has been filed or no return has been filed, notice under Section 143(2) or 142(1) of the IT Act as the case may be, shall be served on the Assessee calling upon information through NaFAC.

19. With regard to the said aspect, the Board had issued guidelines on 24.05.2023 for compulsory selection of returns for complete scrutiny for the financial year 2023-24. Clause (4) of the said guidelines deals with the cases, in which, notice under Section 148 of the IT Act has been issued and the same reads as follows:

S. No	Parameter	Procedure for Compulsory Selection
(4)	Cases in which notice under Section 148 of the Act have been issued	
	Cases where return is either	(i) Cases, where notices u/s 148 of the Act have been issued pursuant to search &



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S. No	Parameter	Procedure for Compulsory Selection
	furnished or not furnished in response to notice u/s 148 of the Act	seizure/survey actions conducted on or after the 1 day of April, 2021: These cases shall be selected for compulsory scrutiny with prior administrative approval of Pr.CIT/Pr.DIT/CIT/DIT concerned who shall ensure that such cases, if lying outside Central Charges, are transferred to Central Charges u/s 127 of the Act within 15 days of service of notice u/s 143(2)/142(1) of the Act calling for information by the Jurisdictional Assessing Officer concerned. (ii) Cases other than search & seizure/survey: a) For those cases which are to be completed by NaFAC on or before 31.03.2024, Jurisdictional Assessing Officers (JAOs) shall upload the underlying documents, on the basis of which notice u/s 148 was issued, on ITBA, for access by NaFAC. The Directorate of Income-tax (Systems) shall forward these cases to NaFAC, which will take further necessary action. Notice u/s 143(2)/142(1) of the Act calling for information shall be served on the assessed through NaFAC. (For Assessing Officers in International Taxation and Central Circle Charges; refer para 4.1 at page No.06)



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20.Clause (4) of the guidelines dated 24.05.2023:

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(a) The Sub-clause (i) of Clause (4) deals with the seizure and survey actions and hence, the same will not come under faceless assessment scheme.

(b) The Sub-clause (ii) of Clause (4) deals with cases, other than the search and seizure, wherein it states that for those cases, which are to be completed by NaFAC on or before 31.03.2024, the Jurisdictional Assessment Officer (JAO) shall upload underlying documents, on the basis on which the notice under Section 148 was issued, on ITBA, for access by NaFAC. Further, it has been stated that the Directorate of Income Tax (Systems) shall forward these cases to NaFAC, which will take further necessary action. Thereafter, the notice under Section 143(2) or 142(1) of the IT Act shall be served against the respective Assessee and called upon the information from Assessee through NaFAC.

21. The above extraction at paragraph 19 is the guidelines issued by the Board by virtue of the power available under Sub-Section (2) of Section



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144B of the IT Act. At this juncture, it would be apposite to extract the provisions of Sub-Section (2) of Section 144B of the IT Act hereunder:

“(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons or incomes or class of incomes or cases or class of cases, as may be specified by the Board.”

a) A reading of the above makes it clear that for the purpose of faceless assessment, the Board has to specify the territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases.

b) As far as the territorial area is concerned, in law, the term “territorial area” would mean under the jurisdiction of Government Authorities. Accordingly, by virtue of powers available under Section 144B(2) and in accordance with the provisions of Scheme, the area of JAO and FAO, has been clarified for the purpose of issuance of 148/148A notice and thereafter, the assessment, re-assessment or re-computation shall be carried out by virtue of FAO in terms of the provisions of Section 144B of the IT Act.



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22. On the other hand, in absence of any such Scheme for issuance of

Section 148A notice and with the limited scope of the Scheme for issuance of Section 148 notice, the cases pertaining to issuance of Section 148 or 148A notice, has been allotted by the Directorate of Income Tax (Systems) to the Jurisdictional Assessing Officer based on the PAN jurisdiction by virtue of Automated Allocation System, whereas, the jurisdiction for issuance notice under Section 142(1) or 143(2) has been allotted to the NaFAC based on the automated allocation system to the extent as provided under clause (i) of Sub-Section (1) of Section 144B of the IT Act and subsequent procedure shall be conducted by the Assessing Officer in the manner referred in Section 144B of the IT Act.

23. Further, the Board has taken into consideration with regard to the aspect of obtaining prior approval from the higher authority for issuance of notice under Section 148 of the Act. Though Section 151A mandates the Central Government to bring in a Scheme in this regard, so far, no such scheme was brought in.



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24. An argument was put forward by the learned counsel for the petitioner with regard to the footnote, wherein it has been mentioned as follows:

(For Assessing Officers in International Taxation and Central Circle Charges; refer para 4.1 at page No.06)

25. She would submit that the said provisions in the guidelines would apply in the cases of international taxation and Central circle charges. However, this Court is of the view that the said interpretation of the learned counsel for the petitioner is not correct. It is very clear that sub-clause (ii) of Clause (4) not only deals with international taxation cases but all the cases other than the search and survey, including cases under Section 148 of the Act, etc.,

26. Further, a reading of Section 144B of the IT Act (extracted supra), it is clear that the Clause (iii) of Sub-Section (1) of Section 144B of the IT Act empowers the NaFAC to assume its jurisdiction in Section 148 cases from the stage of issuance of notice under Section 143(2) or 142(1) of the IT Act, thus, it will not enable them to issue any notice under Section 148A



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or 148 of the IT Act. Keeping that in mind, the Board has issued the aforesaid guidelines on 24.05.2023, which would squarely apply to the petitioner's case as well.

27. An argument was made by the learned counsel for the petitioner by referring proviso to Sub-Section (2) of Section 151A of the IT Act, wherein it has been stated that *“no direction shall be issued after the 31st day of March, 2022”*. Further, by referring the Sub-Section (2) of Section 151A of the IT Act, wherein it has been stated that *“the Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification”*, she contended that the Central Government cannot issue any direction beyond 31.03.2022. Therefore, the guidelines issued by the Board on 24.05.2023 is beyond the scope of Section 151A of the IT Act.



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28. Now, let me examine the provisions of Section 151A of the IT Act and the E-Assessment of Income Escaping Assessment Scheme, 2022, dated 29.03.2022 and the Faceless Jurisdiction of Income Tax Authorities Scheme, 2022 dated 28.03.2022. For ready reference, the provisions of Section 151A of the IT Act reads as follows:

“151A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by-

(a) Eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible.

(b) Optimizing utilization of the resources through economies of scale and functional specialization;

(c) Introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by



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notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament. ”

29. This Court is unable to persuade with the submissions of the learned counsel for the petitioners for the reasons that in Section 151A of the IT Act, it has been stated that the Central Government cannot issue modification, alteration or adaptation with regard to the notification issued on 28.03.2022 or 29.03.2022. Further, the Sub-Section (2) of Section 151A read with the proviso mentioned therein states that no direction shall be issued with regard to the provisions of any exemption, modification or adaptation as may be specified in the Notification. In the present case, no such exemption, modification or adaptation has been made in the above two



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notifications issued by the Central Government, it has also not brought in any such notification to give effect to the same. On the other hand, the Board has issued the guidelines in terms of the provisions of Section 144B(2) of the IT Act, which empowers them to issue such guidelines and the issuance of such guidelines within the scope of sub-section (2) of 144B will not amount to issuance of any direction by Central Government to make modifications, exemption or adaptation in the above two notification.

30. In terms of Section 151A of the IT Act, for issuance of Section 148 notice, the prior approval is require from the Authorities concerned. On the other hand, Section 151A empowers the Central Government to bring a Scheme for sanction of issuance of notice under Section 151 of the IT Act. However, so far, no Scheme was brought in by the Central Government. In the absence of any such Scheme, the provisions of Section 151A has to be complied with, while issuing Section 148 notice, the prior approval has to be obtained. Accordingly, the Board has issued the above guidelines for the purpose of implementation of the Act, without any deviation from the Scheme and the provisions of Section 144B of the IT Act.



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31. As stated above, the NaFAC will assume its jurisdiction in Section 148 cases from the stage of issuance of notice under Section 142(1) or 143(2) of the IT Act, which is subsequent to the stage of obtaining permission from the higher Authorities concerned under Section 151 of the IT Act for issuance of notice under Section 148 of the IT Act. Therefore, the NaFAC will have no role to play in issuance of Section 148 notice and to get prior approval from higher Authorities in terms of Section 151, for which either Section 144B or Scheme issued on 28.03.2022 and 29.03.2022 empowers them. Therefore, this Court is not in a position to agree with the submissions of the learned counsel for the petitioner on this aspect.

32.Clause (iv)

(a) Further, Clause (iv) of Sub-Section (1) of Section 144B of the IT Act deals with the aspect, ***which enables the assessment unit to obtain such further information or document or evidence from the Assessee or any other person and may make a request to NaFAC to send appropriate***



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notice with regard to the same.

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(b) Subsequent to the allotment of cases by NaFAC on the basis of Automated Allocation System to the assessment unit, the assessment unit can request NaFAC for any additional information. Therefore, as much as possible the information has been furnished, when the matters are selected and allocated, to the assessment unit.

(c) In terms of Clause (i) of Sub-Section (1) of Section 144B of the IT Act, the NaFAC shall allot the cases based on the Automated Allocation System. While allotting the cases, if there is any scope for issuance of notice under Section 142(1) or Section 143(2), the notice will be issued by NaFAC to the concerned Assessee and after getting response from the Assessee, the NaFAC will provide the same to the assessment unit. As far as Section 148 notice is concerned, the same will also be forwarded to the assessment unit along with reply. That is why the Clause (iv) of sub-section (1) of Section 144B, states that if any further information, documents or evidences from



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assessee or any other person is required by the assessment unit, it may request the same through NaFAC. Therefore, from the above, it is clear that when the cases are allotted through Automated Allocation System by NaFAC, the cases falling under Section 148 will also be taken into consideration for the purpose of allocation to the assessment unit. Accordingly, the notice along with the other documents filed by the assessee will be forwarded to the assessment unit. In the meantime, the notice under Section 142(1) or 143(2) will be issued in appropriate cases by NaFAC and after receipt of the response, the said response will also be forwarded to the concerned assessment unit. The above aspect was made clear vide the guidelines issued by the Department by virtue of notification dated 24.05.2023.

33. Therefore, as far as the income escaped assessment is concerned, the jurisdiction of the NaFAC would start to conduct Section 147 proceedings in terms of provisions of Section 144B of the IT Act, only from the stage of issuance of notice under Section 143(2) or 142(1), i.e., subsequent to the issuance of notice under Section 148 of the



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IT Act. Thus, the NaFAC assumes the jurisdiction for assessment, re-assessment or re-computation in the cases of income escaping assessment only from the stage of issuing the notice under Section 142(1) or 143(2) immediately upon the receipt of information from the Directorate of Income Tax (Systems).

34. From the above discussion, it is clear that the NaFAC will not have any power of issuance of notice under Section 148 or 148A of the IT Act. As contended by the learned Senior Standing counsel appearing for the respondents, in cases of income escaping the assessment, the work of NaFAC only starts from issuance of notice under Section 142(1) and 143(2) of the IT Act.

35. In terms of Sub-Section (2) of Section 151A of the IT Act, the Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the



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notification, provided that no direction shall be issued after the 31st day of

March, 2022.

36. Thus, Section 151A of the IT Act enables the Central Government to bring separate scheme for the purpose of

- i) assessment, reassessment or re-computation under section 147 or
- ii) issuance of notice under Section 148 or
- iii) conducting of inquiry or issuance of show cause notice or passing of order under Section 148A or
- iv) sanction for issuance of notice under Section 151.

37. By virtue of the power available under Section 151A of the IT Act, the Central Government has brought a Scheme called “E-Assessment of Income Escaping Assessment Scheme, 2022” (hereinafter called as Scheme) vide notification S.O.1466(E) dated 29.03.2022 and the said e-assessment scheme is extracted hereunder:

**NOTIFICATION S.O. 1466(E) [No. 18/2022/F.
NO. 370142/16/2022-TPL(PART1)]**

**E-ASSESSMENT OF INCOME ESCAPING
ASSESSMENT SCHEME, 2022**

**NOTIFICATION S.O. 1466(E) [NO. 18/2022/F. NO.
370142/16/2022-TPL(PART1), DATED 29-3-2022**



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In exercise of the powers conferred by sub-sections (1) and (2) of section 151A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

Short title and commencement:

1.(1) This Scheme may be called the e-Assessment of Income Escaping Assessment Scheme, 2022.

(2) It shall come into force with effect from the date of its publication in the Official Gazette.

Definitions:

2. (1) In this Scheme, unless the context otherwise requires, --

(a) "Act" means the Income-tax Act, 1961 (43 of 1961);

(b) "automated allocation" means 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,

2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

Scope of the Scheme

3. For the purpose of this Scheme,--

(a) assessment, reassessment or re-computation under section 147 of the Act,



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(b) issuance of notice under section 148 of the Act, shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.”

38. The above Scheme was brought in for the following two purposes,

- (i) assessment, reassessment or re-computation under section 147,
- (ii) issuance of notice under Section 148 of the IT Act.

39. However, no scheme has been brought in for the following other 2 purposes as provided in Section 151A of the IT Act

- (i) conducting of inquiry or issuance of show cause notice or passing of order under Section 148A or
- (ii) sanction for issuance of notice under Section 151 of the IT Act.

40. On the other hand, Section 151A was intended to bring separate Scheme for the following purposes and to deal with them separately:



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- i) assessment, reassessment or re-computation under section 147 or
- ii) issuance of notice under Section 148 or
- iii) conducting of inquiry or issuance of show cause notice or passing of order under Section 148A or
- iv) sanction for issuance of notice under Section 151.

41. With the above, now let me analyze the provisions of the Scheme in detail as follows:

(i) Clause 2(1)(b) of the above Scheme, defines “automated allocation” which means 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.

(ii) The purpose of the Scheme is to make

a) assessment, reassessment or re-computation under Section 147 of the Act;

b) issuance of notice under Section 148 of the Act,

shall be through automated allocation, in accordance with risk management strategy



formulated by the Board as referred to in Section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in Section 144B of the Act with reference to making assessment, reassessment or recomputation of total income or loss of assessee.

(iii) As far as assessment, reassessment or re-computation under Section 147 of the IT Act is concerned, as per the Scheme, it has to be carried out through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the IT Act for issuance of notice and in a faceless manner to the extent provided under Section 144(B) of the Act.

(iv) There is no quarrel on the aspect that the assessment, re-assessment or re-computation under Section 147 of the Act shall be made in terms of provision of Section 144B of the IT Act by virtue of the procedure laid down therein.

(v) Clause 3(b) of the Scheme provides that the issuance of notice under Section 148 of the IT Act shall be through



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automated allocation, in accordance with the risk management strategy, formulated by the Board as referred to in Section 148 of the IT Act for issuance of notice, in a faceless manner to the extent provided in Section 144B of the Act with reference to making assessment or reassessment or re-computation of total income or loss of the assessee.

(vi) It was the contention of the Department that already Section 148 notices have been issued through automated allocation in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the Act in a faceless manner.

(vii) As per the provisions of E-Assessment Scheme, while issuing notice under Section 148 of the IT Act, the following three mandatory requirements have to be complied with:

The notice under Section 148 shall be issued

- (a) through automated allocation;
- (b) in accordance with the risk management strategy formulated by the Board as referred to in Section 148 of the Act;
- (c) in the faceless manner to the extent mentioned in Section 144B of the IT Act.



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(a) Automated Allocation System:

(i) As far as the automated allocation for issuance of notice under Section 148 of the IT Act is concerned, the Directorate of Income Tax (Systems) will select cases randomly from ITBA portal based on the PAN card jurisdiction and allocate through the automated allocation system as defined in the Scheme to the concerned Jurisdictional Assessing Officer.

(ii) Since the cases are selected randomly by the Directorate of Income Tax (Systems) and allocated based on the PAN Card jurisdiction to the concerned Jurisdictional Assessing Officer, the JAO will have no role to play in allocation and selection of cases. Even the Directorate of Income Tax (Systems) will not have any knowledge, about the allotment of cases to a particular assessing officer.

(iii) As far as the present case is concerned, as contended by the learned Senior Standing counsel appearing for the respondents, the Directorate of Income Tax (Systems) has made the allocation through



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Automated Allocation System to the respective Assessing Officer based on the PAN card jurisdiction. Hence, in the case on hand, the requirement of Automated Allocation System has already been duly complied with.

(b) Risk Management Strategy:

(i) As far as the risk management strategy is concerned, it was contended by the respondents that the Income Tax Department developed an integrated platform, i.e. Income Tax Business Application (ITBA), which is the core application used by the Income Tax Officer for all operations. In the said portal, all the information gets uploaded based on the risk management strategy formulated by the Board from time to time, and once the information is uploaded in the ITBA Portal from various sources. Thereafter, the system will classify, select and allot, based on the PAN card jurisdiction, after classification based on the Software, through the automated allocation system.

(ii) The situation, under which and how the cases, pertaining to income escaping the assessment under Section 148 of the IT Act, has been



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selected based on the data analytics and Artificial Intelligence (AI) and advance algorithm to detect the cases based on the risk management strategy formulated by the Board from time to time, as contended by Dr.B.Ramaswamy, learned Senior Standing counsel, are as follows:

1. Data Integration from Multiple Sources

The department consolidates data from various sources, including:

Annual Information Statement (AIS)

Tax Deducted at Source (TDS) returns

GST filings

Bank transactions (via SFT - Statement of Financial Transactions)

Property registrations and luxury purchases

Investments in shares, mutual funds, or foreign assets

Data from other government departments like the RBI or SEBI.

2. Cross-Verification of Reported Income

The system compares the income reported in the Income Tax Return (ITR) with:

High-value transactions in the AIS.

TDS and Tax Collected at Source (TCS) data.

Details of expenses or investments reported elsewhere (e.g., property purchases, business turnover).



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Example: A taxpayer reports an income of **** but shows a property purchase of ****. This mismatch triggers an alert.

3. Pattern Recognition and Risk Analysis

AI algorithms identify patterns of underreporting or evasion, such as:

Sudden drops in reported income compared to previous years.

Unusual claims of deductions or exemptions.

Non-reporting of foreign income or assets.

Failure to reconcile GST returns with ITR.

4. Identifying Non-Filers

The system tracks taxpayers who are:

Liable to file returns but fail to do so, based on TDS data, property transactions, or business turnover.

Repeat offenders in earlier assessments.

5. Report from High-Value Transactions

Transactions exceeding specific thresholds are reported by entities like banks, credit card companies, and registrars.

Examples: Cash deposits above **** in a financial year.

Credit card payments exceeding ***** in a single transaction.



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Mutual fund purchases above ****

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6. Information from External Sources

Whistleblower reports, media investigations, or third-party complaints are incorporated into the system for analysis.

7. Automated Risk Scoring

Each taxpayer is assigned a risk score based on:

Income consistency over years.

Discrepancies in declarations.

Past compliance behavior.

Complexity of transactions.

High-risk cases are alerted for further review.

8. Alerts for Reassessment (Section 148)

If the system identifies significant discrepancies or undisclosed income, a case is allotted for reassessment under Section 148, subject to approval by senior tax authorities.

This automated and data-driven process minimizes human bias and ensures systematic detection of income escaping assessment.

The alerts in the Income Tax Department's system are identified through automated processes that analyze



discrepancies, patterns, and inconsistencies in financial data. These alerts are triggered when specific conditions or anomalies are detected. Here's how they are identified:

a) Mismatch in Reported Income

The income reported in the ITR does not align with financial transactions in the Annual Information Statement (AIS) or Form 26AS.

Example: Reported income: **** : Bank deposits: ****

b) High-Value Transactions

Specific thresholds for transactions trigger an alert if not properly explained in the ITR.

Cash Deposits: Deposits above *** in a savings account.

Credit Card Payments: Annual payments exceeding ***

Property Purchases: Real estate transactions above ***

Mutual Fund Investments: Exceeding *** in a financial year.

c) Discrepancy in TDS/TCS Data

Tax Deducted at Source (TDS) shown in Form 26AS does not match the income reported in the ITR.

Example: TDS by employer: ***. Income declared: ***
(lower than expected for this TDS amount).



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d) GST and Income Tax Data Mismatch

Businesses filing GST returns but reporting significantly lower income in ITR.

Example: GST turnover: ***.

ITR turnover: **

e) Sudden Changes in Income or Deductions

Unusual drops in income or abnormal claims of exemptions/deductions compared to previous years.

Example: Previous income: *** current income: ***

without reasonable justification.

f) Inconsistencies in Capital Gains or Investments

Gains from shares, mutual funds, or property are underreported, or investments exceed known sources of income.

Example: Mutual fund investment: **; reported income: **

g) Non-Filing or Delayed Filing

Taxpayers liable to file ITR but failing to do so.

Filing after the due date, especially when associated with high-value transactions.



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h) International Transactions and Foreign Assets

Non-disclosure of foreign income, investments, or bank accounts.

Example: Foreign remittance data shows ** transferred abroad, but no corresponding income is declared.

i) Frequent Cash Transactions

Excessive cash deposits or withdrawals not aligned with the taxpayer's profile or declared income.

Example: Annual cash deposits: **; declared income: **

j) Business Turnover and Profit Mismatch

Businesses reporting disproportionate turnover and profits compared to industry standards.

Example: Turnover: ** profit: **

(significantly lower than sector averages).

k) Non-Reconciliation of AIS/Statement of Financial Transactions (SFT)

The data reported by banks, registrars, or other institutions in the AIS or SFT is not reflected in the taxpayer's ITR. Example: Bank reports ** in interest income; ITR reports ***



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1) Past Non-Compliance Behavior

Taxpayers with a history of underreporting income or penalties in earlier assessments.

How these transactions are Detected :

1. AI and Machine Learning Models: Analyze patterns and detect anomalies based on historical data.
2. Risk Profiling: Taxpayers are scored on their likelihood of evasion based on their profile, transaction history, and compliance behavior.
3. Cross-Verification Tools: Automated systems cross-check data from multiple sources (e.g., banks, registrars, GST filings).
4. Threshold Alerts: Pre-defined thresholds for transactions trigger system-generated alerts for review.

Once the above criteria have been complied with, the notice under section 148 will be issued for further scrutiny, after obtaining the prior approval/sanction from the senior Authorities in terms of provisions of Section 151 of the IT Act.



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(iii) From reading the above, it is clear that the Department has been selecting the cases based on the above procedure and the same is squarely in accordance with the risk management strategy framed by Board referred in Section 148 of the IT Act. Thereafter, based on the Automated Allocation System, the Directorate of Income Tax (Systems) forwarding the cases based on the PAN jurisdiction. Therefore, the selection and allotment of cases, will not comes within the purview of the person who send notice based on the PAN jurisdiction, who is non other then the Jurisdictional Assessing Officer.

(iv) Therefore, the cases were selected based on the risk management strategy framed by the Board in terms of Section 148 of the IT Act. Hence, the requirement of Scheme, i.e., Section 148 notice shall be issued in accordance with the risk management strategy formulated by the Board as referred in Section 148 of the IT Act, has been duly complied with.

(v) Further, it is not in the domain of the concerned jurisdictional Assessing Officer to pick and choose, but it would be automated allocation



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of cases based on the risk management strategy as formulated by the Board from time to time. Therefore, the issuance of notice under Section 148 have already been duly complied with by issuing the same by JAO in a faceless manner, through automated allocation system, in accordance with the risk management strategy as stated above.

(c) Faceless Manner:

(i) The petitioner has referred to Section 144B and contended that it should be in faceless manner otherwise, the Scheme would become redundant and Clause 3(b) of the Scheme would be otiose and in this regard, they referred three judgments of the three High Courts.

(ii) As far as Section 144B is concerned, there is no dispute that the same deals with faceless assessment and the procedure stated therein would apply for the purpose of assessment, re-assessment or re-computation to the extent provided therein and send notice, as referred in Section 144B of the IT Act, by NaFAC. Except the above, the NaFAC will not have any power



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to issue any other notice beyond the scope of Section 144B of the IT Act.

WEB.COM The Scheme only speaks about the issuance of notice in faceless manner.

(iii) Nowhere, either in provisions of IT Act or by virtue of any notification or Scheme, the word “faceless manner” has been defined. Only the word “faceless assessment” has been defined in Section 144B of the IT Act, which reads as follows:

(2)(1)(k) "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;

(iv) A reading of the above definition would reveal that the faceless assessment proceedings is nothing but the e-proceedings conducted electronically in 'e-proceeding' facility through Assessee's registered account in designated portal.

(v) The designated portal means a web portal designated by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre. This designated portal is meant



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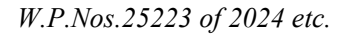
for the purpose of making faceless assessment under Section 144B of the IT

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(vi) As far as sending notice in faceless manner is concerned, the Directorate of Income Tax (Systems) will select the cases based on the risk management strategy formulated by the Board from time to time. Thereafter, allocating the case through Automated Allocation System as discussed above to the respective Jurisdictional Assessing Officer based on the PAN card jurisdiction.

(vii) As discussed above, the faceless manner means, sending notice electronically by way of “e-proceedings” to the assessee's registered account through ITBA portal itself, i.e. web portal which is designated and controlled by Directorate General of Income Tax (System).

(viii) In the present case, the notice was sent to the Assessee electronically from the web portal of ITBA through the e-proceeding facilities available with the Department through the Assessee's registered account from the web portal of the ITBA. There is no quarrel on this aspect also. If it is so, all the requirements of the Scheme are duly complied with i.e., the notice has been sent under Section 148 of the IT Act in a faceless



(ix) At this juncture, it would be apposite to extract the first and last page of the notices issued under Section 148A and 148 of the IT Act, which reads as follows:

First page of Section 148A notice:

Page No.65/102



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Last page of Section 148A notice:

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Hence, It is crystallized that the flagged information in assessee's case suggests that income of Rs.19,67,00,000/- has escaped assessment

7. Conclusion:

7.1 The basis of the material available on record including the reply of the assessee has been examined.

7.2 From the above discussions, it is evident that the documents in possession reveal that the income chargeable to tax to the tune of Rs.19,67,00,000/- has escaped assessment for Assessment Year 2017-18 and the same is represented in the form of asset being deposits in bank accounts.

7.3 On the basis of the examination and the above facts, I am satisfied that the case of the assessee is a fit case for issue of notice u/s.148 of the Income-tax Act, 1961.

7.4 As per fifth and sixth proviso of section 149(1) of the IT Act, the time limit for issue of notice under 148 of the Income-tax Act, 1961 is extended up to 15/04/2024.

7.5 This order u/s.148A(d) of the Income-tax Act, is passed with the prior approval of the Chief Commissioner of Income-tax-1, Chennai, under clause (ii) of Section 151 of the Income-tax Act, 1961.

8. The notice u/s 148 of the Income-tax Act, 1961 for reopening the assessment proceedings for AY 2017-18 is issued accordingly.

LIVESH KUMAR BARNIVAL
NON CORP WARD 10(8) CHENNAI

On case the document is digitally signed please
refer Digital Signature at the bottom of the page!

This document is digitally signed
Signature: LIVESH KUMAR BARNIVAL
Date: 14/04/2024, Apr
Location: CHENNAI



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Section 148 notice:

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX
OFFICER
NON CORP WARD 10(6) CHENNAI

To,
MARK STUDIO INDIA PRIVATE LIMITED
NO. 116, FIRST FLOOR RAMANATHAN STREET,
MADALINGAPURAM NUNGAMBAKKAM
CHENNAI 600034, Tamil Nadu
India

PAN: AAHCM5005B	A.Y: 2017-18	Dated: 15/04/2024	DIN & Notice No: ITBA/AST/S/148_1/2024-25/1064084739(1)
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Notice under section 148 of the Income-tax Act, 1961

Sir/Madam/ Ma,

1. I have the following information in your case or in the case of the person in respect of which you are assessable under the Income-tax Act, 1961(here in after referred to as "the Act") for Assessment Year 2017-18
 - information in accordance with the risk management strategy formulated in this regard

suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN ITBA/AST/F/148A/2024-25/1064082954(1) dated 15/04/2024 and annexed herewith for reference,

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 2017-18 and I, hereby, require you to furnish, within 107 days from the issue of this notice, a return in the prescribed form for the Assessment Year 2017-18.

UMESH KUMAR BARNVAL
NON CORP WARD 10(6) CHENNAI

(If case the document is digitally signed please
refer Digital Signature at the bottom of the page)

Note: If digitally signed, the date of digital signature may be taken as date of document.

JOBRAKUNNAPARTHY BLOCK, No. 121, MAHATMA GANDHI ROAD, NUNGAMBAKKAM, CHENNAI, Tamil Nadu, 600034

Email: CHENNAI.ITO.NOTE@INCOMETAXGOV.IN
Note: The website address of the e-filing portal has been changed from www.assessments.gov.in to www.assessments.gov.in

This document is digitally signed
Signed: UMESH KUMAR BARNVAL
Date: Monday, April 15, 2024
Location: CHENNAI



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WEB COPY (x) A reading of the above two notices would show that the notice has been signed digitally and it was sent to the Assessee's registered e-mail account through ITBA web portal. As contended above, the cases have not been selected by the person, who has send notice. However, as narrated above, the Directorate of Income Tax (Systems) selected the cases based on the discrepancies identified by the risk management system as referred in clause (i) of Explanation (1) to Section 148 of the Act.

42. Except the procedure mentioned above for the purpose of sending notice under Section 148, no other provision enables any of the Income Tax Officers to send notice in any other mode in faceless manner. In the present case, as discussed above, notice has been sent in the faceless manner by duly complying with the conditions and the modalities mentioned in the scheme itself which were already discussed that in the absence of specific provision empowering the Faceless Assessment Officer in terms of Section 144B, the power and the Jurisdiction of the Jurisdictional Assessment Officer cannot be taken away as long as Section 148 notice sent by

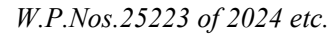


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automated allocation based on risk management strategy and in a faceless manner in terms of the provisions of the Scheme.

43. In the present case, all the three ingredients have been duly complied with by the respondents in issuance of the notice. Therefore, by no stretch of imagination, one can construe that the respondents have sent the notice through ITBA portal not in the faceless manner. Notices were already issued in faceless manner.

44. By referring the notices, the learned counsel for the petitioner has agreed that the e-notice was sent by JAO through e-mail id of the assessee from the web portal of ITBA. However, she would contend that the Officer name has been mentioned in the notices. As far as this contention is concerned, this Court is of the view that if all the notices have been send in faceless manner, name of the Officer should not be mentioned. However, it will only be considered as a procedural error, which will not vitiate the entire initiation of the proceedings and hence, it will not affect the jurisdiction to issue the notice by the respondent. But in future cases, the



where the notices has been sent.

46. For the purpose of assessment, reassessment or re-computation, the Jurisdictional Assessing Officer has been vested by virtue of the Faceless Jurisdiction of Income Tax Authorities Scheme, 2022, which was introduced on 28.03.2022, reads as under:

1. Short title and commencement.— (1) This Scheme may be called the Faceless Jurisdiction of Income tax Authorities Scheme, 2022. (2) It shall come into force with effect from the date of its publication in the Official Gazette.



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2. Definitions.— (1) In this Scheme, unless the context otherwise requires, —

(a) 'Act' means the Income-tax Act, 1961 (43 of 1961);

(b) 'automated allocation' means 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;

(2) words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. Scope, Powers and Performance of functions of income-tax authorities. — For the purpose of this Scheme,

— (a) the exercise of all or any or the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities, by or under the Act as referred to in section 120 of the Act; or

(b) vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act, shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in—

(i) section 144B of the Act with reference to making faceless assessment of total income or loss of assessee;

(ii) the Faceless Appeal Scheme, 2021 notified under sub-sections (6B) and (6C) of section 250 of the Act with reference to the disposal of appeals;

(iii) the Faceless Penalty Scheme, 2021 notified under sub-sections (2A) and (2B) of section 274 of the Act with reference to imposition of penalty under Chapter XXI of the Act;

(iv) the e-Verification Scheme, 2021 notified under sub-sections (1) and (2) of section 135A of the Act with reference to the calling for of information under section 133 of the Act, collecting certain information under section 133B of the Act, or calling for information by prescribed



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authority under section 133C of the Act, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 of the Act;

(v) the e-Settlement Scheme, 2021 notified under sub-sections (11) and (12) of section 245D of the Act with reference to the settlement of pending applications by the interim Board;

(vi) the e-advance rulings Scheme, 2022 notified under sub-sections (9) and (10) of section 245R of the Act with reference to dispute resolution for persons or class of persons, as specified by the Board, who may opt for dispute resolution under the Chapter XIX-AA of the Act with reference to dispute arising from any variation in the specified order fulfilling the specified conditions.”

47. A reading of above Clause 3(b) shows that vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act, shall be in a faceless manner, through automated allocation in accordance with and to the extent provided in section 144B of the Act with reference to making faceless assessment or reassessment of total income or loss of assessee.

48. Therefore, the Faceless Assessment Officer's jurisdiction under Section 124 of the Act has been provided only to make faceless assessment in terms of Section 144B to the extent provided therein. In the Faceless



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Assessment Scheme, the Assessment Officer referred to in Section 144B will only to make faceless assessment and the Assessment Unit, Technical Unit, Verification Unit and Review Unit would be considered as Assessing Officer for the purpose of Section 144B of the Act and those Officers can perform the duties for assessment alone. When such being the case, they have no power to issue notice under Section 148 of the Act. What was intended by the Act is only for the purpose of making faceless assessment through the Assessing Officer referred to in Section 144B of the Act. The Assessing Officer referred to in Section 144B of the Act cannot perform any other acts than making assessment, reassessment or re-computation in faceless manner, to the extent provided in Sub-Section (2) of Section 144B of the IT Act, by the Board.

49. The learned counsel appearing for the petitioner has referred the judgment of the Telangana High Court in ***Kankanala Ravindra Reddy vs. Income-Tax Officer*** reported in (2023) 156 taxmann.com 178 (TELANGANA). The relevant paragraphs, viz., paragraph Nos.25, 26 and 27 are extracted hereunder:



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“25. A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated 28-3-2022 and 29-3-2022, it would clearly indicate that the Central Board of Direct Taxes was very clear in its mind when it framed the aforesaid two schemes with respect to the proceedings to be drawn under section 148A, that is to have it in a faceless manner. There were two mandatory conditions which were required to be adhered to by the Department, firstly, the allocation being made through the automated allocation system in accordance with the risk management strategy formulated by the Board under section 148 of the Act. Secondly, the re-assessment has to be done in a faceless manner to the extent provided under section 144B of the Act.

26. After the introduction of the above two schemes, it becomes mandatory for the Revenue to conduct/initiate proceedings pertaining to reassessment under section 147, 148 & 148A of the Act in a faceless manner. Proceedings under section 147 and section 148 of the Act would now have to be taken as per the procedure legislated by the Parliament in respect of reopening/re-assessment i.e., proceedings under section 148A of the Act.

27. In the present case, both the proceedings i.e., the impugned proceedings under section 148A of the Act, as well as



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the consequential notices under section 148 of the Act were issued by the local jurisdictional officer and not in the prescribed faceless manner. The order under section 148A(d) of the Act and the notices under section 148 of the Act are issued on 29-4-2022, i.e., after the "Faceless Jurisdiction of the Income-tax Authorities Scheme, 2022" and the "e-Assessment of Income Escaping Assessment Scheme, 2022" were introduced.

50. In the above case, the Hon'ble Telangana High Court has held that for making assessment, reassessment or re-computation under Section 147, the notice under Section 148 or 148A of the IT Act shall be issued in the faceless manner and rendered the findings that in the above case, the notices were not issued in such faceless manner. However, in the present case, this Court has already elaborately discussed as to how the Section 148 or 148A notices have been issued by the respondents in faceless manner based on the available facts and circumstances.

51. Further, she referred to the judgment of the Hon'ble Bombay High Court in ***Hexaware Technologies Limited vs. Assistant Commissioner of***



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Income Tax and others reported in **2024 SCC OnLine Bom 1249**. The

relevant paragraphs, viz., paragraph Nos.33 to 37 are extracted hereunder:

“33. The guideline dated August 1, 2022 relied upon by the Revenue is not applicable because these guidelines are internal guidelines as is clear from the endorsement on the first page of the guideline “Confidential For Departmental Circulation Only”. The said guidelines are not issued under section 119 of the Act. Any such guideline issued by the Central Board of Direct Taxes is not binding on the petitioner. Further the said guideline is also not binding on respondent No. 1 as they are contrary to the provisions of the Act and the Scheme framed under section 151A of the Act. The effect of a guideline came up for discussion in Sofitel Realty LLP v. ITO (TDS) [(2023) 457 ITR 18 (Bom); 2023 SCC OnLine Bom 1498; (2023) 153 taxmann.com 496 (Bom).] wherein this court has held that the guidelines which are contrary to the provisions of the Act cannot be relied upon by the Revenue to reject an application for compounding filed by an assessee. The court held that guidelines are subordinate to the principal Act or Rules, it cannot restrict or override the application of specific provisions enacted by Legislature. The guidelines cannot travel beyond the scope of the powers conferred by the Act or the Rules.



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33.1. *The guidelines do not deal with or even refer to the Scheme dated March 29, 2022 ((2022) 442 ITR (Stat) 198) framed by the Government under section 151A of the Act. Section 151A(3) of the Act provides that the Scheme so framed is required to be laid before each House of the Parliament. Therefore, the Scheme dated March 29, 2022 under section 151A of the Act, which has also been laid before Parliament, would be binding on the Revenue and the guideline dated August 1, 2022 cannot supersede the Scheme and if it provides anything to the contrary to the said Scheme, then the same is required to be treated as invalid and bad in law.*

34. *As regards Income-tax Business Application step-by-step Document No. 2 regarding issuance of notice under section 148 of the Act, relied upon by the Revenue, an internal document cannot depart from the explicit statutory provisions of, or supersede the Scheme framed by the Government under section 151A of the Act which Scheme is also placed before both the Houses of Parliament as per section 151A(3) of the Act. This is specially the case when the document does not even consider or even refer to the Scheme. Further the said document is clearly intended to be a manual/guide as to how to use the Income-tax Department's portal, and does not even claim to be a statement of the Revenue's position/stand on the issue in question. Our observations with respect to the*



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guidelines dated August 1, 2022 relied upon by the Revenue will equally be applicable here.

35. Further, in our view, there is no question of concurrent jurisdiction of the jurisdictional Assessing Officer and the Faceless Assessing Officer 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 jurisdictional Assessing Officer or the Faceless Assessing Officer in the Scheme dated March 29, 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 the Revenue is to be accepted, then even when notices are issued by the Faceless Assessing Officer, it would be open to an assessee to make submission before the jurisdictional Assessing Officer and vice versa, which is clearly not contemplated in the Act. Therefore, there is no question of concurrent jurisdiction of both Faceless Assessing Officer or the jurisdictional Assessing Officer with respect to the issuance of notice under section 148 of the Act. The Scheme dated March 29, 2022 ((2022) 442 ITR (Stat) 198) 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



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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 March 29, 2022 ((2022) 442 ITR (Stat) 198) 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 Faceless Assessing Officer as per the said Scheme, we express our view as follows:

36.1 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 Central Board of Direct Taxes, which covers



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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 Faceless Assessing Officer which can issue the notice under section 148 of the Act and not the jurisdictional Assessing Officer. The argument advanced by the respondent would render clause 3(b) of the Scheme otiose and to be ignored or contravened, as according to the 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. The respondents, being an authority subordinate to the Central Board of Direct Taxes, cannot argue that the Scheme framed by the Central Board of Direct Taxes, and which has been laid before both Houses of Parliament is partly otiose and inapplicable. The argument advanced by the respondent expressly makes clause 3(b) otiose and impliedly makes the



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whole Scheme otiose. If clause 3(b) of the Scheme is not applicable, then only clause 3(a) of the Scheme remains. What is covered in clause 3(a) of the Scheme is already provided in section 144B(1) of the Act, which section provides for faceless assessment, and covers assessment, reassessment or recomputation under section 147 of the Act. Therefore, if the Revenue's arguments are to be accepted, there is no purpose of framing a Scheme only for clause 3(a) which is in any event already covered under faceless assessment regime in section 144B of the Act. The argument of the respondent, therefore, renders the whole Scheme redundant. An argument which renders the whole Scheme otiose cannot be accepted as correct interpretation of the Scheme. The phrase “to the extent provided in section 144B of the Act” in the Scheme is with reference to only making assessment or reassessment or total income or loss of the assessee. Therefore, for the purposes of making assessment or reassessment, the provisions of section 144B of the Act would be applicable as no such manner for reassessment is separately provided in the Scheme. For issuing notice, the term “to the extent provided in section 144B of the Act” is not relevant. The Scheme provides that the notice under section 148 of the Act, shall be issued through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act



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and in a faceless manner. Therefore, “to the extent provided in section 144B of the Act” does not go with issuance of notice and is applicable only with reference to assessment or reassessment. The phrase “to the extent provided in section 144B of the Act” would mean that the restriction provided in section 144B of the Act, such as keeping the International Tax Jurisdiction or Central Circle Jurisdiction out of the ambit of section 144B of the Act would also apply under the Scheme. Further the exceptions provided in sub-sections (7) and (8) of section 144B of the Act would also be applicable to the Scheme.

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 the 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 the assessee. Therefore, there is no question of the petitioner having to prove further prejudice before arguing the invalidity of the notice.”



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52. In the above case, the Hon'ble Bombay High Court has also held that for making assessment, reassessment or re-computation under Section 147 of the IT Act, the notice under Section 148 of the IT Act shall be issued in faceless manner. Further, in the above case, it came to conclusion that the Section 148 notice was not sent by the respondents in faceless manner. On the other hand, as stated above, in the present case, this Court has already elaborately discussed as to how the Section 148 notice was send in faceless manner in due compliance of the provisions of the Scheme. However, the Bombay High Court has no occasion deal with the aforesaid aspect since the same was not brought before the Hon'ble Division Bench of the Bombay High Court.

53. She has also referred to the judgment of the Hon'ble Gujarat High Court in *Talati and Talati LLP vs. Office of Assistant Commissioner of Income Tax* reported in **2024: GUJHC: 54567-DB**. The relevant paragraphs, viz., paragraph Nos.22 to 28, 30 and 31 are extracted hereunder:



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“(22) From a further reading of Explanation 1 and Explanation 2 attached to Section 148, it is clear that the provisions under Section 148 for issuance of notice before making assessment, re-assessment or re-computation under Section 147 operate in two different ways. For the purpose of Section 148, where Section 148A is applicable, Explanation 1 provides:

(23) The provisions contained in Explanation 1 shows that the information with the Assessing Officer for the purpose of Section 148, which suggests that the income chargeable to tax has escaped assessment under the Explanation would mean:

(i) any information in the case of the assessee, for the relevant assessment year, in accordance with the risk management strategy formulated by the Board from time to time; or

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in Section 90 or Section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under Section 135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court. On



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the contrary, Explanation 2 which deals with the information received during search and seizure operations under Section 132 requires fulfillment of pre-requisites conditions, noted hereinbefore, in the submission of the learned counsel appearing for the Revenue.

(24) The concept of Risk Management Strategy formulated by the Board is incorporated in Clause (i) of Explanation 1, as also specified in Clause 3 of the notification dated 29.03.2022 issued by the Central Government in accordance with the provisions of Explanation 1 clause (i) to Section 148, which is not applicable in the case of information received during the course of search and seizure under Section 132.

(25) From the language employed in the Explanation 1 and Explanation 2 to Section 148 of the Act' 1961, we reach at an opinion that the method of automated allocation, i.e. for random allocation of cases through algorithm, or by using suitable technological tools, including artificial intelligence and machine learning, in accordance with risk management strategy formulated by the Board, as referred to in Explanation 1 clause (i) to Section 148 of the Act, for issuance of notice under Section 148 in a faceless manner, as per the scheme framed vide notification dated 29.03.2022, cannot be applied to the case of Search and Seizure under Section 132, where the Jurisdictional Assessing Officer (JAO) is required to record his



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satisfaction on the basis of the material for affirmation of opinion in an honest and bona fide manner.

(26) We find substance in the submission of the learned counsel for the Revenue that recording of satisfaction by the Assessing Officer on a perusal of the information received by him as a result of search and seizure operation under Section 132 of the Income Tax Act' 1961, requires application of human mind, inasmuch as, reasons affirmed on the part of the Satisfaction Note may also become subject matter of scrutiny by the Court in a case of challenge, where the Court in exercise of power of judicial review may examine as to whether they are actuated by mala fides or passed on extraneous or irrelevant considerations.

(27) The decision of the Division Bench of the Bombay High Court in the case of Hexaware Technologies Ltd. (supra) has been rendered in a case, which falls within the arena of Explanation 1 to Section 148 and not where Explanation 2 to Section 148 of the Income Tax Act' 1961, would be attracted.

(28) From the above, by reading all the relevant provisions of the Income Tax Act' 1961 as also the notification dated 29.03.2022 issued by the Central Government framing scheme for "EAssessment of Income Escaping Assessment" under sub-sections (1) and (2) of Section 151 A of the Act' 1961, we reach at an irresistible conclusion that the challenge



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to the notice under Section 148 dated 22.03.2024 for A.Y. 2021 - 2022 on the sole premise that the said notice could have been issued only through automated allocation in faceless manner and not by Jurisdictional Assessing Officer (JAO), cannot be sustained.

(29)

(30) Moreover, Section 151A contemplates framing of the scheme by the Central Government by notification in the official Gazette, even for the purpose of issuance of notice under Section 148 in the case of re-assessment or sanction for issue of such notice under Section 151, with the aim to impart greater efficiency, transparency and accountability by eliminating the interface between the income tax authority and the assessee or any other person to the extent technologically feasible.

(31) The feasibility of implying technology for the process, therefore, would be relevant. There may be a situation, where a scheme may be framed by the Central Government for issuance of the notice under Section 148 even in the case of Search and Seizure under Section 132 of the Act' 1961, so as to meet out the expectations of the legislature under Section 151A, to impart greater efficiency, transparency and accountability by applying artificial intelligence, technological innovations, etc., but as of now, from a careful reading of the notification



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dated 29.03.2022, along with the statutory provisions, we find that the aforesaid notification does not cover a case where notice under Section 148 is issued by the Jurisdictional Assessing Officer (JAO) the information received by him in the matter of Search and Seizure under Section 132 of the Act' 1961, or requisitioned under Section 132A."

54. In the above said judgment, it was elaborately discussed with regard to the making of assessment, re-assessment or re-computation along with issuance of notice under Section 148 or 148A of the IT Act shall be made by following the procedure laid down under Section 144B of the IT Act. However, this Court has already elaborately discussed about the situation, where Section 148 or 148A shall be sent in faceless manner and also the stage when the assessment, reassessment or re-computation under Section 144B of the IT Act will commence in detail, but the Hon'ble Division Bench of Gujarat High Court had no occasion to deal with the same.



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55. Dr.B.Ramaswamy, learned Senior Standing counsel has referred the judgment of Hon'ble Delhi High Court in ***T.K.S.Builders Private Limited vs. Income Tax Officer*** rendered in ***W.P.(C).No.1968 of 2023***. The relevant paragraphs, viz., paragraph Nos.99 to 103 are extracted hereunder:

“99. Returning then to the Faceless Reassessment Scheme 2022 itself, we find sufficient merit in the interpretation of its clauses as has been commended for our consideration by the respondents. Clause 3 of the said scheme provides that assessment, reassessment or recomputation under Section 147 of the Act as well as issuance of notice under Section 148 would be through automated allocation in accordance with the risk management strategy and in a faceless manner. The respondents rightly draw our attention to the usage of punctuation at various places in Clause 3. A careful reading of that clause shows that the draftsman has used a comma immediately after the phrase “shall be through automated allocation”. Yet another comma appears after the phrase “for issuance of notice”. It thus appears to have been the clear intent of the author to separate and segregate the phases of initiation of action in accordance with RMS, the formation of opinion whether circumstances warrant action under Section 148 of the Act being undertaken by issuance of notice and the actual undertaking of assessment itself.



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100. *Beyond the specific use of punctuation within Clause 3, a comprehensive reading of the Faceless Reassessment Scheme 2022, supported by the extensive material presented by the respondents, bolsters the clear intent underlying each phase of the faceless assessment process.*

101. *As we had noticed in the preceding parts of this decision, the RMS and the Insight Portal pushes information to the JAO and is principally not concerned with faceless assessment at all. The RMS essentially enables the JAO to firstly examine the veracity of disclosures made and examine the return against various parameters and information which has been collated by the Directorate of Systems. It thus provides the JAO with an insight in respect of various transactions to which the assessee may be connected as well as data pertaining to that assessee which has otherwise been aggregated and mapped on the basis of material existing on the system of the respondents. The respondents would, therefore, appear to be correct in their submission that when material comes to be placed in the hands of the JAO by the RMS, it would consequently be entitled to initiate the process of reassessment by following the procedure prescribed under Section 148A. If after consideration of the objections that are preferred, it stands firm in its opinion that income was likely to have escaped assessment, it would transmit the relevant record*



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to the NFAC. It is at that stage and on receipt of the said material by NFAC that the concepts of automated allocation and faceless distribution would come into play. The actual assessment would thus be conducted in a faceless manner and in accordance with an allocation that the NFAC would make. This, in our considered opinion, would be the only legally sustainable construction liable to be accorded to the scheme. Our conclusion would thus strike a harmonious balance between the evaluation of information made available to an AO, the preliminary consideration of information for the purposes of formation of opinion and its ultimate assessment in a faceless manner.

102. We are also, in this regard, guided by the principles of beneficial construction and thus avoiding an interpretation that would render portions of the Act or the Faceless Assessment Scheme superfluous or ineffective should be avoided//. To assert that the JAO's powers become redundant under the faceless assessment framework would conflict with beneficial construction, as it would undermine provisions specifically established to support comprehensive data analysis and informed decision-making, such as the JAO's access to RMS and Insight Portal information.

103. We are fully cognizant of the contrarian view which was expressed in this respect in Hexaware Technologies and



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which stands reflected in para 36 of the report which has been extracted hereinabove. However, for reasons assigned in the preceding parts of this decision, we find ourselves unable to concur with the interpretation accorded by the Bombay High Court upon Clause 3 of the Faceless Reassessment Scheme 2022. As was noted by us earlier, Clause 3 clearly contemplates the initial enquiry and formation of opinion to reassess being part of one defined process followed by actual assessment in a faceless manner. It thus divides the process of reassessment into two stages and when viewed in that light it is manifest that it strikes a just balance between the obligation of the JAO to scrutinise information and the conduct of assessment itself through a faceless allocation. The distribution of functions between the JAO and NFAC is complimentary and concurrent as contemplated under the various schemes and the statutory provisions. This balanced distribution underscores the legislative intent to create a seamless integration of traditional and faceless assessment mechanisms within a unified statutory framework. This we so hold and observe since we have, principally, been unable to countenance a situation where the JAO stands completely deprived of the jurisdiction to evaluate data and material that may be placed in its hands”



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56. Upon reading the above judgment, this Court is inclined to follow the above findings of the Hon'ble Division Bench of the Delhi High Court, since the above findings are in line with the findings of this Court.

57. Assessment, re-assessment or re-computation:

As far as the assessment, re-assessment or re-computation is concerned, this Court is of the considered view that both the Faceless Assessment Officer as well as the Jurisdictional Assessment Officer will have concurrent jurisdiction for the following reasons:

(a) As far as the international taxation, Central Circle Charges and search and seizure cases are concerned, it has been specified only for the JAO. In such case, the FAO will not have any jurisdiction to make assessment, re-assessment or re-computation.

(b) The Scheme provides only with regard to the Automated Allocation System in accordance with the risk management strategy formulated by the Board from time to time, which shall be made in faceless



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manner. At this juncture, it would be apposite to extract Explanation (1)(i)

to (v) to Section 148 of the IT Act, which reads as follows:

“Explanation 1. For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,-

(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or

(iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court.”

(c) The Clause (i) of Explanation (1) deals on the aspect of income escaped assessment, means any information of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time. Therefore, except the clause (i)



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of Explanation (1), the Scheme has not mentioned anything about the faceless assessment of the categories mentioned at Clause (ii) to (v) of Explanation (1). Hence, all the other categories mentioned in Clause (ii) to (v) of Explanation (1) of Section 148 of the IT Act shall not be made in accordance with the Scheme. Therefore, it is clear that the Scheme was framed to cover the category of information as mentioned in Clause (i) of Explanation (1), for which the assessment, reassessment or recomputation shall be conducted in faceless manner.

(d) Section 144B(2) of the IT Act has empowered the Board to specify the territorial area, persons or class of persons, income or class of income, or cases or class of cases, which shall be made in faceless manner. In all the other cases, where the Board has not specified anything or specified other than by faceless manner, the assessment shall be conducted in any manner, other than the faceless manner, by the concerned JAO.

(e) In terms of Sub-Section 7(a)(ii) and (8) of Section 144B of the IT Act, the Principal Chief Commissioner or Principal Director General (in-



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charge of NaFAC), as the case may be, at any stage of the assessment, if considered necessary, shall transfer the cases to the Assessing Officer having jurisdiction over such cases with the prior approval of the Board.

(f) For the aforesaid reasons, this Court has arrived at a conclusion that in terms of the provisions of the IT Act, the assessment, re-assessment or re-computation shall be conducted by both the FAO as well as JAO as they have concurrent jurisdiction.

58. In fine, to put it in a nutshell, this Court pass the following orders:

i) As far as the issuance of notice under Section 148 of the IT Act is concerned, only the JAO will have exclusive jurisdiction.

ii) As far as the assessment, re-assessment or re-computation in terms of the provisions of Section 147 of the IT Act is concerned, both the FAO as well as the JAO will have concurrent jurisdiction.

iii) The Directorate of Income Tax (Systems) shall have the power to make allotment of cases, through Automated Allocation



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System to allot cases for issuance of notice under Section 148A/148 in eligible cases based on the risk management strategy in terms of the provisions of the Scheme dated 29.03.2022, to the Jurisdictional Assessing Officer based on the PAN card jurisdiction.

iv) The JAO shall issue notice under Section 148 of the IT Act, based on the cases allotted by the Directorate of Income Tax (Systems) in faceless manner, by virtue of signing it digitally without referring their name, to the e-mail id of the registered account of the Assessee through the ITBA Portal.

v) In the present writ petitions, the cases were allotted by the Directorate of Income Tax (Systems) through Automated Allocation System, based on the risk management strategy formulated by the Board as referred to in Section 148 of the IT Act, for issuance of notice to the Jurisdictional Assessing Officer, who had thereafter sent the Section 148 notice to the registered e-mail account of the Assessee from the ITBA Portal, in faceless manner. Thus, the issuance of the impugned notice was duly in accordance with the Scheme, except the procedural lapse of mentioning the name of the JAO.



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vi) The said procedural errors will not vitiate the initiation of the proceedings for issuance of notice under Section 148 of the IT Act since such errors are curable in nature.

vii) In terms of the provisions of Section 151A of the IT Act, still the JAOs shall have to obtain prior approval from the higher authority for issuance of Section 148 notice under the Scheme in faceless manner.

viii) The JAO shall upload in the ITBA Portal, the relevant documents along with the reply received for Section 148 notice from the Assessee.

ix) Thereafter, the Directorate of Income Tax (Systems) forward the Section 148 cases to NaFAC to take further action. Immediately thereupon, the NaFAC shall assume the jurisdiction in terms of Section 144B of the IT Act.

x) Once the NaFAC assumed its jurisdiction subsequent to the receipt of the information pertaining to Section 148 cases from the Directorate of Income Tax (Systems), the NaFAC shall issue the notice under Section 143(2) or 142(1) of the IT Act calling for the further information from the Assessee.



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xi) In terms of Sub-Section (2) of Section 144B of the IT Act, the Board shall have power to specify the territorial area, or persons or class of persons, incomes or class of incomes, or cases or class of cases, in which, the assessment shall be made in faceless manner.

xii) The guidelines issued on 24.05.2023, by the Board, is well within the powers available to them, in terms of the provisions of Sub-Section (2) of Section 144B of the IT Act and issuance of such guidelines will not amount of making any modification, granting exemptions or adaptation of the terms and conditions specified in the Schemes dated 28.03.2022 and 29.03.2022. The Board has exercised the power only in terms of the provisions of Section 144B(2) of the IT Act and not in terms of the provisions of Section 151A(2) of the IT Act. The proviso to Sub-Section (2) of Section 151A of the IT Act deals with the aspect that the Central Government shall not issue any direction after 31.03.2022 to make any exemption, modification and adaptation with regard to the Schemes dated 28.03.2022 and 29.03.2022. In the present case, the guidelines issued in terms of Sub-Section (2) of Section 144B of the IT Act will not amount to the directions issued by the Central Government in terms of Sub-Section (2) of Section 151A of the IT Act.



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xiii) The power of Central Government to issue any direction in terms of Sub-Section (2) of Section 151A of the IT Act read with its proviso, will be entirely different from the issuance of guidelines, by the Board, with the power available in terms of Sub-Section (2) of Section 144B of the IT Act.

xiv) The provisions of Section 144B of the IT Act is both in the nature of substantive as well as procedural.

xv) While the FAO performing the duties of faceless assessment in faceless manner, the JAO is also equally performing his duties, in faceless manner, while issuing the notice under Section 148A/148 of the IT Act, as intended in the Scheme.

59. For all these reasons, these writ petitions are liable to be dismissed. Accordingly, these writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

60. While dismissing these petitions, this Court grants liberty to the petitioners to file their reply within a period of 30 days from the date of receipt of copy of this order, in which case, the Authorities are directed to



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consider the said reply and pass orders after affording an opportunity of personal hearing to the petitioner.

20.12.2024

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

nsa

To

1.Income Tax Officer,
Non-Corporate Ward 10(6),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034

2.National Faceless Assessment Unit,
New Delhi.



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KRISHNAN RAMASAMY.J.,

nsa

W.P.Nos.25223 & 25227 of 2024
and W.M.P.Nos.27545, 27547, 27549 & 27550 of 2024

20.12.2024