* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: October 04, 2024**

Judgment pronounced on: October 28, 2024

\+ W.P.(C) 1968/2023

T.K.S. BUILDERS PVT. LTD. .....Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

INCOME TAX OFFICER WARD 25(3) NEW DELHI .....Respondent

Through: Mr. Aseem Chawla, SSC with Ms. Pratishta, Ms. Nivedita, Ms. Priya Sarkar, Advs.

\+ W.P.(C) 4512/2023 & CM APPL. 17291/2023 (Interim Relief)

GDR FINANCE AND LEASING PRIVATE LIMITED .....Petitioner

Through: Mr. Prakash Kumar & Mr. Rupinder Kumar, Advs.

versus

INCOME TAX OFFICER, WARD 10(1), NEW DELHI .....Respondent

Through: Mr. Abhishek Maratha, SSC with Ms. Nupur Sharma, Mr. Parth Semwal & Mr. Apoorv Agarwal, JSCs, Mr. Gaurav Singh, Mr. Bhanukaran Singh, Ms. Muskan Goel, Ms. Parithi Kohli, Mr. Himanshu Gaur, Advs.

\+ W.P.(C) 8891/2023 & CM APPL. 33614/2023(stay)

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SULOCHNA GOEL .....Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 43(1) DELHI AND ANR. .....Respondents

Through: Mr. Aseem Chawla, SSC with Ms. Pratishta, Ms. Nivedita & Ms. Priya Sarkar, Advs.

\+ W.P.(C) 5246/2023& CM APPL. 20477/2023 (stay)

BISHAMBER DAYAL CHANDER MOHAN .....Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

INCOME TAX OFFICER WARD 58(3) .....Respondent

Through: Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh & Mr. Yojit Pareek, JSCs for IT Deptt.

\+ W.P.(C) 6777/2023 & CM APPL. 26479/2023 (stay)

BISHAMBER DAYAL CHANDER MOHAN (ACTING THROUGH COMPETENT PARTNER, MR. CHANDER MOHAN AGARWAL) .....Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

INCOME TAX OFFICER, WARD 58(3), DELHI .....Respondent

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17:50:00

Through: Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh & Mr. Yojit Pareek, JSCs for IT Deptt.

\+ W.P.(C) 7178/2023 & CM APPL. 27960/2023 (stay)

BISHAMBER DAYAL CHANDER MOHAN (ACTING THROUGH COMPETENT PARTNER MR CHANDER MOHAN AGARWAL) .....Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

INCOME TAX OFFICER WARD 58(3), DELHI .....Respondent

Through: Mr. Gaurav Gupta, SSC with Mr. Shivendra Singh & Mr. Yojit Pareek, JSCs for IT Deptt.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

TABLE OF CONTENTS

A. FACTUAL BACKGROUND 4

B. ARGUMENTS ADVANCED BY RESPECTIVE SIDES 11

C. STATUTORY PROVISIONS RELEVANT TO THE FACELESS SCHEME OF ASSESSMENT 41

D. NOTIFICATIONS AND INSTRUCTIONS PERTAINING TO THE FACELESS SCHEME OF ASSESSMENT 58

E. RATIONALE AND LEGISLATIVE INTENT UNDERLYING THE FACELESS SCHEME OF ASSESSMENT 69

F. RMS AND OTHER MODES OF SELECTION OF CASES .. 76

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

G. "INFORMATION" RELEVANT FOR ASSESSMENTS 80
H. THE CONCURRENT CONFERRAL OF JURISDICTION .. 84
I. ASSESSMENT AND RE-ASSESSMENT ACTION IN LIGHT OF THE FACELESS ASSESSMENT REGIME..... 86
J. DISPOSITION..... 106

YASHWANT VARMA, J.

A. FACTUAL BACKGROUND

1. This batch of writ petitions assail the validity of reassessment action initiated under Section 148 of the **Income Tax Act, 1961**[1]. Although that action is impugned on various grounds, learned counsels for the writ petitioners have confined their submissions to the issue of whether a notice issued by the **Jurisdictional Assessing Officer**[2] would be valid and compliant with the Faceless Scheme of Assessment which had come to be adopted by virtue of Sections 144B and 151A of the Act. We, consequently, restrict the present judgment to the aforesaid issue alone and reserve the right of the writ petitioners to address all other objections which are taken to the commencement of reassessment in independent and appropriate proceedings.

2. For purposes of disposal of the present batch, we propose to take note of the salient facts which obtain in lead petition, W.P.(C) 8891/2023, and which pertains to **Assessment Year**[3] 2014-15. On 31 March 2021, a notice under Section 148 of the Act came to be issued against the writ petitioner. That notice was challenged by way of W.P.(C) 965/2022 and which formed part of a larger batch of writ petitions which has since then come to be commonly known as **Suman**

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[1] Act
[2] JAO
[3] AY

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Jeet Agarwal v. Income Tax Officer, Ward 61(1) and Others[4]. The aforenoted writ petition was duly entertained and interim orders passed on 24 March 2022, restraining the respondents from taking any coercive action against the petitioner in pursuance of the notice referable to Section 148.

3. On 04 May 2022, the Supreme Court pronounced its judgment in a batch of Special Leave Petitions and appeals titled **Union of India v. Ashish Agarwal**[5]. The said batch was principally concerned with the validity of notices of reassessment issued after the promulgation of Finance Act, 2021 and the respondents, despite the above, having chosen to commence reassessment proceedings in accordance with the erstwhile statutory regime which existed.

4. In order to lend a quietus to that controversy and which had resulted in numerous challenges being mounted before various High Courts, the Supreme Court in *Ashish Agarwal* modified the judgments handed down by different High Courts in the following terms:-

> "**25.** Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:
>
> **25.1.** The respective impugned Section 148 notices issued to the respective assessees shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter.
>
> **25.2.** The requirement of conducting any enquiry with the prior approval of the specified authority under Section 148-A(a) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-

[4] 2022 SCC OnLine Del 3141
[5] (2023) 1 SCC 617

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Signing Date:28.10.2024
17:50:00

2021 till date, including those which have been quashed by the High Courts.

25.3. The assessing officers shall thereafter pass an order in terms of Section 148-A(d) after following the due procedure as required under Section 148-A(b) in respect of each of the assessees concerned.

25.4. All the defences which may be available to the assessee under

Section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.

25.5. The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended Section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.

26. There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective asses sees. We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assessees as because of a bona fide belief of the officers of the Revenue in issuing approximately 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.

27. Therefore, we have proposed to pass the present order with a view to avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to **PAN INDIA**.

28. In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

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17:50:00

28.1. The impugned Section 148 notices issued to the respective assessees which were issued under unamended Section 148 of the IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show cause notices in terms of Section 148-A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter.

28.2. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(a) is hereby dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

28.3. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.

28.4. The assessing officers shall thereafter pass orders in terms of

Section 148-A(*d*) in respect of each of the assessees concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted).

28.5. All defences which may be available to the assessees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessees concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available.

29. The present order shall be applicable **PAN INDIA** and all judgments and orders passed by the different High Courts on the issue and under which similar notices which were issued after 1-4-2021 issued under Section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of lndia so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that the present order shall also govern the pending writ petitions, pending before various the High Courts in which similar notices under Section 148 of the Act issued after 1-4-2021 are under challenge.

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17:50:00

> **30.** The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only."

5. Pursuant to the liberty so accorded in *Ashish Agarwal*, a notice under Section 148A(b) came to be issued in respect of the petitioner on 02 June 2022. The petitioner furnished a response to that notice on 15 June 2022. Ultimately and in compliance with the procedure as prescribed in Section 148A, the JAO passed an order under Section 148A(d) dated 22 July 2022 rejecting the objections raised to the commencement of reassessment. This was followed by the issuance of a consequential notice under Section 148 of the same date.

6. Pursuant to the judgment rendered by the Supreme Court in *Ashish Agarwal*, the batch of writ petitions pending before this Court in *Suman Jeet Agarwal* came to be disposed of on 27 September 2022. It becomes relevant to note that *Suman Jeet Agarwal* was principally concerned with a challenge raised to various notices under Section 148 which had come to be issued at the cusp of Finance Act, 2021 coming into effect. While dealing with the categories of notices and the date when those notices would be deemed to have been issued, the Court had classified various notices into five stated categories. That batch ultimately came to be disposed of in the following terms:-

> "**209.** For the reasons and principles that we have laid down, we dispose of these Writ Petitions with the following directions:
>
> **210. Category 'A' :** The Notices falling under category 'A', which were digitally signed on or after 1st of April, 2021, are held to bear the date on which the said Notices were digitally signed and not 31st March 2021. The said petitions are disposed of with the direction that the said Notices are to be considered as show-cause-notices

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17:50:00

under Section 148A (b) of the Act as per the directions of the apex Court in the *Ashish Agarwal* (Supra) judgment.

211. Category 'B' : The Notices falling under category 'B' which were sent through the registered e-mail ID of the respective JAOs, though not digitally signed are held to be valid. The said petitions are disposed of with the direction to the JAOs to verify and determine the date and time of its despatch as recorded in the ITBA portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after 1 of April, 2021, the Notices are to be considered as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the *Ashish Agarwal* (Supra) judgment.

212. Category 'C : The petitions challenging Notices falling under category 'C which were digitally signed on 31st of March 2021, are disposed of with the direction to the JAOs to verify and determine the date and time of despatch as recorded in the ITBA portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after 1st of April, 2021, the Notices are to be considered as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the *Ashish Agarwal* (Supra) judgment.

213. Category 'D': The petitions challenging Notices falling under category 'D' which were only uploaded in the E-filing portal of the assessees without any real time alert, are disposed of with the direction to the JAOs to determine the date and time when the assessees viewed the Notices in the E-filing portal, as recorded in the ITBA portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment. If such date of issuance is determined to be on or after 1st of April 2021, the Notices will be construed as issued under Section 148A (b) of the Act of 1961 as per the *Ashish Agarwal* (Supra) judgment.

214. Category 'E': The petitions challenging Notices falling under category 'E' which were manually despatched, are disposed of with the direction to the JAOs to determine in accordance with the law laid down in this judgment, the date and time when the Notices were delivered to the post office for despatch and consider the same as date of issuance. If the date and time of despatch recorded is on or after 1 of April, 2021, the Notices are to be construed as show-cause-notices under Section 148A (b) as per the directions of the apex Court in the *Ashish Agarwal* (Supra) judgment.

215. Notices sent to unrelated e-mail addresses: The petitions challenging Notices which were sent to unrelated e-mail addresses are disposed of with the direction the JAOs to verify the date on which the Notice was first viewed by the assessee on the E-filing portal and consider the same as the date of issuance. If such date of issuance is determined to be on or after 01 April, 2021, the Notices

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Signing Date:28.10.2024
17:50:00

will be construed as issued under Section 148A (b) of the Act of 1961 as per judgment in *Ashish Agarwal* (Supra).

216. We may note that in the writ petitions, the petitioners have raised additional defenses to challenge the impugned Notices. Such additional defenses have not been considered by this Court and the petitioners shall be at liberty to raise all such additional defenses as available inlaw.

217. We are conscious that the time granted by the Supreme Court in *Ashish Agarwal* to the Department has since expired on 3rd June, 2022 however, the proceedings in the present writ petitions were stayed on 24th March, 2022 until the pronouncement of this judgment. Therefore, we grant the JAOs in the first instance eight (8) weeks time from today to determine the date of issuance of the Notices as per the law laid down in this judgment.

218. The Notices which in accordance with the law laid down in this judgment has been verified by the JAOs to have been issued on or after 01st April 2021 and until 30th June, 2021 shall be deemed to have been issued under Section 148A of the Act of 1961 as substituted by the Finance Act, 2021 and construed to be show-cause notices in terms of Section 148A(b) as per the judgment of the apex Court in *Ashish Agarwal* (Supra) and the JAOs shall thereafter follow the procedure set down by the Supreme Court in the said judgment which reads as follows:

xxxx xxxx xxxx

219. With the aforesaid directions, present writ petitions and pending applications stand disposed of."

7. It would appear that taking a cue from the aforesaid decision, yet another notice under Section 148A(b) dated 28 October 2022 came to be issued in respect of the petitioner. This was followed by an order dated 13 December 2022 being passed referable to Section 148A(d) along with a notice under Section 148 of even date. Although a final assessment order dated 24 May 2023 thereafter came to be framed, the said order alludes to the second notice under Section 148 dated 22 July 2022. We have not been informed of the fate of the notice dated 13 December 2022 and which represented the last of the multiple notices issued by the respondents. It is at this juncture that the present writ petition came to be filed before this Court.

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8. The challenge to the notice under Section 148 was principally founded on the decisions handed down by the High Courts of Karnataka, Telangana, Bombay, and Gauhati, all of which have in unison, held that after the introduction of Sections 144B and 151A read together with the **E- Assessment of Income Escaping Assessment Scheme, 2022**[6] as embodied in the Notification dated 29 March 2022, the JAO would stand denuded of jurisdiction to commence proceedings under Section 148 of the Act.

B. ARGUMENTS ADVANCED BY RESPECTIVE SIDES

9. Both Mr. Goel as well as Mr. Kumar, learned counsels who appeared in support of the writ petitions, commended for our consideration the judgments handed down by the aforenoted High Courts and argued that once the respondents had chosen to adopt the faceless procedure for assessment even in respect of reassessment, the JAO would have no authority to invoke Section 148. It was their contention that the judgments of different High Courts have consistently taken the position as advocated above and consequently that view meriting affirmation and these writ petitions being allowed on this score alone.

10. The first of those judgments which appears to have dealt with this issue was of the Telangana High Court in **Kankanala Ravindra Reddy vs. Income-tax Officer**[7]. The challenge which was addressed before that High Court to the Section 148 notices was that once the respondents had adopted faceless assessment in terms of the scheme enacted under Section 151A, the JAO would stand denuded of power

[6] Faceless Reassessment Scheme 2022
[7] W.P (C) 25903/2023 decided on 14 September 2023

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Signing Date:28.10.2024
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and authority to commence proceedings under Section 148A and that it was only the faceless route of assessment which could have been followed.

11. Dealing with this issue, the Telangana High Court in *Kankanala Ravindra Reddy* had observed as follows: -

> **"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 undersection 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 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 undersection 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."

We are informed that the Revenue has assailed that judgment by way of Special Leave Petition (Civil) Diary No. 2041/2024 before the Supreme Court and on which notice came to be issued on 02 February 2024.

12. A similar question arose for consideration of the High Court of Telangana yet again in **Venkataramana Reddy Patloola vs. Deputy**

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17:50:00

Commissioner of Income Tax and Others[8]. The Telangana High Court, while construing the Faceless Reassessment Scheme, 2022 which had come to be introduced on 29 March 2022, negated the argument of the Revenue of the JAO being concurrently empowered to undertake reassessment by observing:-

> "**18.** Learned counsel for the petitioners, by placing reliance on the judgment of Bombay High Court in *Hexaware Technologies Ltd.*(supra), argued that the provision has already been interpreted by the Bombay High Court, and therefore, the aforesaid expression '*to the extent provided in Section 144B of the Act*' does not deal with the aspect of issuance of notice under Section 148 of the Act.
>
> **19.** As noticed, learned Senior Standing Counsel for Income Tax Department has taken a diametrically opposite stand by contending that the said expression, indeed, covers the issuance of notice under Section 148 of the Act. His contention was that issuance of notice under Section 148 of the Act was also part of assessment procedure.
>
> **20.** In the considered opinion of this Court, clause 3(b) of the notification dated 29.03.2022, in specific, deals with issuance of notice under Section 148 of the Act. For that purpose, the notification seeks to apply e-assessment of income escaping assessment scheme, 2022. A microscopic reading of clause 3(b) shows that its only literal interpretation could be that issuance of notice under Section 148 of the Act is squarely covered under the scheme, and for the purpose of issuance of notice, the faceless procedure must be followed. The expression '*to the extent provided in Section 144B of the Act*' in our judgment does not deal with 'issuance of notice' under Section 148. The said expression is applicable with reference to 'assessment' and 'reassessment'. Sub-section (2) of Section 144B relates to "assessment" and does not deal with issuance of notice under Section 148 of the Act.
>
> xxxx xxxx xxxx
>
> **22.** A careful reading of the scheme points out that law makers consciously provided two different sub clauses (a) and (b). Clause 3 '(a)' specifically deals with assessment, reassessment and recomputation whereas sub-clause '(b)' deals with notice under Section 148 of the Act and gives reference of Section 144B for providing 'extent' for the purpose of 'assessment' and 'reassessment'. Putting it differently, sub-clause (b) of Clause 3 of the scheme, before use of word 'and' is complete in itself and makes it obligatory to issue notice under Section 148 as per automated

[8] 2024 SCC OnLine TS 1792

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allocation procedure envisaged in clause 2 (b) of the scheme. The sentence after use of word 'and' in sub-clause (b) of clause 3 talks about 'extent' provided in Section 144B with reference to assessment and reassessment. The second portion of sub-clause (b) of clause 3 after 'and' does not deal with issuance of notice under Section 148 of the Act. Therefore, sub-clause (b) of clause 3 is in two parts. First part is confined to notice under Section 148 of the Act, whereas, second part after the word 'and' is confined to 'assessment' and 'reassessment'.

xxxx xxxx xxxx

24. Thus, there is no cavil of doubt that Section 144B of the Act and order of CBDT dated 06.09.2021 give exemption from following the mandatory faceless procedure only in relation to passing of assessment orders in cases of central charges and international tax charges. Any other interpretation would amount to doing violence with the language employed in the scheme/notification dated 29.03.2022, Section 144B(2) of the Act and order dated 06.09.2021. Since in our view, the plain and unambiguous language used in the scheme and order dated 06.09.2021 shows that the notice under Section 148 does not fall within the 'exception', the judgments cited by the learned Senior Standing Counsel for Income Tax Department are of no assistance. The Taxpayer is nowhere distinguished between NRIs and Indian Citizens. The notice issued under Section 148 must comply with the requirement of the Scheme whether or not the Taxpayer is NRI/Indian Citizen. Thus, the second limb of argument of the learned Senior Standing Counsel for Income Tax Department deserves to be rejected.

25. Pertinently, this Court in *Kankanala Ravindra Reddy* (supra), held as under:

> "25. A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated 28.03.2022 and 29.03.2022, 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."
>
> (Emphasis Supplied)

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13. By the time the Telangana High Court came to pronounce its verdict in *Venkataramana Reddy Patloola,* it also had the benefit of considering a detailed decision which had come to be pronounced by the Bombay High Court in **Hexaware Technologies Ltd. v. Assistant Commissioner of Income Tax**[9]. In *Hexaware Technologies*, the Bombay High Court, apart from the various other questions which were formulated, also had an occasion to examine the issue of whether a notice under Section 148, if issued by the JAO, would sustain in light of the scheme formulated in accordance with Section 151A of the Act. Since most of the High Courts have thereafter followed the opinion expressed in *Hexaware Technologies*, we deem it apposite to extract the following passages from that decision: -

> **"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.
>
> **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

[9] 2024 SCC OnLine Bom 1249

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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 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 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

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

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 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 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

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

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 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 statue, itself causes prejudice to the assessee. All assessees are entitled to be assessed as per law and by following the procedure prescribed by law. Therefore, when the Income-tax authority proposes to take action against an assessee without following the due process of law, the said action itself results in a prejudice to the assessee. Therefore, there is no question of the petitioner having to prove further prejudice before arguing the invalidity of the notice."

14. A reading of the decision in *Hexaware Technologies* would compel one to notice a detailed reference being made to an Office Memorandum dated 20 February 2023. It, however, becomes pertinent to clarify here that the document dated 20 February 2023, and which

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

has been described to be an "*Office Memorandum*", was actually instructions provided to counsels for the Revenue in connection with the batch of writ petitions which were pending before that High Court. They were thus rightly construed as not being statutory instructions which the **Central Board of Direct Taxes**[10] is otherwise, and undoubtedly, empowered to issue under the Act.

15. However, those instructions were duly examined and dealt with by the Bombay High Court in the following terms: -

> **"38.** With respect to the Office Memorandum dated February 20, 2023, the said Office Memorandum merely contains the comments of the Revenue issued with the approval of Member (L&S) Central Board of Direct Taxes and the said Office Memorandum is not in the nature of a guideline or instruction issued under section 119 of the Act so as to have any binding effect on the Revenue. Moreover, the arguments advanced by the Revenue on the said Office Memorandum dated February 20, 2023 is clearly contrary to the provisions of the Act as well as the Scheme dated March 29, 2022 and the same are dealt with as under—
>
> > (i) It is erroneously stated in paragraph 3 of the Office Memorandum that "The scheme clearly lays down that the issuance of notice under section 148 of the Act has to be through automation in accordance with the risk management strategy referred to in section 148 of the Act". The issuance of notice is not through automation but through "automated allocation". The term "automated allocation" is defined in clause 2(1)(b) of the said Scheme to mean random allocation of cases to the Assessing Officers. Therefore, it is clear that the Assessing Officers are randomly selected to handle a case and it is not merely a case where notice is sought to be issued through automation.
> >
> > (ii) It is further erroneously stated in paragraph 3 of the Office Memorandum that "To this end, as provided in section 148 of the Act, the Directorate of Systems randomly selects a number of cases based on the criteria of Risk Management Strategy". The term "randomly" is further used at numerous other places in the Office Memorandum with respect to selection of cases for consideration/issuance of notice under section 148 of the Act. The respondent is clearly incorrect in its understanding of the said Scheme as the reference to

[10] CBDT

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

random in the said Scheme is reference to selection of Assessing Officer at random and not selection of section 148 cases as random. If the cases for issuance of notice under section 148 of the Act are selected based on criteria of the risk management strategy, then, obviously, the same are not randomly selected. The term "randomly" by definition mean something which is chosen by chance rather than according to a plan. Therefore, if the cases are chosen based on risk management strategy, they certainly cannot be said to be random. The computer/system cannot select cases on random but selection can be based on certain well-defined criteria. Hence, the argument of the respondents is clearly unsustainable. If the case of the respondent is that the applicability of section 148 of the Act is on random basis, then the provisions of section 148 itself would become contrary to article 14 of the Constitution of India as being arbitrary and unreasonable. Randomly selecting cases for reopening without there being any basis or criteria would mean that the section is applied by the Revenue in an arbitrary and unreasonable manner. The word "random" is used in clause 2(1)(b) of the said Scheme in the definition of "automated allocation"."Automated allocation" is defined in the said clause to mean "an algorithm for randomised allocation of cases….". The term "random", in our view, has been used in the context of assigning the case to a random Assessing Officer, i.e., an Assessing Officer would be randomly chosen by the system to handle a particular case. The term "random" is not used for selection of case for issuance of notice under section 148 as has been alleged by the Revenue in the Office Memorandum. Further, in paragraph 3.2 of the Office Memorandum, with respect to the reassessment proceedings, the reference to "random allocation" has correctly been made as random allocation of cases to the Assessment Units by the National Faceless Assessment Centre. When random allocation is with reference to officer for reassessment then the same would equally apply for issuance of notice under section 148 of the Act.

(iii) The conclusion at the bottom of page 2 in paragraph 3 of the Office Memorandum that "Therefore, as provided in the Scheme the notice under section 148 of the Act is issued on automated allocation of cases to the Assessing Officer based on the risk management criteria" is also factually incorrect and on the basis of incorrect interpretation of the Scheme. Clause 2(1)(b) of the Scheme defined "automated allocation" 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

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

the use of resources". The said definition does not provide that the automated allocation of case to the Assessing Officer is based on the risk management criteria. The reference to risk management criteria in clause 3 of the Scheme is to the effect that the notice under section 148 of the Act should be in accordance with the risk management strategy formulated by the Board which is in accordance with Explanation 1 to section 148 of the Act. In our view, the Revenue is misinterpreting the Scheme, perhaps to cover its deficiency of not following the Scheme for issuing notice under section 148 of the Act.

(iv) In paragraph 3.1 of the Office Memorandum, it is stated that the case is selected prior to issuance of notice are decided on the basis of an algorithm as per risk management strategy and are, therefore, randomly selected. It is further stated that these cases are "flagged" to the jurisdictional Assessing Officer by the Directorate of Systems and the jurisdictional Assessing Officer does not have any control over the process. It is further stated that the jurisdictional Assessing Officer has no way of predicting or determining before hand whether the case will be "flagged" by the system. The contention of the Revenue is that only cases which are "flagged" by the system as per the risk management strategy formulated by the Central Board of Direct Taxes can be considered by the Assessing Officer for reopening, however, in clause (i) in the Explanation 1 to section 148 of the Act, the term "flagged" has been deleted by the Finance Act, 2022, with effect from April 1, 2022. In any case, whether only cases which are flagged can be reopened or not is not relevant to decide the scope of the Scheme framed under section 151A of the Act, which required the notice under section 148 of the Act to be issued on the basis of random allocation and in a faceless manner.

(v) The Revenue has wrongly contended in paragraph 3.1 of the Office Memorandum that "Therefore, whether jurisdictional Assessing Officer or National Faceless Assessment Centre should issue such notice is decided by administration keeping in mind the end result of natural justice to the assessees as well as completion of required procedure in a reasonable time". In our opinion, there is no such power given to the administration under either section 151A of the Act or under the said Scheme. The Scheme is clear and categorical that notice under section 148 of the Act shall be issued through automated allocation and in a faceless manner. Therefore, the argument of the Revenue is clearly contrary to the provisions of the Scheme.

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(vi) In paragraph 3.3 of the Office Memorandum, it is again erroneously stated that "Here it is pertinent to note that the said notification does not state whether the notices to be issued by the National Faceless Assessment Centre or the jurisdictional Assessing Officer ("JAO")… It states that issuance of notice under section 148 of the Act shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in a faceless manner to the extent provided in section 144B of the Act. The Scheme is categoric as stated aforesaid that the notice under section 148 of the Act shall be issued through automated allocation and in a faceless manner. The Scheme clearly provides that the notice under section 148 of the Act is required to be issued by National Faceless Assessment Centre and not the jurisdictional Assessing Officer. Further, unlike as canvassed by the Revenue that only the assessment shall be in faceless manner, the Scheme is very clear that both the issuance of notice and assessment shall be in faceless manner.

(vii) In paragraph 5 of the Office Memorandum, a completely unsustainable and illogical submission has been made that section 151A of the Act takes into account that procedures may be modified under the Act or laid out taking into account the technological feasibility at the time. Reading the said Scheme along with section 151A of the Act makes it clear that neither the section or the Scheme speak about the detailed specifics of the procedure to be followed therein. This argument of the Revenue is clearly contrary to the Scheme as the Scheme is very specific to provide, inter alia, that the issuance of notice under section 148 of the Act shall be through automated location and in a faceless manner. Therefore, the Scheme is mandatory and provides the specification as to how the notice has to be issued. Further the argument of the Revenue that section 151A of the Act takes into account that the procedure may be modified under the Act is without appreciating that if the procedure is required to be modified then the same would require modification of the notified Scheme. It is not open to the Revenue to refuse to follow the Scheme as the Scheme is clearly mandatory and is required to be followed by all Assessing Officers.

(viii) The argument of the Revenue in paragraph 5.1 of the Office Memorandum that the section and Scheme have left it to the administration to device and modify procedures with time while remaining confined to the principles laid down in the said section and Scheme, is without appreciating that one of the main principles laid down in the Scheme is that the

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

notice under section 148 of the Act is required to be issued through automated allocation and in a faceless manner. There is no leeway given on the said aspect and, therefore, there is no question of the administration to device and modify procedures with respect to the issuance of notice."

16. The reasoning assigned by the Bombay High Court in *Hexaware Technologies* then came to be adopted by the High Court of Gauhati in **Ram Narayan Sah v. Union of India and Others**[11]**.** This becomes apparent from the following passages of that judgment: -

"**8.** A careful perusal of the scheme reveals that the scope of the scheme is for the purpose of the assessment, reassessment, recomputation under section 147 of the Act and issuance of notices under section 148 of the Act and the same shall be by a process through automated allocation in accordance with the risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of the notice and in a faceless manner and to the extent provided under section 144B of the Act with reference to making the assessment or reassessment of total income or loss of the assessee.

9. A perusal of section 151A along with the scheme reveals that the statute in order to obviate prejudice and bias has resorted to issuance of notices by automated allocation through the risk management strategy. The judgments referred to by the learned counsel for the petitioner supports the contention raised by the writ petition and hold that the notices are required to be issued in an automated manner without there being any interface between the Department and the assessee. The judgment relied upon by the learned counsel for the respondent however had discussions on the issue as to whether there is any vested or any fundamental right in respect of the assessee's demand for automated issuance of notice. The Delhi High Court vide judgment and order dated May 26, 2023 passed in W.P. (C) No. 3535 of 2021 (*Sanjay Gandhi Memorial Trust v. CIT (Exemptions)* and C.M. Appl. No. 10693 of 2021 *Magick Woods Exports P. Ltd. v. Addl./Joint/Dy./Asst. CIT/ITO* has categorically held that there is no fundamental right or legal right available to an assessee to demand that the notices though automated digital allocation should be issued.

10. The question of whether the petitioner has the fundamental right or not may not be required to be answered in the present proceedings inasmuch as Mr. Keyal has fairly submitted that in terms of the provisions of section 151A, the Department has already framed a

[11] 2024 SCC OnLine Gau 1424

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

scheme and the same is notified by notification dated March 29, 2022 ((2022) 442 ITR (Stat) 198).

11. As discussed above, the scope of the scheme is for the purposes of the assessment, reassessment, recomputation under section 147 and for issuance of notices under 148 and which shall be done through automated allocations by the Department."

17. A challenge to reassessment action on identical lines thereafter came to be addressed before the High Court of Punjab and Haryana in **Jatinder Singh Bhangu and Another v. Union of India and Others**[12]. The question of whether the JAO could commence reassessment in light of the Faceless Reassessment Scheme, 2022 was ultimately answered in favor of the assessee as would be evident from the following passages forming part of that decision: -

"**15.** From the perusal of section 151A, it is quite evident that the scheme of faceless assessment is applicable from the stage of show-cause notice under section 148 as well as section 148A. Clause 3(b) of notification dated March 29, 2022 issued under section 151A clearly provides that scheme would be applicable to notice under section 148. Even otherwise, it is a settled proposition of law that assessment proceedings commence from the stage of issuance of show-cause notice. The object of introduction of faceless assessment would be defeated if show-cause notice under section 148 is issued by the jurisdictional Assessing Officer. The respondents are heavily placing reliance upon the office memorandum and letter issued by the Departmental authorities. It is axiomatic in tax jurisprudence that circulars, instructions and letters issued by the Board or any other authority cannot override statutory provisions. The circulars are binding upon the authorities and the courts are not bound by such circulars. The mandate of sections 144B, 151A read with notification dated March 29, 2022 ((2022) 442 ITR (Stat) 198) issued thereunder is quite lucid. There is no ambiguity in the language of statutory provisions, thus, the office memorandum or any other instruction issued by the Board or any other authority cannot be relied upon. Instructions/circulars can supplement but cannot supplant statutory provisions.

16. In the wake of the above discussion and findings, we find it appropriate to subscribe the view expressed by the Bombay, Telangana and Gauhati High Courts. The instant petitions deserve to be allowed and accordingly allowed.

[12] 2024 SCC OnLine P&H 9337

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Signing Date:28.10.2024
17:50:00

> **17.** The notices issued by the jurisdictional Assessing Officer under section 148 are hereby quashed with liberty to the respondent to proceed in accordance with procedure prescribed by law."

18. A Division Bench of the Bombay High Court in **Kairos Properties Private Limited v. Assistant Commissioner of Income-tax and Others**[13] then reaffirmed the view taken in *Hexaware Technologies*, albeit on the basis of the following reasoning: -

> "**12.** On a plain reading of sub-section (1) of Section 151A, it is seen that it clearly provides that 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 etc., or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability which could be in terms of clauses (a), (b) and (c) of sub-section (1) of Section 151A, namely, eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible; optimising utilisation of resources through economies of scale and functional specialisation; and introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction. Sub-section (2) makes it explicit that for the purpose of giving effect to the Scheme made under sub-section (1), by notification in the Official Gazette, the Central Government can also 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 and further under sub-section (3), every notification issued under sub-section (1) and sub-section (2) shall be laid before each House of Parliament.
>
> **13.** It is thus clear from the implications as brought about by the provisions of Section 151A that the notification dated 29th March, 2022 is issued in terms of what has been provided under Section 151A. It has been issued after the amendments were incorporated in subsection (1) by Finance Act, 2021 with effect from 1 April, 2022. It would be thus difficult to accept a proposition when in paragraph 3(a) of the Scheme defining the scope of the Scheme when the words "assessment", "reassessment" or "re-computation" under Section 147 of the Act are explicitly provided, and further when clause (b) in paragraph 3 of the Scheme provides for issuance of notice under Section 148 of the Act, it would not take within its ambit the provisions of Section 148A which are the initial steps, which in a given case are required to be taken in issuance of notice

[13] 2024 SCC OnLine Bom 2571

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

under Section 148 of the Act. Section 148A provides for "Conducting inquiry, providing opportunity before issue of notice under section 148". Thus, this provision postulates a procedure inextricably linked to Section 148 which would apply to all cases of reassessment with a proviso stipulating exceptions to the rule. In other words, Section 148A in its object, intent and purpose is inextricably connected with the assessment, re-assessment or recomputation, for which a notice under Section 148 may be issued. Any other view would mean that the requirement to adopt the faceless procedure under the Scheme is a mere ministerial requirement for issuance of the notice. Such a reading would not be in conformity with the objectives spelt out in clauses (a), (b) and (c) of Section 151A(1).

14. Thus, to accept a contention that merely because the notification does not explicitly refer to the provisions of Section 148A, the scope of the Scheme as defined in paragraph 3 would exclude the applicability of Section 148A, would lead to an absolute absurdity, and more particularly, considering the express provisions of subsection (1) of Section 151A. Also it is not possible to accept reading of the provisions of Section 144B de-hors Section 151A(1). Sub-section (2) of Section 151A is specifically incorporated to empower the Central Government to exclude the applicability of any of the provisions of the Act and/or to make such provisions applicable with exceptions, modifications and adaptations. Nothing of this nature is found in the notification to infer any exclusion of Section 148A, and when it clearly concerns the entire assessment, reassessment or re-computation under Section 147 and issuance of notice in that regard under Section 148 of the Act.

15. Thus, the Central Government has not applied the provisions of subsection (2) of Section 151A to specifically exclude the application of Section 148A from the scope of the Scheme in paragraph 3 of the notification dated 29th March, 2022, it would hence be not be possible to accept the Revenue's contention that the provision of Section 148A stands excluded from the applicability of the faceless mechanism."

In view of the above, the petitioner would contend that the impugned notices under Section 148, all of which have come to be issued by the JAO, would not sustain.

19. We had, while taking note of those judgments, the issues that stood raised in these petitions and being mindful of the impact which our decision was likely to have on a large number of matters which were flooding our board daily, on 29 August 2024 passed a direction

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

for an appropriate affidavit being filed by the respondents bearing in mind the larger ramifications of an action annulling innumerable notices which had come to be issued in the meanwhile.

20. Pursuant to the said direction, a detailed additional affidavit came to be submitted by the respondents. We deem it apposite to extract paragraphs 6 to 19 thereof hereunder: -

> "**6.** That as envisioned in the Section 148 of the Act, the Directorate of Systems randomly selects a number of cases based on the criteria of the Risk Management Strategy. The Assessing Officer has no role to play in such selection. Consequent to such selection, the information is made available to the Assessing Officer who, with the prior approval of specified authority, determines which of these cases are fit for proceedings under the Section 147 of the Act as per the procedure provided in Section 148A of the Act. This involves conducting an enquiry, if needed and giving the assessee an opportunity of hearing.
>
> **7.** That the procedure outlined under Section 148A of the Act is a mandatory process (for cases other than search cases) and initiation of proceedings under Section 148A is based on risk assessment strategy and randomness. The notice under Section 148A issued thereafter is naturally based on risk management strategy and automated allocation.
>
> **8.** That the scheme provides for randomized allocation of cases. The intent behind is to ensure fair and reasonableness in the selection of cases. In the procedure for issuance of notice under Section 148 of the Act this is ensured as cases selected prior to issuance of the said notice are decided on the basis of an algorithm as per the Risk Management Strategy and are, therefore, randomly selected.
>
> **9.** That such cases are flagged to the JAO by the Directorate of Systems and the JAO does not have any control over the process.
>
> **10.** That the cases are selected on the basis of risk management strategy in a random manner, and the JAO has no way of predicting or determining beforehand whether a case will be flagged by the Systems.
>
> **11.** That consequent to the issuance of notice under Section 148 of the Act as per the procedure discussed above are again randomly allocated to the Assessment Units by the National Faceless Assessment Centre as per clause (i) of sub-Section (1) of Section 144B of the Act.

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

12. That the assessment is conducted as per the procedure provided in Section 144B of the Act in a faceless manner, as is also stated in the scheme. From the above, it is quite clear that the procedure for issuance of notices under Section 148 of the Act as well as the consequent assessment proceedings are following the scheme notified under Section 151A of the Act.

13. That it is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under Section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed.

14. That Section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to mean that the JAO is bereft of the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of Section 144B of the Act. Since, Section 144B of the Act does not provide for issuance of notice under Section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under Section 148 of the Act.

15. That in the present context it is apt not to lose sight of the parent Section, that is Section 151A of the Act, as the power to notify the scheme originates in the said Section.

16. That in terms of sub-section (1) of the said Section it has been provided that the Central Government may notify a scheme for conduct of procedures mentioned therein by:-

> (a) eliminating the interface between the income-tax authority and the assessee or any other person to the **extent technologically feasible**;
>
> (b) **optimizing utilisation of the resources** through economies of scale and functional specialisation;
>
> (c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

Therefore, the parent Section takes in to account that procedures may be modified under the Act or laid down taking into account their technological feasibility at the time. Further, instead of laying down specifics of the procedure, the Section clarifies that the scheme so notified should make optimal utilisation of resources through economies of scale and functional specialisation.

17. That reading the Section 151A of the Act in tandem with the scheme as given in Notification S.O. 1466(E) dated 29.03.2022, it is

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

quite clear that neither the Section nor the scheme speak about the detailed specifics of the procedure to be followed therein. They lay down the general principles that should be followed so as to impart greater efficiency, transparency and accountability to the procedures contained therein. The said scheme lays down that the issuance of notice under Section 148 of the Act shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in a faceless manner to the extent provided in Section 144B of the Act.

18. That the specifics of the various parts of the procedure will evolve with time as the technology evolves and the structures in the Income-tax Department change. The Section and the scheme have left it to the administration to devise and modify procedures with time while remaining confined to the principles laid down in the said Section and scheme. By conducting the procedures under the e-Assessment vide Notification No. S.O. 1466(E) [NO. 18/2022/F. NO. 370142/16/2022, Dated- March 29, 2022 (Scheme on automated allocation) at two levels, one with the JAO and other with NFAC, an attempt has been made to introduce checks and balances within the system that the assessee can submit evidences and can avail opportunity of hearing prior to commencement of any proceedings under the Act. Since issuance of notice under Section 148 of the Act does not suo moto result in enhancement of the total income of the assessee or levy of any penalty etc., the procedure is conducted by the JAO.

19. That re-assessment proceedings consequent to the issuance of notice are conducted as per the faceless assessment. This ensures convenience of the assessee, equitable distribution of workload among the officers and is alto compatible with the technological abilities in the Department as on date to ensure a procedure which is seamless, reasonable and fair for the assessee."

21. The respondents, as would be evident from the additional affidavit filed in these proceedings and the averments made therein, have sought to explain the working and implementation of the **Risk Management Strategy**[14] as well as the identification of cases on a random basis. They assert that the Directorate of Systems selects a number of cases based on the criteria of the RMS and thereafter flags those matters for the consideration of the JAO. It is averred that the selection of cases under the RMS is on the basis of an algorithm

[14] RMS

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

adopted and the data thus compiled being thereafter made available on the Insight Portal which is accessible by the JAO.

22. They assert that cases selected randomly in terms of the RMS are principally picked up by the Directorate of System and which process of selection is undertaken independently and without the involvement of the JAO. It is thus asserted that since the cases are selected in a random manner, the JAO has no way of predicting or determining beforehand which case would come to be flagged by the Directorate of Systems.

23. It is then submitted that the cases so flagged by the Directorate of Systems are then forwarded to the JAO, who remains *in seisen* of proceedings till the issuance of a notice under Section 148 and whereafter the assessment is randomly allocated to an Assessment Unit by the **National Faceless Assessment Center**[15] in accordance with Section 144B of the Act.

24. The respondents further assert and seek to emphasize that the Act proceeds on the premise of both the JAO as well as Assessment Units under NFAC being empowered to exercise concurrent jurisdiction. It was their contention that the Act creates no distinction nor does it distinguish between a JAO or the NFAC with respect to a particular case. They take the stand that merely because Assessment Units conduct assessment proceedings in a specific case in a particular Assessment Year, the same cannot be construed as amounting to the JAO being deprived of jurisdiction over a particular assessee. The respondents further drew our attention to sub-sections (7) and (8) of Section 144B and which contemplates a transfer of records back to the

[15] NFAC

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

JAO during or after the conclusion of assessment proceedings in a faceless manner.

25. The additional affidavit further adverts to the system of faceless assessment itself resting on technological feasibility and being a procedure which is envisaged to continually evolve based on factors such as technological feasibility and efficient use of available resources. The respondents consequently assert that both Section 144B as well as the Faceless Reassessment Scheme 2022 have thus, out of prudence, left it to the administration to devise and modify procedures over time.

26. It was averred that the Notification of 29 March 2022 which had introduced the Faceless Reassessment Scheme 2022, in fact, seeks to introduce appropriate checks and balances within the system and bifurcates the reassessment action into two levels, with one being up to the stage where the JAO goes through the procedure prescribed Section 148A and which may culminate in a final decision to initiate reassessment being made and a notice under Section 148 being issued. The second stage, according to the respondents, is of actual assessment and which is thereafter made by the NFAC. According to the disclosures made in the additional affidavit, the aforesaid procedure as adopted ensures equitable distribution of workload amongst officers and has been so designed so as to be compatible with the technological abilities available in the hands of the Revenue as on date.

27. Appearing for the respondents, Mr. Chawla and Mr. Maratha addressed elaborate submissions and provided invaluable assistance to the Court by placing for our consideration the legislative measures adopted from time to time, the evolution of faceless assessment over

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

the years as well as the various instructions, circulars and clarifications which had been issued by the respondents to aid and guide faceless assessment.

28. Mr. Chawla at the outset drew our attention to the following table which attempts to capture the evolution of the faceless assessment regime over time:-

S. No.	Parameters	E-Assessment Scheme, 2019 (September 12, 2019)	Faceless Assessment Scheme (August 13, 2020)	Faceless Assessment (Section 144B of the Act)	Faceless Assessment, 2022 (Section 144B of the Act)
1.	Nomenclature	E-assessment 2019	Faceless assessment scheme, 2019	Faceless assessment	Faceless assessment
2.	Act/CBDT Notification	S.O 3264 (E)	S.O 2745 (E)	TOLA, 2020	Finance Act, 2022
3.	Applicability	Regular assessment u/s 143(3) of the Income Tax, 1961 ("the Act"), selected on pilot basis	(i)All assessment specified (except non-residents and search cases)	All assessments	Section 143(3), 144, 147 of the Act except 142A of the Act cases
4.	Excluded	Other than selected	Search and non-residents cases	Search cases and other relocated cases	Search, 142(2A) of the Act and other relocated cases
5.	National Faceless Assessment Centre (NaFC)	To facilitate the conduct of make an e-asst. in centralized manner	To facilitate the conduct of and make faceless assessment in centralized manner	To facilitate the conduct of and make faceless assessment in centralized manner.	To facilitate the conduct of and convey assessments
6.	Regional E-Faceless Assessment Centres	To facilitate the conduct of and make e-assessment	To facilitate the conduct of and make e-assessment	To facilitate the conduct of and make e-assessment	-
7.	Assessment	Conduct and	Conduct and	Conduct and	Conduct

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

	Unit	perform function to make assessment as includes identifying points or issues for Determining any liability/ refund seeking information clarification analysis of material furnished by assessee and such other functions required for making assessment	perform function of making assessment, as includes identifying points or issues for determining any liability/refund seeking information clarification analysis of material furnished by the assessee and such other functions required for making faceless assessment	perform function of making assessment, as includes identifying points or issues for determining any liability/refund seeking information clarification analysis of material furnished by the assessee and such other functions required for making faceless assessment.	and perform function of making assessment, as includes identifying points or issues for determining any liability/refund seeking information clarification analysis of material furnished by the assessee and assigned such other functions required for making faceless assessment
8.	Review Unit	Facilitate conduct of e-assessment, perform review of draft order including checking relevant material evidence was brought on record, relevant point of facts and law and the issues requiring	Facilitate conduct of faceless assessment, perform review of draft order checking relevant material evidence, relevant points of fact and law and issues requiring incorporation of addition or disallowance and other required review functions.	Facilitate conduct of faceless assessment, perform review of draft order checking relevant material evidence, relevant points of fact and law and issues requiring incorporation of addition	Facilitate conduct of faceless assessment, perform review of "ILDP" (Income & Loss Determination Proposal) and checking relevant material evidence, relevant points of

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

		incorporation of addition or disallowance and other required review functions.		and disallowance and other required review functions.	fact and law ad issues requiring addition or disallowance are incorporated and other required review functions.
9.	Technical Unit (TU)	Technical assistance on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or other technical matters.	Technical assistance on audit in addition to legal, accounting, forensic, information technology, valuation, Transfer, pricing, data analytics, management or other technical matters	Technical assistance on audit, legal, accounting, forensic, information technology, valuation, Transfer pricing, data analytics, management or other technical matters.	Technical assistance on audit, legal, accounting, forensic, information technology, valuation, Transfer pricing, data analytics, management or other technical matters
10.	Verification Unit	Facilitate conduct of e-assessment, perform function of verification, including inquiry, cross verification, books of witnesses, examination of recording of statements, and other required in	Facilitate conduct of faceless assessment, perform function of verification, including conduct of verification, inquiry, cross examination of books of witnesses, recording of statements, and other required verification	assessment, function of verification, including faceless examination inquiry, cross verification, of books of witnesses, recording of statements, and other required in verification	Facilitate conduct of faceless assessment, perform function of verification, including inquiry, cross books of verification, examination of witnesses, recording of statements, and

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

		verification			other required in verification
11.	Scope & Coverage	Regular assessments under section 143(3) of the Act	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 Board	As per Section 144B (2) of the Act, 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 Board	As per Section 144 B (2) of the Act, 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 Board
12.	Compliance of AU (Assessment Unit) Notice or requisition	Response within 15 days.	Response within 15 days	Response within 15 days	Response within 15 Days
13.	Requisition Report of VU (Verification Unit) and TU (Technical Unit)	There was no specific requirement to forward the reports of Verification Unit (VU) and TU to the AU.	Now, NeAC is mandated to forward to AU.	NeAC is mandated to forwarded to AU.	NeAC is mandated to forward to AU.
14.	Best Judgment Assessment Notice	No provision for Best Judgment Assessment under Section 144 of the Act.	On inclusion provisions of Section 144 of the Act, in the event of non-compliances compliances by assessee, NeAC to serve show cause notice Assessee to file	Compliances failure by assessee, NeAC to serve show cause notice Assessee to file response within time	Compliance s failure by assessee, NCAC to serve show cause notice Assessee to file response

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

			response within time specified or extended.	specified or extended.	within time specified or extended;
15.	Assessment Unit to Draft Revised Draft Assessment Order	Revised Draft Order, incorporating suggested by Review Unit (RU), by same Unit which drafted original draft order.	Revised Draft Order, incorporating the suggestion by the Review Unit (RU), is to be prepared by a new Regional Assessment Unit of (ReAC), selected by NeAC on random allocation basis.	Final Draft Order, incorporating the suggestion by the Review Unit (RU), is to be prepared by a new Assessment Unit of (RCAC), selected by NFAC on random allocation basis.	Prepare 'income /loss determination proposal' Draft Order, considering modification suggested by the Review Unit (RU). Prepare draft send to eligible assessee or finalise in other case as conveyed by NeFC. Or on receipt of DRP directions.
16.	Response Time	Assessee was required to file his response to draft assessment order, on or before the date and time specified in the notice	Scheme suggests provision for extension of time.	Scheme suggests provision for extension of time.	Scheme suggests provision for extension of time.
17.	Transfer of records to Jurisdictional	NeAC was required, after completion of	AO shall take such action as may be required	AO shall take such action as	Transfer all electronic records

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

	AO	the assessment, to transfer all the electronic records of the case to the jurisdictional AO	under the Act. Provision for transfer of the electronic records of the penalty proceedings also, on completion of the same.	may be required under the Act.	of the case to jurisdictional AO for further required action under the Act
18.	Power to transfer Assessment cases to the Jurisdictional Assessing Officer	Power to transfer assessment cases to the jurisdictional assessing officers, lies with the National e-Assessment Centre (NeAC).	Principal Chief Commissioner or Principal Director General, NeAC, is authorised to transfer certain assessment cases to the jurisdictional assessing officers, only after prior approval of the Board.	By section 144B (8) of the Act by the Principal CC or Pr. DG in charge of NFAC may at any stage of assessment, transfer the case to Jurisdictional AO with prior approval of the Board.	By Section 144B(1)(xxxii) of the Act, if Section 142(2A) of the Act, special audit reference made by NeFC; or in terms of Section 144B (8) of the Act, at any stage of assessment, with prior approval of the Board.
19.	Right of Personal Hearing	The assessee is entitled to personal hearing, by way of video conferencing / telephony, in case of disagreement with the additions/disall	The assessee or other person may only request for a personal hearing by way of video telephony. The Chief Commissioner or the Director General, ReAC,	Assessee to file response to prejudicial variation in the draft, or review or final draft order by video. Personal	Assessee to file response to prejudicial variation in the income or loss determination proposal, draft,

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

		o conferencing/ wances proposed in the draft assessment order, in all assessment cases.	may pprove such request, if he is of the opinion that the case falls in the list of specified circumstances as notified by CBDT.	hearing may only request for hearing by way of video conferencing/ telephony and subject to approval of The Chief Commissioner or the Director General, NFAC	draft order, DRP, Request on personal hearing may is granted but by way of video conferencing/ telephony
20.	Communication mode between the assessee and Assessment Unit, Technical Unit, Verification Unit, and Review Unit	All communication between the assessee, Technical, Verification and Review Units	All communication with assessee, various Units by exclusive electronic mode; except with Verification Unit for conducting enquiry/ verification.	All communication only through NFAC and exclusively by electronic mode; except with enquiry Verification by Verification Unit,	All communications only through NFAC and exclusively by electronic mode; except with enquiry/ verification by Verification Unit.
21.	Authentication of Electronic Record	Authentication /signing of the electronic record was to be done by affixing the digital signature	Authentication/ signing of the electronic record has to be done by NeAC by affixing its digital signature	An electronic record shall be authenticated by ---NFAC and Units affixing digital signature.	An electronic be record shall be authenticated by--- the NFAC by way of an electronic communication,Units by

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

					affixing its digital signature;
22.	Power to specify format, mode, procedure and processes	Principal Chief Commissioner or the Principal Director General, were vested with the power to specify format, mode, procedure and processes under the Scheme.	Pr.CC or the Pr. DG are authorised to specify format, mode, procedure and processes only with the prior approval of CBDT.	Pr.CC or the Pr. DG are authorised to specify format, mode, procedure and processes with the prior approval of the Board	Pr.CC or the Pr. DG, are authorised to specify format, mode, procedure and processes with the prior approval of the Board (CBDT).

29. Mr. Chawla also, and for our convenience, placed on the record a table which depicts the various faceless schemes as envisioned under the Act by referring to the following illustrations:-

Faceless Jurisdiction of Income Tax Authorities [Section 130 of the Income Tax Act, 1961 ("the Act")]	**Faceless Collection of Information [Section 135A of the Act]**	**Faceless Inquiry or Valuation [Section 142B of the Act]**
Purpose of Schemes		
• Exercise of all or any of the powers and performance of all or any of the functions conferred on or assigned to Income Tax authorities referred under Section 120 of the Act , OR • Vesting the jurisdiction with the Assessing Officer as referred under Section 124 of the Act, OR • Exercise of power to transfer cases under	• Calling for information under Section 133 of the Act, OR • Collecting certain information under Section 133B of the Act, OR • Calling for information by prescribed Income Tax authority under Section 133C of the Act, OR • Exercise of power to inspect	• Issuing notice under Section 142(1) of the Act, OR • Making inquiry before assessment under Section 142(2) of the Act, OR • Directing the assessee to get his accounts audited under Section 142(2A), OR • Estimating the value of any asset, property or investment by a valuation officer under Section 142A of the Act

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

Section 127 of the Act, OR • Exercise of jurisdiction in case of change of incumbency as referred under Section 129 of the Act	register of Companies under Section 134 of the Act, OR • Exercise of power of Assessing Officer under Section 135 of the Act	

Faceless Assessment of Income Escaping Assessment [Section 151A of the Act]	**Faceless Rectification, Amendments and Issuance of Notice or information [Section 157A of the Act]**	**Faceless Collection and Recovery of Tax [Section 231 of the Act]**
• Assessment, reassessment or recomputation under Section 147 of the Act, OR • Issuance of notice under Section 148 or Sanction for issue of such notice under Section 151 of the Act, OR • Conducting enquiries of or issuance of show cause notice or passing of order under Section 148A of the Act, OR	• Rectification of any mistake apparent from record under Section 154 or other amendments under Section 155 of the Act, OR • Issue of notice of demand under Section 156 of the Act, or intimation of loss under Section 157 of the Act	• Issuance of certificate for deduction of income tax at any lower rates or no deduction of income-tax under Section 197 of the Act, OR • Deeming a person to be an assessee in default under Section 201(1) or under Section 206C(6A) of the Act, • Issuance of certificate for lower collection of tax under Section 206C (9) of the Act, OR • Passing of order or amended order under Section 210(3)/(4) of the Act, OR • Reduction or waiver of the amount of interest paid or payable by an assessee under Section 220(2A) of the Act, OR • Extending the time for payment or allowing payment by instalment under Section 220(3) of the Act, OR • Treating the assessee as not being in default

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

		under Section 220(6) or (7) of the Act, OR • Levy of penalty under Section 221 of the Act, OR • Drawing of certificate by the Tax Recovery Officer under Section 222 of the Act, OR • Jurisdiction of Tax Recovery Officer under Section 223 of the Act, OR • Stay of proceedings in pursuance of certificate and amendment or cancellation thereof by the Tax Recovery Officer under Section 225 of the Act, or other modes of recovery under Section 226 of the Act, OR • Issuance of tax clearance certificate under Section 230 of the Act

Faceless Revision of Orders [Section 264A of the Act]	**Faceless Effect of orders [Section 264B of the Act]**	**Faceless Approval or Registration [Section 293D of the Act]**
Purpose of Schemes		
Revision of orders under Section 263 of the Act or under Section 264 of the Act	Giving effect to an order under Section 250, 254, 260, 262, 263, or 264 of the Act	Granting approval or registration by the Income Tax Authority under any provision of the Act

C. STATUTORY PROVISIONS RELEVANT TO THE FACELESS SCHEME OF ASSESSMENT

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Signing Date:28.10.2024
17:50:00

30. In order to appreciate the statutory scheme of faceless assessment, some of the provisions which deal with the information on the basis of which reassessment may be initiated as well as the paradigm shift which came to be introduced with respect to assessment, it would be apposite to take note of the following statutory provisions.

31. Section 135A of the Act, which deals with the subject of faceless collection of information, reads as follows:-

> **"Section 135A - Faceless collection of information**
>
> (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of calling for information under section 133, collecting certain information under section 133B, or calling for information by prescribed income-tax authority under section 133C, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 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) optimising utilisation of the resources through economies of scale and functional specialisation;
>
> (c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.
>
> (2) 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:
>
> **Provided** that no direction shall be issued after the 31st day of March, 2022:
>
> **[Provided further** that the Central Government may amend any direction, issued under this sub-section on or before the 31st day of March, 2022, by notification in the Official Gazette.**]**
>
> (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.]"

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

32. Section 144B came to be inserted for the first time by the **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020**[16] with effect from 01 April 2021. As the provision originally existed, the *non obstante* clause in Section 144B initially covered assessments under Sections 143(3) and 144(2) only. The provision came to be amended thereafter by way of Finance Act, 2022 and the class of assessments to which it was ordained to extend came to be expanded to cover assessment as well as reassessment as contemplated under Sections 143(3), 144 and 147 of the Act.

33. That provision, as it exists presently, is reproduced hereinbelow:-

> "**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 may be, with respect to the cases 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;
>
> (*iv*) where a case is assigned to the assessment unit, under clause (*i*), 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;

[16] TOLA

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(*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;

(*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 from the 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 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

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

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

(*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, 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,—

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(*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;

(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 144-C, 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 Centre shall convey to the assessment unit to pass the final assessment order in accordance with such draft order, which shall thereafter pass the final assessment order and initiate penalty proceedings, if any, and send it to the National Faceless Assessment Centre;

(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

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(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 sub-section (2) of Section 144-C;

(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 144-C, intimate the assessment unit to complete the assessment on the basis of the draft order;

(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 subsection (4) of Section 144-C 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 144-C, 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 144-C, complete the assessment within the time allowed in sub-section (13) of Section 144-C 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

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

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 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) The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely—

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

(ii) such assessment units, as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under this Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment, and the term "assessment unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(iii) such verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board:

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

Provided that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit;

(iv) such technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under section 90 or 90A, which may be required in a particular case or a class of cases, under this section and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(v) such review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xvi) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues requiring addition or disallowance have been incorporated and such other functions as may be required for the purposes of review and the term "review unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(4) The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely—

(i) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(iii) such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.

(5) All communications,—

(i) among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;

(ii) between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and

(iii) between the National Faceless Assessment Centre and various units shall be exchanged exclusively by electronic mode:

Provided that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this behalf.

(6) For the purposes of faceless assessment—

(i) an electronic record shall be authenticated by—

(a) the National Faceless Assessment Centre by way of an electronic communication;

(b) the assessment unit or verification unit or technical unit or review unit, as the case may be, by affixing digital signature;

(c) assessee or any other person, by affixing his digital signature or under electronic verification code, or by logging into his registered account in the designated portal;

(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of—

(a) placing an authenticated copy thereof in the registered account of the assessee; or

(b) sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or

(c) uploading an authenticated copy on the Mobile App of the assessee, and followed by a real time alert;

(iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;

(iv) the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;

(v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000);

(vi) a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under this section;

(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit;

(viii) where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;

(ix) subject to the proviso to sub-section (5), any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under Section 133-A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;

(x) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

representative, or any other person does not have access to video conferencing or video telephony at his end;

(xi) the Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre and the units set up, in an automated and mechanised environment.

(7)(*a*)The Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of the National Faceless Assessment Centre shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 may be invoked in the case,—

(i) forward the reference received from an assessment unit under clause (*xxxii*) of sub-section (1) to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case, and inform the assessment unit accordingly;

(ii) transfer the case to the Assessing Officer having jurisdiction over such case in accordance sub-section (8);

(b) where a reference has been received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under sub-clause (i) of clause (a), he shall direct the Assessing Officer, having jurisdiction over the case, to invoke the provisions of sub-section (2A) of section 142;

(c) where a reference has not been forwarded to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over the case, in a case referred to in sub-clause (i) of clause (a), the assessment unit shall proceed to complete the assessment in accordance with the procedure laid down in this section.

(8) Notwithstanding anything contained in sub-section (1) or subsection (2), the Principal Chief Commissioner or the Principal Director General, as the case may be, in charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.]

(9) [*Omitted by Finance Act, 2022, w.e.f. 1-4-2021*.]

(10) [*Omitted by Finance Act, 2022, w.e.f. 1-4-2022*]

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

Explanation.—In this section, unless the context otherwise requires—

(*a*) "addressee" shall have the same meaning as assigned to it in clause (*b*) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000);

(*b*) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of Section 288;

(*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*) "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;

(*e*) "computer resource" shall have the same meaning as assigned to it in clause (*k*) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000);

(*f*) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000);

(*g*) "computer resource of assessee" shall include assessee's registered account in designated portal of the income tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered email address of the assessee with his email service provider;

(*h*) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000);

(*i*) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre;

(*j*) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of Section 144-C;

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

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(*l*) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of Section 2 of the Information Technology Act, 2000 (21 of 2000);

[(*la*) "electronic verification code" means a code generated for the purpose of electronic verification as per the data structure and standards specified by the Principal Director General or Director General, as the case may be, in charge of information technology;]

(*m*) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of Section 144-C;

(*n*) "email" or "electronic mail" and "electronic mail message" means a message *or* information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(*o*) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of Section 3 of the Information Technology Act, 2000 (21 of 2000);

(*p*) "Mobile app" shall mean the application software of the income tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;

(*q*) [* * *]

(*r*) "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;

(*s*) "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;

(*t*) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including—

(i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or

(ii) the e-mail address available in the last income tax return furnished by the addressee; or

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

(vi) any e-mail address made available by the addressee to the income tax authority or any person authorised by such authority.

(*u*) "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;

(*v*) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.]"

34. It is pertinent to note that when Section 144B was originally introduced in the statute book with effect 01 April 2021, it also included sub-section (9) which read as under:-

> "(9) Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) [other than the cases transferred under sub-section (8)] on or after the 1st day of April, 2021, shall be *non est* if such assessment is not made in accordance with the procedure laid down under this section."

Sub-section (9) ultimately came to be deleted by Finance Act, 2022 with retrospective effect from 01 April 2021. The reasons which appear to have weighed upon the Legislature to delete sub-section (9) from Section 144B can be gleaned from Circular No. 23/2022 dated 03 November 2022 and relevant parts whereof are reproduced hereinbelow: -

> "(II) Sub-section (9) of erstwhile section 144B of the Act provided that the assessment proceedings shall be void if the procedure mentioned in the section was not followed. The said sub-section

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

refers to violation of the procedure laid down by the law whereas a large number of disputes have been raised under the sub-section involving technical issues arising due to use of information technology, leading to unnecessary litigation, It is, therefore, omitted for its date of inception."

35. While noticing the relevant provisions of the Act and which would have a bearing on the controversy which stands raised, this would perhaps be an appropriate juncture to also extract Sections 148 and 151A:-

"Section 148 - Issue of notice where income has escaped assessment.

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

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice:

Provided further that no such approval shall be required where the Assessing Officer, with the prior approval of the specified authority, has passed an order under clause (*d*) of section 148A to the effect that it is a fit case to issue a notice under this section:]

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

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,—

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

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.]

Explanation 2.—For the purposes of this section, where,—

i. a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
ii. a survey is conducted under section 133A, other than under sub-section (2A) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
iii. the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
iv. the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,
v. the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [67][where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.]"

"**Faceless assessment of income escaping assessment.—**

151A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or recomputation under section 147 or issuance of notice under

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

section 148 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*) optimising utilisation of the resources through economies of scale and functional specialisation;

(*c*) introducing a team-based assessment, reassessment, recomputation 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 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.]"

D. NOTIFICATIONS AND INSTRUCTIONS PERTAINING TO THE FACELESS SCHEME OF ASSESSMENT

36. The Faceless Re-Assessment Scheme, 2022 came to be promulgated on 29 March 2022 and the same is reproduced in its entirety hereunder: -

"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"

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, —

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(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 optimize 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 recomputation 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 or reassessment of total income or loss of assessee."

37. With the advent of technology, the Revenue appears to have over a course of time adopted new tools for assembling, accumulation and analysis of data embedded in the millions of returns which come to be filed every financial year. It has thus over a period of time adopted measures such as **Computer Aided Scrutiny Selection**[17], **Annual Information Return**[18] data and **Central Information Branch**[19] data. These measures appear to have been formulated in order to aid and assist the Revenue with respect to scrutiny assessment, investigation and evaluation.

38. For instance, AIR is stated to be a Return which is obtained with respect to high value financial transactions and is obtained in terms of Section 285BA of the Act. The information is then aggregated on the

[17] CASS
[18] AIR
[19] CIB

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

basis of the returns that would have been filed across the nation and appropriate information thus centralized. The CIB is stated to be one of the nodal agencies of the Income Tax Department and concerned with collection and systemized organization of information from internal as well as external sources, dissemination of the same to the individual Assessing Officers and other agencies within the Department as also the sorting, managing, organizing and analysis of information being provided to the Revenue by various sources. The information so collected is thereafter stated to form part of a larger database housed in the CIB module under the control of the Directorate of Systems.

39. Mr. Chawla has, along with his compilation, placed for our consideration the Instructions issued by the Department of Revenue from time to time and which assists us in appreciating how these new technological capabilities have been deployed by the Department to aid it in the discharge of its functions.

40. For instance, the instruction of 26 September 2014 deals with the selection of cases for scrutiny under CASS. Similar explanatory instructions appear in the communication of the CBDT dated 29 December 2015 and which was followed by yet another direction pertaining to cases of limited scrutiny on 14 July 2016. Of equal significance is the response of the Hon'ble Minister of State for Finance in the Rajya Sabha, who on 07 December 2021 disclosed the manner in which random scrutiny of taxpayers is undertaken. The extracts of the proceedings of the Rajya Sabha are reproduced hereunder: -

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
RAJYA SABHA
UNSTARRED QUESTION NO-1018
ANSWERED ON – 07/12/2021

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

RANDOM SCRUTINY OF TAX PAYERS

1018. SHRI NARANBHAI J. RATHWA

Will the Minister of FINANCE be pleased to state:

(a) whether Government has issued guidelines prescribing framework for random selection of scrutiny cases for financial year 2021-2022 through Computer Aided Scrutiny Selection (CASS);

(b) if so, the percentage of cases fixed for random scrutiny for this year;

(c) whether generally small tax payers get notices, whereas big tax payers escape the random scrutiny cases; and

(d) if so, the reasons for targeting small tax payers having less than one crore income; and

(e) whether Government would revise guidelines so as to include industrial houses in random scrutiny and, if not, the reasons therefor?

ANSWER

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE
(SHRI PANKAJ CHAUDHARY)

(a) No sir. The Income-tax Department has not issued any guidelines prescribing framework for selection of cases through Computer Aided Scrutiny Selection (CASS) for Financial Year 2021-22.

For scrutiny, cases are not selected randomly but are selected as per the Board (Central Board of Direct Taxes) approved selection rules through a Computer Aided Scrutiny Selection (CASS) process in an identity blind manner. The cases get selected only if they meet the selection criteria based on the various risk parameters across different income brackets.

(b) CASS 2022 with respect to Income-tax Returns (ITRs) for Financial Year 2021-22 has not been executed yet as the parameter finalisation is pending. The latest cycle for which counts are available is CASS 2021 covering ITRs pertaining to Assessment Year 2020-21(Financial Year 2019-20). Count of cases flagged for scrutiny under CASS 2021 is 48,702 and percentage of cases flagged based on ITR pool considered is 0.0725%.

(c) No sir. The cases are selected for scrutiny through a selection process. The selection criteria include various risk parameters and are not dependent on the income range of the taxpayers. Accordingly, the cases from any income range may get selected if they meet the selection criteria.

(d) Does not arise in view of the reply to part (c) above.

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(e) Does not arise in view of the reply to part (a) above."

41. The CBDT post the commencement of the Faceless Assessment Scheme in 2019 issued one of its first instructions on 08 April 2021. This was followed by an order under Section 119 of the Act dated 06 September 2021 and amending order dated 22 September 2021 which chronicled various categories of cases which would stand excluded from faceless assessment.

42. The order dated 06 September 2021 as amended by the order dated 22 September 2021 is reproduced hereunder:-

"ORDER UNDER SECTION 119 OF THE INCOME-TAX ACT, 1961 PROVIDING EXCLUSIONS TO SECTION 144B OF THE ACT

ORDER F. NO. 187/3/2020-ITA-I, DATED 6-9-2021

AS AMENDED BY ORDER F. NO. 187/3/2020-ITA-1, DATED 22-9-2021

1. The Faceless Assessment Scheme, 2019 (the Scheme) has been incorporated in the Act vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Section 144B of the Act pertaining to Faceless Assessment has been inserted by the said amendment w.e.f. 1-4-2021.

2. The Central Board of Direct Taxes vide Order F.No. 187/3/2020-ITA-I dated 13th August, 2020 (the Order) read with order under section 119 of the Act regarding mutatis mutandis application of Orders, Circulars etc. issued in order to implement the Scheme to Faceless Assessment under section 144B of the Act, F.No. 187/3/2020-ITA-I dated 31st March, 2021 directed that all the Assessment Orders shall be passed by the National Faceless Assessment Centre (NaFAC) under section 144B of the Act except as under:-

i. Assessment orders in cases assigned to Central Charges.
ii. Assessment orders in cases assigned to International Tax Charges.
iii. assessment order in cases where pendancy could not be created on ITBA portal because of technical reasons or cases not having a PAN, as the case may be.
iv. Assessment orders in cases

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(a) set aside to be done de novo

or

(b) to be done u/s 147 of the act

For which the time limit for completion expires on 30.09.2021 pending with the jurisdictional Assessing officer as on 11.09.2021 on thereafter, which cannot be completed as per the procedure laid down under section 144B of the act due to technical/ procedural constraints in the givne period of limitation.]

3. In partial modification of the said Order, the Central Board of Direct Taxes in exercise of powers under section 119 of the Act, hereby directs that in addition to exceptions (i) & (ii) provided in Para 2 of the Order, the following exception is also hereby added as under:-

iii. Assessment Orders in cases where pendency could not be created on ITBA because of technical reasons or cases not having a PAN, as the case may be.

4. Further, the Central Board of Direct Taxes clarifies that assessment in cases transferred by the Principal Chief Commissioner or the Principal Director General in charge of National Faceless Assessment Centre (NaFAC) under section 144B(8) of the Act shall be handled as per the procedure specified in the letter F.No. 225/97/2021/ITA-II dated 6th September, 2021.

5. This order comes into effect immediately."

43. Insofar as the utilization of the Insight Portal and selection of cases in accordance with the RMS as formulated, Mr. Chawla has placed for our consideration the Instructions issued by the Directorate of Systems dated 16 November 2023 and which is extracted in its entirety hereinbelow:-

"Sir/Madam,

Sub - Dissemination of certain High Risk Non-filer cases pertaining to the AV 2020-21 on Insight Portal selected under Risk Management Strategy (RMS) Cycle 3 - reg. Kindly refer to the above.

2. A taxpayer who is having income above the prescribed limit or fulfils any other condition mentioned in section 139 of the Act is required to file return of income. Non-filers with potential tax liabilities are identified by analysing information received under,

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

AIR/CIB data, TDS/TCS Statement etc. and overall taxpayer profile based on the information available in the database.

3. RMS Cycle - 3 for non-filer category of cases has been executed for **AY 2020-21** on the basis of rules/parameters thereto approved by the Board under RMS (Risk Management Strategy) for identifying High Risk Non-filer cases with potential tax liabilities.

4. In respect of above, certain high-risk Non-filer cases for relevant assessment year(s) as approved by the Board have been made visible to the Jurisdictional Assessing Officers on Verification module of the Insight Portal with following case type - **'RMS - Non filing of Return PAN cases**'. The cases can be accessed on INSIGHT portal using following path-

Insight Portal - Verification -Taxpayer - Verification - Case type - RMS -Non filing of Return PAN cases'

For detailed description of Case View and underlying Info, User may refer to the Annexure "A" enclosed.

5. Underlying information including various third-party data/information related to PAN of assigned cases may also be accessed on Profile Views of Insight Portal. Profile Views shows various information related to taxpayer including:

a. Comparative ITR information under **Return Profile (TRP)**

b. Comparative key values, financial ratios etc. under **Financial Profile (TFP)**

c. Details of various address, email, mobile numbers under, **Master Profile (TMP)**

d. list of accounts, immovable assets etc under Asset Details **(TAD)**

e. list of key persons, shareholders etc uncle, **Relationship (TRL)**

f. Third Party Information, Aggregated TDS Payments, Aggregated GST Transactions, and other information under **Taxpayer Annual Summary (TAS)**

6. Following activities are available on Case Detail screen which can be accessed by clicking Initiate Activity drop down button.

a. **Mark case as untraceable:** This generic functionality allows user to mark such cases where the communications are not getting delivered to the taxpayers untraceable for feedback purpose.

b. **Mark case as Non-Responsive:** User can mark such crises where the **communications** are getting delivered to the taxpayer but the taxpayer is not responding to the queries sent on Compliance Portal through this functionality.

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

c. **Enter Comments:** User can record remarks at the case level.

d. **Case Reassignment:** The user can select multiple cases and re-assign/ transfer them.

e. **No Return Required:** In Non-filing of Return (NMS): RMS cases, the user can mark a case as 'No Return Required', if the user comes to this conclusion post assessment of response submitted by the taxpayer.

f. **Initiate Proceedings u/s 148A/148:** The dropdown provides the user a generic technical functionality to initiate proceedings for RMS cases related to issuance of notice u/s 148A or notice u/s 148 of the Income Tax Act, 1961. The user may use this particular functionality for initiating proceedings related to issuance of notice u/s 148A for cases under RMS.

7. Further, necessary action u/s 148A of the Income-tax Act. 1961 in respect of the above disseminated cases for AY 2020-21 under RMS Cycle-3 shall be taken after taking into account all relevant applicable provisions of the Act.

8. The Assessing Officers may also further refer to relevant Notifications/Instructions/Circulars/S.O.Ps for cases disseminated under Risk Management System issued by the CBDT front time to time.

9. In case of any technical difficulty being observed, users my immediately contact OR write to Insight helpdesk. (Helpdesk number - 18001034216, Email id: helpdesk@insight.gov.in).

Yours faithfully,

(Ankit Verma)

Jt. DIT (Systems)- 2(3)

Copy to:

1. PPS to Chairperson, Member (Admin & Faceless Scheme(s)). Member (A&J), Member (IT & R), Member (Inv.), Member (L & S), Member (TPS), CBDT and DGIT(S), Delhi & DGIT(S)-2, Bangalore, for Information.

2. Nodal officer of ITBA, Insight i-library, https://www.irsofficersonline.gov.in."

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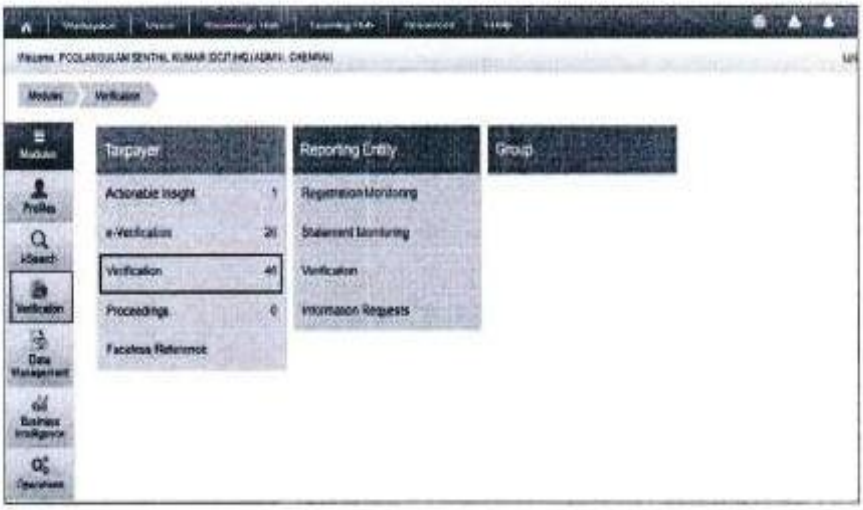
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

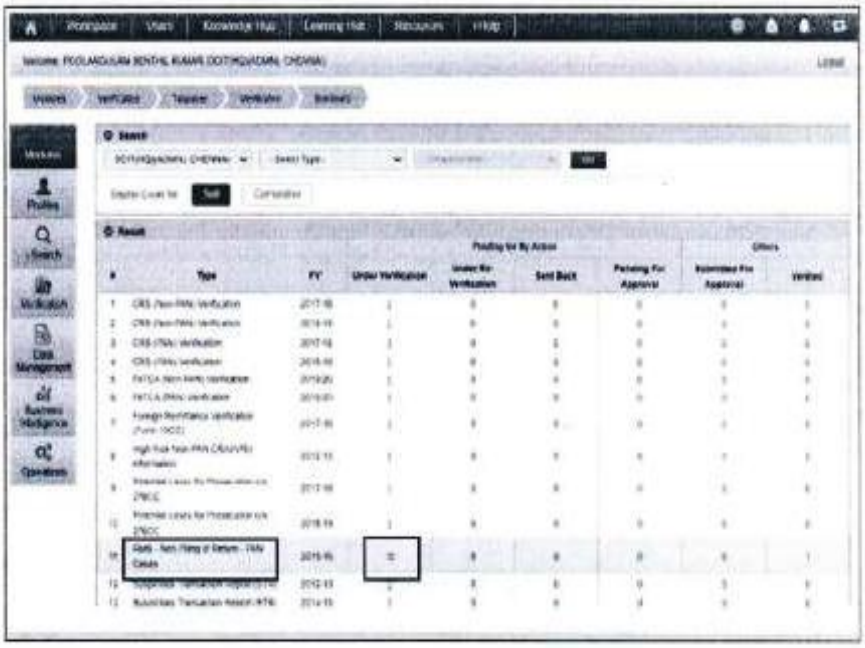
Annexure "A"

Step by Step Screen shots

1. The list of RMS cases assigned to the user can be accessed as under
   a) Login to Insight Portal (https://insight.gov.in)
   b) Select Verification Tab available under Taxpayer Verification.



   c) List of cases assigned to the user will be displayed to the user under Verification Summary Screen.



2. User needs to click on count displayed under case status "Under Verification" will navigate user to Case List View.

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

3. User needs to click on View Detail Hyperlink to navigate to Case Detail View
4. User needs to click on select activity to select Case Level activities

5. Following Activities will be applicable to the Case
    a. No Action Required
    b. Mark case as untraceable
    c. Mark case as non-responsive
    d. Enter Comments
    e. Initiate proceeding u/s 148A/148
    f. Reassign Case
6. User will be able to click on "View Detail" hyperlink displayed against each Verification Issue to navigate to "Verification Issue Detail" screen.
    a. To identify Imputed Information i.e. Non PAN information on which PAN has been imputed based on the Board approved rules, the Information Code will have words "IP" and Information Description will have words "Imputed Information" in beginning.
7. TSN will be hyperlink which will navigate user to pop up view of Information details

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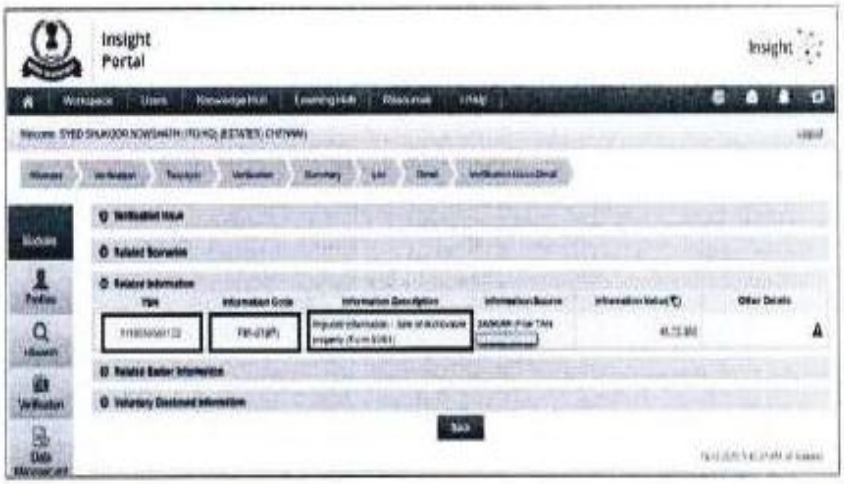
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00



8. TSN hyperlink available in case of imputed information will display additional fields to provide complete information received from source.

"

44. Of significance is the Notification issued under Section 120 of the Act dated 13 August 2020 and which designates the authorities charged with the conduct of faceless assessment in respect of various territorial areas and the relevant parts of the said notification are reproduced hereunder:-

"**NOTIFICATION**

New Delhi, the 13th August, 2020

(INCOME TAX)

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

S.O. 2756(E).-In pursuance of the powers conferred by sub-sections (1), (2) and (5) of section 120 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), the Central Board of Direct Taxes hereby directs that the Income-tax Authorities of the National e-Assessment Centre (hereinafter referred to as the NeAC) specified in Column (2) of the Schedule below, having its headquarters at the place mentioned in column (3) of the said Schedule, shall exercise the powers and functions of Assessing Officer concurrently, to facilitate the conduct of Faceless Assessment proceedings in respect of territorial areas mentioned in the column (4), persons or classes of persons mentioned in the column (5) and cases or classes of cases mentioned in the column (6) of the Schedule-I of the notification No. 50 of 2014 in S.O. 2752 (E) dated the 22nd October, 2014 published in the Gazette of India, Extraordinary Part II, Section 3, sub-section (ii):

SCHEDULE

S. No.	Income Tax Authority	Headquarters
(1)	(2)	(3)
1	Principal Chief Commissioner of Income-tax (NeAC), Delhi	Delhi
2	Income – tax Officer (NeAC)(HQ), O/o Principal Chief Commissioner of Income-tax (NeAC), Delhi	Delhi

……."

45. Having noticed the rival submissions which were addressed, it becomes apparent that the principal plank of the challenge raised by the writ petitioners is that by virtue of the introduction of Section 144B, a JAO stands completely denuded of the power to assess or reassess. The petitioners would argue that once the faceless scheme of assessment came to be promulgated and which encompassed the power to reassess under Section 147, Section 144B is liable to be construed as ousting all other modes and methodologies of assessment otherwise envisaged under different provisions of the Act.

E. RATIONALE AND LEGISLATIVE INTENT UNDERLYING THE FACELESS SCHEME OF ASSESSMENT

46. In light of the rapid onset of technological advancements, the

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

Revenue, with the introduction of the faceless scheme of assessment, seeks to collect relevant information relating to transactions undertaken by assessees with third parties as also to aggregate information from various other law enforcement agencies. Owing to the fast-evolving technological advancements, the Revenue, appears to have set up a data assimilation architecture enabling it to gather information concerning transactions undertaken by assessees with third parties and to consolidate information obtained from various other law enforcement agencies. The Revenue on the basis of this exercise of data assimilation and analysis is enabled to verify and cross check information with respect to particular assessees in order to detect non-filers as well as those who have failed to make a full and true disclosure of their income. The entire schema of assessment, reassessment and recomputation of income is thus based on the information so collected. In view of the aforesaid, a burgeoning need was felt to reform the system of assessment, reassessment and recomputation of income aligning it with contemporary standards of efficiency and transparency.

47. The **Hon'ble Finance Minister**[20] in her Budget Speech dated 05 July 2019 for the fiscal year of 2019-20, observed that the system of scrutiny assessments prevalent at that time, involved a high degree of direct interface and interaction between taxpayers and the officers of the Department, which in her view could plausibly lead to "*certain undesirable practices on the part of tax officials*" and thus undermine the transparency and integrity of the assessment process. To address and eliminate these concerns, the FM expressed the intent of the government to launch, in a phased manner, an electronic scheme of

[20] FM

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

faceless assessment "*involving no human interface*" which, to begin with, would involve such assessments being carried out in select cases "*requiring verification of certain specified transactions or discrepancies*" with the purported aim being for the centralised body initiating faceless assessment to be the singular point of contact between the taxpayer and the Department. The relevant extracts of the Budget Speech dated 05 July 2019 are accordingly reproduced hereinbelow:

> "**Faceless e-assessment**
>
> **124.** The existing system of scrutiny assessments in the Income-tax Department involves a high level of personal interaction between the taxpayer and the Department, which leads to certain undesirable practices on the part of tax officials. To eliminate such instances, and to give shape to the vision of the Hon'ble Prime Minister, a scheme of faceless assessment in electronic mode involving no human interface is being launched this year in a phased manner. To start with, such e-assessments shall be carried out in cases requiring verification of certain specified transactions or discrepancies.
>
> **125.** Cases selected for scrutiny shall be allocated to assessment units in a random manner and notices shall be issued electronically by a Central Cell, without disclosing the name, designation or location of the Assessing Officer. The Central Cell shall be the single point of contact between the taxpayer and the Department. This new scheme of assessment will represent a paradigm shift in the functioning of the Income Tax Department."

48. As a result, the faceless scheme of assessment thus came to be introduced, for the first time on 12 September 2019 through the 'E-assessment Scheme, 2019', which thereafter came to be referred to as the 'Faceless assessment scheme, 2019' vide the amending Notification dated 13 August 2020. It is these measures which constituted the launch of the scheme of faceless assessment in the country. As noticed hereinabove, Section 144B of the Act thereafter came to be introduced vide TOLA and with effect from 01 April 2021. The Finance Act of

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

2022 subsequently expanded the ambit of Section 144B to cover assessments as well as reassessments under Sections 143(3), 144 and 147 of the Act.

49. The common thread underlying the various facets of the evolving faceless assessment regime from its inception till the present, has been the felt need to enhance efficiency, transparency and accountability in the process of assessment and reducing the human interface between the AO and the assessee. However, and despite the expressed intent to altogether eliminate the interface between the AO and the assessee, both the Notifications of 12 September 2019 as well as of 13 August 2020 had not excluded the involvement of the JAO completely and in the course of the faceless assessment process. As would be manifest from the discussion which ensues, the respondents appear to have been at all times, cautious of not precluding the involvement of JAO within the faceless assessment process. The retention of the JAO in certain phases of the assessment process reflects a balanced approach, aiming to preserve transparency and efficiency while ensuring that complex issues receive appropriate attention from a qualified and experienced assessing officer.

50. For instance, the Notification of 12 September 2019 mandated that NFAC, after the completion of assessment, would transfer all electronic records of the case to the JAO in the following circumstances:

> "**6. Procedure for assessment. —**
>
> **xxxx xxxx xxxx**
>
> (xx) The National e-assessment Centre shall, after completion of assessment, <u>transfer all the electronic records of the case to the Assessing Officer having jurisdiction over such case</u>., for –

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(a) imposition of penalty;

(b) collection and recovery of demand;

(c) rectification of mistake;

(d) giving effect to appellate orders;

(e) submission of remand report, or any other report to be furnished, or any representation to be made, or any record to be produced before the Commissioner (Appeals), Appellate Tribunal or Courts, as the case may be;

(f) proposal seeking sanction for launch of prosecution and filing of complaint before the Court;"

51. Similarly, the Notification dated 13 August 2020, which had introduced amendments to the previous Notification of 12 September 2019 had contemplated the role of the JAO in the faceless assessment scheme as follows:

"(2) for clause 1, the following clause shall be substituted, namely:—

xxxx xxxx xxxx

(xxvi) The National e-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 Act;

(2) Notwithstanding anything contained in sub-paragraph (1), the Principal Chief Commissioner or the Principal Director General, in charge of National e-assessment Centre, <u>may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board</u>.

xxxx xxxx xxxx

(5) in clause 4, within quotes, for the portion beginning with the words "The National e-assessment Centre shall levy the penalty" and ending with the words "as the case may be", the following shall be substituted, namely:—

> "The National e-assessment Centre shall <u>levy the penalty as per the said draft order of penalty and serve a copy of the same along with demand notice on the assessee or any other person, as the case may be, and thereafter transfer electronic records of the penalty proceedings to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act</u>."

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

52. It becomes relevant to note that Section 144B came to be introduced in the statute for the first time by virtue of TOLA and as that provision originally stood, the faceless assessment scheme was confined to assessments liable to be made under Section 143(3) which deals with regular assessments and Section 144, which is concerned with best judgment assessment. It was in terms of Finance Act, 2022, that sub-section (1) of Section 144B came to be amended to include "reassessment" or "recomputation" under Sections 143(3), Section 144 or Section 147, as the case may be. The principal question which therefore arises for our consideration is whether Section 144B precludes the JAO from initiating proceedings for reassessment in terms as contemplated under Section 148 and in accordance with the procedure prescribed in Section 148A.

53. It is pertinent to note that Finance Act, 2021 fundamentally altered the procedure for reassessment. These were measures statutorily adopted undisputedly while Section 144B had already come to be inserted in the Act. The reassessment provisions made no specific reference to the faceless scheme of assessment at this stage since the subject of reassessment undisputedly was brought within the ambit of Section 144B only in 2022. It is also relevant to note that the family of provisions dealing with reassessment continued to use the expression "*Assessing Officer*" throughout.

54. Alongside the introduction of Section 144B by TOLA, Section 151A also came to be inserted in the Act. This provision empowered the Union Government to formulate a scheme for the purposes of assessment, reassessment or recomputation, as the case may be, under

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

Section 147 as well as the issuance of notices under Section 148. As is manifest from the plain language of that provision, the underlying objective of such a scheme was to meet the legislative objective of eliminating the interface between an income tax authority and the assessee, optimal utilization of resources through economies of scale and functional specializations, the introduction of team based assessment, reassessment, recomputation as well as issuance or sanction of notices. Such team based assessment was intended to be in accordance with the randomized allocation of cases and thus the usage of the expression "*dynamic jurisdiction*".

55. Thus, both Sections 144B as well as Section 151A sought to introduce a system in terms of which assessment or reassessment proceedings could be entrusted to Assessment Units which would be randomly identified. Section 144B and the Explanation appended thereto defined an "*automated allocation system*" to mean an algorithm for randomized allocation of cases with the aid of suitable technological tools and which were envisaged to extend to the employment of artificial intelligence and machine learning. While the first E-Faceless Assessment Scheme came to be promulgated on 12 September 2019, the Union Government formulated a scheme referable to Section 151A on 29 March 2022 which is the Faceless Reassessment Scheme, 2022.

56. As is manifest from a reading of Clause 3 of the Faceless Reassessment Scheme, 2022, assessment, reassessment or recomputation under Section 147 of the Act as well as issuance of notice under Section 148 was to be by way of an automated allocation and in a faceless manner to the extent provided in Section 144B. Clause 3 also uses the expression "…..*in accordance with risk management*

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

strategy formulated by the Board as referred to in Section 148 of the Act……". The reference to RMS in the scheme was clearly intended to align with the concept of information which was spoken of in Explanations 1 and 2 of Section 148. Both Explanations 1 and 2 of Section 148 are of critical importance as would become apparent from the discussion which ensues.

F. RMS AND OTHER MODES OF SELECTION OF CASES

57. However, and before we proceed to examine and interpret the scope of those two Explanations, this would be an appropriate juncture to elaborate upon the underlying scheme and objective of the RMS which came to be formulated by the Board as well as other data analytical measures which came to be adopted for the purposes of assessment under the Act. The RMS was preceded by the adoption of various technological tools by the Income Tax Department for the purposes of analysing returns, extracting data and information pertaining to the constituents of the tax base of the country and the selection of appropriate cases for scrutiny and other measures contemplated under the Act. These developments as per the material placed for our consideration by Mr. Chawla, first stood mirrored in a system titled CASS and which finds mention in a communication of the CBDT dated 26 September 2014. The aforesaid system of scrutiny, and where cases came to be selected with the aid of information and data analytical tools, was aided by the creation of AIR, CIB and 26AS data collected by the respondents. Instructions for purposes of scrutiny with the aid of CASS were also issued by the CBDT in terms of its communications dated 29 December 2015 and 14 July 2016.

58. Of equal significance is the response made by the Minister of

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

State in the Ministry of Finance in the Rajya Sabha on 07 December 2021. The Hon'ble Minister stated that for the purposes of scrutiny, cases are selected randomly through the CASS process and *"in an identity blind manner"*. It would thus appear that by this time the Income Tax Department clearly had in place a selection criteria which took into consideration various risk parameters and which would operate as red flags enabling and assisting the respondents to assess or reassess as well as to scrutinize in a more effective and efficient manner. This process uses data analytics and algorithms to identify cases that may need closer inspection based on specific risk parameters, such as unusual financial activity, discrepancies in tax returns, or high-value transactions. The CASS process minimizes human intervention in the selection phase, aiming to make the scrutiny process more objective, efficient, and unbiased by focusing on risk-based criteria rather than manual selection.

59. Turning then to the concept of RMS which is frequently referenced and finds repeated mention in the statute as well as the instructions issued by the CBDT, we take note of the Insight Instruction No. 71 issued by the Directorate of Income Tax (Systems) specifically addressing this approach. The aforesaid Insight Instruction appears to suggest that RMS and the creation of an Insight Portal were digital tools created internally by the respondents in order to enable an AO to holistically evaluate individual returns, map returns that may be found to be connected and a data set thus becoming available to be used for exploratory, statistical and perhaps even inferential analysis. The Insight Portal thus assimilated data pertaining to each individual assessee across broad parameters, stretching from comparative income

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

tax return information, financial profiles and asset details amongst various other factors. The Insight Portal thus integrates a comprehensive dataset for each individual assessee, encompassing a wide range of parameters. These include comparative analyses of income tax return histories, detailed financial profiles, asset holdings, and additional relevant financial and transactional information. This data assimilation allows for a nuanced view of each taxpayer's financial standing and reporting consistency across multiple dimensions .The Insight Instruction dated 16 November 2023 discloses that the data so collected was made visible to the JAOs' on the verification module of the Insight Portal. This enabled the JAO to test the completeness of disclosures made by an individual assessee against material aggregated by the system.

60. In addition to the above, the Insight Portal enabled the JAO to access a **Transaction Number Sequence**[21] hyperlink and which would disclose the following information pertaining to that particular assessee:- (a) bank account (b) aggregate gross amount related to the account (c) cash deposits in that account and (d) information with respect to immovable property transactions and other relevant details. This feature allows JAOs to verify if a taxpayer's information is complete and consistent with the data gathered by the system, making it easier to catch any missing links or inaccurate information.

61. What we seek to emphasise and highlight is that the extensive framework of information which is collected, structured and made available on the Insight Portal represents data which is made visible solely to the JAO. This entire spectrum of data, information and

[21] TNS

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

comprehensive insight is not digitally pushed to the NFAC in the first instance. From the additional affidavit which has been filed by the respondents and which explains the working and the implementation of RMS, the following position emerges.

62. The deponent discloses that the Directorate of Income Tax (Systems) is accorded the ability to randomly select cases which may have been cross referenced on the basis of the criteria and factors on which the RMS is founded. Upon such cases coming to be randomly selected and flagged, the cases so identified are then forwarded to the concerned JAO. What the respondents seek to emphasize is that the cases which are selected by the Directorate of Income Tax (Systems) based on the RMS is an exercise independently undertaken with the JAO having no control over the selection process. It is in that light that the respondents assert that the JAO can neither predict nor determine beforehand whether a case would be flagged by the Directorate of Income Tax (Systems).

63. Apart from the aforenoted technological aspects and the analytical tools which appear to have been adopted by the Income Tax Department, the Act enables the JAO itself to select cases which may merit further inquiry or investigation on the basis of information as defined. This becomes apparent from the following discussion.

64. As we view Explanation 1 of Section 148 of the Act, it becomes apparent that an assessing officer could form an opinion that income chargeable to tax had escaped assessment on the basis of (a) information which comes to light through the RMS (b) an audit objection (c) information received under agreements with nations (d) information made available to the JAO in terms of a scheme notified

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

under Section 135A or (e) information on which further action is warranted in consequence to an order of a Tribunal or a Court. It is thus manifest that apart from information which is made available to the JAO pursuant to the RMS, the Act contemplates a decision to commence reassessment also being founded or based upon other inputs which are noticed in clauses (a) to (e) of Explanation 1. In essence, the Act permits reassessment not only on RMS data but also on a variety of other specified inputs ensuring a broader foundation for initiating reassessment.

65. In terms of Explanation 2 to Section 148, information that may come to the fore consequent to a search or survey, is also, by virtue of the legal fiction incorporated therein, deemed to be that which would constitute "*information*" and be viewed as suggestive of income chargeable to income having escaped assessment. The material that may be gathered in the course of a search or survey also thus constitutes information which comes to be placed in the hands of the JAO and which may form the basis for formation of opinion of whether reassessment is merited.

G. "INFORMATION" RELEVANT FOR ASSESSMENTS

66. It would at this stage be also relevant to take note of the following additional provisions of the Act and which broadly identify sources from which information may be gathered by an AO for the purposes of assessment. An AO, by virtue of Section 133, stands empowered to require any firm or person to furnish information and which may be used in aid of its statutory obligation to discharge the various functions entrusted to it. In terms of Section 133A, an income tax authority, is conferred with the power to survey any place or

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

premises at which a business, profession or activity for charitable purposes is carried out. Section 133A also empowers the income tax authority to inspect books of account, check or verify cash, stock or other valuable articles as well as require the surveyed entity to furnish such information as may be warranted. Similar powers for the purposes of collection of information stand conferred on an income tax authority in terms of Sections 133B and 133C of the Act.

67. Section 135A enables the Union Government to frame a scheme for the purposes of calling for information in terms contemplated under Sections 133, 133B and 133C. Such a scheme has in fact come to be formulated and published on 13 December 2021. It would be relevant for our purposes to take note of the provisions contained in Clauses 3 and 4 of that scheme and which are reproduced hereinbelow:-

> "**3. Scope of the Scheme.-** (1) The scope of the Scheme shall be in respect of:
>
> (i) calling for information under section 133 of the Act;
> (ii) collecting certain information under section 133B of the Act;
> (iii) calling for information by the prescribed income-tax authority under section 133C of the Act;
> (iv) exercise of power to inspect registers of companies under section 134 of the Act; and
> (v) exercise of power of Assessing Officer under section 135 of the Act.
>
> (2) The Scheme shall be applicable to exercise the functions referred to in sub-paragraph (1) for processing or utilisation of the information which is,—
>
> (i) in possession of the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be; or
> (ii) made available to the Principal Director General of Income-tax (Systems)or Director General of Income-tax (Systems), as the case may be, by-
> (a) the Director General of Income-tax (Intelligence and Criminal Investigation);

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Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(b) the Commissioner of Income-tax in charge of the Centralised Processing Centre for processing of returns;
(c) the Commissioner of Income-tax in charge of the Centralised Processing Centre (TDS) for processing of statement of tax deducted at source; or
(d) any other authority, body or person.

4. Electronic Collection and Verification.— (1) The Commissioner of Income-tax (e-Verification) shall collect the information referred to in sub-paragraph (1) of paragraph 3, in accordance with the procedure laid down by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be.

(2) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall make available the information referred to in sub-paragraph (2) of paragraph 3, to the Commissioner of Income-tax (e-Verification)-

(i) which was uploaded to the registered account or sent on the registered mobile number, wherever available, of the assessee and not accepted by him or in a case where no response has been received from the assessee within ninety days;
(ii) in respect of which no registered e - mail account or mobile number is on record.

(3) The Commissioner of Income-tax (e-Verification) shall process the information made available to it for initial e-verification.

(4) The initial e-verification by the Commissioner of Income-tax (e-verification) shall be through an automated issuance of communication to the source from where the information is received and the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall enable such automated communication.

(5) In cases where the mismatch between the amount accepted by the assessee and the amount reported by the reporting entity persists, the information after such initial e-verification shall be run through a risk management strategy laid down by the Board and the information found to be no or low risk on such risk criteria, where no further action is required, shall be processed for closure.

(6) The remaining information shall be transferred electronically by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, to the Prescribed Authority through a process of automated allocation system.

(7) The verification of the information so allocated, shall be completed by the Prescribed Authority in the manner as per the

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

procedure laid down in this regard by the Director General of Income-tax (Intelligence and Criminal Investigation),with the prior approval of the Board.

(8) The information verified as above, shall be sent back electronically in the form of a preliminary verification report for verification to the Commissioner of Income-tax (e-Verification).

(9) The Commissioner of Income-tax (e-Verification) shall match the preliminary verification report with the information in the return of income of the respective assessee, where such return is available electronically and prepare a final verification report.

(10) Based on the final verification report, the information found to be low risk in accordance with the criteria approved by the Board shall be considered for closure.

(11) The remaining information in the form of final verification report shall be processed in accordance with sub-paragraph 12.

(12) If the information referred to in sub-paragraph (11), —

(i) pertains to a pending scrutiny assessment, it shall be made available electronically to the Faceless Assessing Officer or Jurisdictional Assessing Officer, as the case may be.

(ii) does not pertain to a pending scrutiny assessment, it shall be utilised for further necessary action in accordance with the provisions of the Act."

68. In cases where questions of capital gains are at issue, the AO stands conferred with the power to make a reference to a Valuation Officer for an estimation of value, including the fair market value of any asset, property or investment. This power which stands individually conferred upon the AO stands enshrined in Section 142A of the Act. TOLA also introduced Section 142B and which in turn empowered the Union Government to frame a scheme for the purposes of faceless inquiry or valuation. In exercise of that power, the Union Government has framed a scheme which came to be notified on 30 March 2022. Clauses 2 and 3 of that scheme are extracted hereinbelow:-

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

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

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(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 of the Scheme.— For the purpose of this Scheme, —

(a) issuing notice under sub-section (1) of section 142 of the Act,
(b) making inquiry before assessment under sub-section (2) of section 142 of the Act,
(c) directing the assessee to get his accounts audited under sub-section (2A) of section 142 of the Act,
(d) estimating the value of any asset, property or investment by a Valuation Officer under section142A 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 of total income or loss of assessee."

H. THE CONCURRENT CONFERRAL OF JURISDICTION

69. We then take note of the elaborate provisions which the Act incorporates for the purposes of delineating jurisdictional boundaries and conferment of powers amongst income tax authorities. This becomes evident from a reading of Section 120 which enables the CBDT to issue directions specifying the territorial area, persons or classes of persons, incomes or classes of income, as well as cases or classes of cases which may be placed under the jurisdiction of income tax authorities. Notwithstanding such a distribution of cases and territories, Section 127 enables the authorities prescribed therein to transfer any case for the purposes of centralized assessment. That power to transfer can be exercised so as to place a particular batch of cases before any AO irrespective of whether it had been empowered to exercise concurrent jurisdiction. Of equal significance are the

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

notifications issued by the CBDT for the purposes of facilitating conduct of faceless assessment and which in ambiguous terms provide that the authorities so designated in those notifications would exercise powers and discharge functions of an AO "*concurrently*".

70. Despite these assigned areas and responsibilities, Section 127 allows certain tax authorities to transfer cases for centralized assessments. This means that cases originally assigned to one officer or jurisdiction can be reassigned, grouping similar cases together for efficient handling. This power to transfer cases can allow a group of cases to be examined by a particular AO, regardless of whether that officer had authority over the cases initially. The CBDT has also issued notifications to facilitate faceless assessments, where assessments are handled without in-person interaction between the tax official and the taxpayer. These notifications allow designated tax authorities to share the powers and duties of an AO in a "concurrent" manner, meaning multiple officers or authorities can simultaneously exercise the functions of an AO, especially in a faceless system.

71. It is also pertinent to note that Section 144B itself confers a power upon the Principal Chief Commissioner or the Principal Director General to transfer cases to the JAO**.** This authority stands mirrored in sub-section (7) and (8) of Section 144B. We had in the earlier parts of the judgment, also noticed sub-section (9) as it existed in Section 144B prior to its deletion by virtue of Finance Act, 2022. It would be pertinent to briefly advert to the Memorandum which explained the various clauses of Finance Act, 2022 and which discloses the reasons which weighed upon the Union to ultimately move for the deletion of sub-section (9). The relevant part of that Memorandum is reproduced

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

hereunder:-

> "(II) Sub-section (9) of section 144B of the Act provides that the assessment proceedings shall be void if the procedure mentioned in the section was not followed. The said sub-section refers to violation of the procedure laid down by the law whereas a large number of disputes have been raised under this sub-section involving technical issues arising due to use of information technology, leading to unnecessary litigation. It is, therefore, proposed to omit this sub-section i.e., sub-section (9) of section 144B from its date of inception.
>
> This amendment will take effect retrospectively from 1st April, 2021."

Overall, this section captures the legislative intent to create an effective, fair, and flexible tax assessment process that balances structured jurisdictional roles with the adaptability needed for centralized, faceless assessments. Notably, among the various factors that influenced this decision, what is not lost is the delicate balance sought to be struck by the Legislature between procedural adherence and practical efficiency. The Legislature recognised that while strict procedural compliance is fundamental to maintaining fairness and transparency in the assessment process, an inflexible adherence to procedure—especially in a digital and faceless assessment environment—could inadvertently lead to administrative bottlenecks and a surge in litigation. The legislature sought to ensure that the intent of the law is not overshadowed by technicalties.

I. ASSESSMENT AND RE-ASSESSMENT ACTION IN LIGHT OF THE FACELESS ASSESSMENT REGIME

72. Having noticed the origins of faceless assessment and how it came to evolve over a period of time, it becomes apparent that the procedure formulated and introduced by virtue of Section 144B of the Act while undeniably transformative and disruptive and

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

transformational, was also in many ways transitional and representative of a phased and evolving process. Various categories of cases were from inception excluded specifically from the ambit of faceless assessment. These included cases assigned to central charge, those pertaining to international tax, assessment in cases whose pendency could not be created on the Income Tax Business Application portal on account of technical reasons as well as assessments to be undertaken under Section 147. This becomes evident from a reading of the orders dated 06 September 2021 and 22 September 2021 which have been extracted hereinabove. We also had an occasion to note that Section 144B when it originally came to be inserted in the statute, stood confined to assessments under Sections 143(3) and 144. The words "*reassessment*", "*recomputation*" came to be added subsequently by virtue of Finance Act, 2022. It was this Amending Act which also added the words "*Section 147*" specifically in Section 144B. As we read the various clauses of Section 144B, the focal point and the nucleus of faceless assessment primarily appears to be the assessment and analysis of returns which have been filed electronically and are to go through the rigors of regular assessment. This position clearly emerges from a reading of the elaborate provisions contained therein and which in minute detail provide how returns are, generally under the faceless scheme, liable to be scrutinised and assessed, the random allocation of those cases to different Assessment Units, the conferment of dynamic jurisdiction upon Assessment Units, the internal review procedure pertaining to draft orders, issuance of notices and a host of other facets pertaining to assessment in general.

73. However, of critical significance is the absence of any provision

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

of Section 144B seeking to regulate the commencement of reassessment action as contemplated under Sections 147, 148 and 148A of the Act. The provision is conspicuously silent with respect to commencement of action under Section 147. Of equal importance is the fact that although Section 144B describes the various steps to be taken in the course of assessment and assigns roles to different constituents of the NFAC, it does not, at least explicitly, incorporate any machinery provisions which may be read as intended to regulate the pre-issuance stages of a notice under Section 148. While it is true that Section 144B does specifically refer to reassessment, the significance of that insertion would perhaps have to adjudged bearing in mind the interpretation of the scheme for reassessment which has been advocated for our consideration by the respondents and which not only appeals to reason but may also be the more sustainable view to adopt if one were to harmoniously interpret the provisions of the Act alongside the schemes for faceless assessment coupled with the underlying objectives of reducing human interface.// While it is indeed acknowledged that Section 144B expressly includes a reference to reassessment, the true import and scope of this inclusion must be interpreted in a manner that aligns with the overarching framework advocated by the respondents.

74. The respondents' interpretation, which has been advanced for our consideration, not only presents a logical approach but also offers a more sustainable understanding if one is to engage in a harmonious construction of the provisions of the Act. This approach seeks to ensure that the reassessment scheme functions in concert with the faceless assessment framework, .However, before we elaborate upon the reasons which have weighed upon us in this respect, this would be an

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

appropriate juncture to advert to the various streams and sources of information which enables an AO to discharge its obligation of investigation and enquiry.

75. It is important, at the outset, to note that a reassessment need not and in all conceivable contingencies be triggered by a return that an assessee may choose to lodge electronically. Reassessment, as contemplated within the framework of the Act, is a complex process driven by multiple factors that extend far beyond the initial filing of a return. As is manifest from a reading of Explanations 1 and 2 of Section 148, reassessment may be commenced on the basis of information that may otherwise come to be placed in the hands of the JAO. A reassessment may also be considered being initiated if an audit objection were to be flagged and placed for the consideration of the JAO. In terms of Explanation 2, and post Sections 153A/153C fading into the sunset, we could also conceive of material unearthed in the course of a search or material, books of accounts or documents requisitioned under Section 132A as constituting the basis for initiation of reassessment. Explanation 2 also alludes to a survey that may be conducted in exercise of powers comprised in Section 133A and the material gathered in the course thereof being relevant for the purposes of formation of opinion as to whether income had escaped assessment.

76. Thus all the contingencies and situations which are spoken of in Explanations 1 and 2 are not founded on the material or the data which may be available with NFAC. The statute thus clearly conceives of various scenarios where the case of an individual assessee may be selected for examination and scrutiny on the basis of information and material that falls into the hands of the JAO directly or is otherwise

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

made available with or without the aid of the RMS. It would, therefore, in our considered opinion, be erroneous to view Section 144B as constituting the solitary basis for initiation of reassessment. We also, in this regard, bear in consideration the indubitable fact that Section 144B is primarily procedural and is principally concerned with prescribing the manner in which a faceless assessment may be conducted as opposed to constituting a source of power to assess or reassess in itself.

77. Consequently, to ascribe substantive value to Section 144B as the primary basis for reassessment would be to misinterpret its intended meaning. Section 144B is not intended to establish a substantive basis for the exercise of reassessment powers; rather, it is inherently procedural. Its function is confined to outlining the processes through which faceless assessments are to be conducted, ensuring efficiency and consistency in the manner of assessment rather than determining the substantive grounds upon which reassessment is founded. Therefore, Section 144B must be rightly and necessarily conceived as procedural, forming part of the broader legislative framework aimed at structuring the assessment process without encroaching upon the substantive grounds for reassessment itself

78. As noted above, Section 144B is fundamentally concerned with the assessment of returns duly filed and their distribution by way of randomized allocation to different Assessment Units. We, for reasons aforenoted, find ourselves unable to view that provision as being the singular and exclusive repository of the power to assess as contemplated under the Act. This would appeal to reason additionally in light of the provisions contained in sub-sections (7) and (8) of Section 144B and which enable the Principal Chief Commissioner or

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

the Principal Director General to relegate assessment back to the JAO. The randomized allocation of cases based on the adopted algorithm and the use of technological tools including artificial intelligence and machine learning would appear to be primarily aimed at subserving the primary objective of faceless assessment, namely, of reducing a direct interface, for reasons of probity and to obviate allegations of individual arbitrariness. However, it would be wholly incorrect to view the faceless assessment scheme as introduced by virtue of Section 144B as being the solitary route which the Act contemplates being tread for the purposes of assessment and reassessment.

79. The core attributes of the faceless assessment system revolve around the principle of randomized allocation, where 'random' in its literal sense means that case assignments are made without any predetermined or controlling factor. This principle is a deliberate feature of the faceless assessment framework, aimed at reducing direct human interaction—a facet historically susceptible to biases and potential misconduct. By substituting the human element with a carefully designed algorithm, the system restricts human involvement to only those essential stages, thereby enhancing fairness and accountability.

80. Section 144B, therefore, plays a crucial role by establishing the procedural mechanisms for faceless assessments, specifically through the random allocation of cases to different Assessment Units. However, to read into Section 144B a substantive basis for assessments and reassessments would extend its role beyond its intended design. The section's true function lies in facilitating an unbiased, algorithm-driven distribution of cases, supporting the overarching objective of

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

minimizing direct human interaction in the assessment process.

81. Additionally, provisions within sub-sections (7) and (8) of Section 144B authorize the Principal Chief Commissioner or the Principal Director General to transfer cases back to the Jurisdictional Assessing Officer (JAO) when appropriate. This flexibility further emphasises that Section 144B cannot be viewed as the exclusive basis for all assessment and reassessment procedures. The randomised allocation, reinforced by tools such as artificial intelligence and machine learning, is intended to reduce direct human interface for reasons of integrity and to prevent individual arbitrariness. Nevertheless, it would be incorrect to interpret Section 144B as the sole pathway envisioned by the Act for conducting assessments or initiating reassessments. Instead, it should be recognized as one component within a broader statutory framework that provides multiple avenues for the lawful assessment and reassessment of returns.

82. As was noticed by us hereinbefore, the conferred jurisdiction upon authorities for the purposes of faceless assessment itself uses the expression "*concurrently*". That word would mean contemporaneous or in conjunction with as opposed to a complete ouster of the authority otherwise conferred upon an authority under the Act. This too is clearly demonstrative of the Act not intending to deprive the JAO completely of the power to reassess. In understanding the concept of concurrent jurisdiction, it is essential to recognise that the retention of a human element within the broader framework of the National Faceless Assessment Centre (NeAC) does not conflict with the powers held by the JAO. Rather, this setup must be viewed as complementary, reinforcing both accountability and adaptability within the assessment

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

process.

83. In **Sanjay Gandhi Memorial Trust v. Commissioner of Income Tax (Exemption)**[22], the Court directly addressed whether the JAO could exercise assessment authority alongside the faceless assessment system. The Court concluded that, while the faceless system centralizes case handling through the NFAC, this framework does not completely replace or nullify the JAO's role. The CBDT notifications further affirm this shared responsibility, specifying that the NFAC and the JAO hold concurrent jurisdiction, thereby allowing the faceless system to conduct assessments without stripping the JAO of its foundational authority.

84. In this way, the JAO's retention of original jurisdiction provides a critical balance, ensuring that human oversight remains available within the faceless assessment structure when needed. Importantly, the Court highlighted that the JAO's authority is not merely residual but an active, complementary role that reinforces the flexibility of the assessment system. For instance, the NFAC retains the capacity to transfer cases back to the JAO during assessment proceedings if circumstances require a return to jurisdictional assessment. This adaptability affirms that faceless and jurisdictional assessments are not mutually exclusive; instead, they are interwoven aspects of the Act's broader design, intended to operate in tandem to achieve fairness and procedural integrity.

85. The issue of the JAO having concurrent jurisdiction arose directly for the consideration of this Court in *Sanjay Gandhi Memorial Trust*. One of the arguments which appears to have been addressed

[22] 2023 SCC OnLine Del 3161

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

before the Court in that case was of the JAO having no authority or jurisdiction to assess. Dealing with the aforesaid, our Court held:-

> "**48.** This Court is of the view that though in the year 2019, the concept of e-assessment and in 2020, the concept of faceless assessment were introduced, yet the jurisdictional assessing officer continues to exercise concurrent jurisdiction with faceless assessing officer. In fact, pursuant to exercise of power under Section 120(5) of the Act which empowers CBDT to confer concurrent jurisdiction on two or more assessing officers for proper management of the work, the CBDT has vide Notification No. 64/2020 dated 13-8-2020 conferred power upon the income tax authorities of the National e-Assessment Centre to exercise the power and function of assessment "concurrently" while the original jurisdiction continues with the jurisdictional assessing officer. The relevant portion of the said notification is reproduced hereinbelow:
>
> > "S.O. 2756(E).- *In pursuance of the powers conferred by subsections (1), (2) and (5) of Section 120 of the Income Tax Act, 1961 (43 of 1961) (hereinafter referred to as "the said Act"), the CBDT hereby directs that the Income Tax Authorities of the National e-Assessment Centre (hereinafter referred to as "the NeAC") specified in column (2) of the Schedule below, having its headquarters at the place mentioned in column (3) of the said Schedule, shall exercise the powers and functions of assessing officer concurrently, to facilitate the conduct of faceless assessment proceedings) ....*
> >
> > (emphasis supplied)"
>
> **49.** It is clarified in the e-assessment and faceless assessment scheme that once a case is selected for scrutiny, for the limited purpose of passing assessment order for a particular assessment year, the case is assigned to National e-Assessment Centre and after assessment, the electronic records of the case are to be transferred back to the jurisdictional assessing officer.
>
> **50.** Further, the E-assessment Scheme, 2019 and faceless assessment scheme issued vide two notifications each dated 12-9-2019 and 13-8-2020 under Sections 143(3-A) and (3-B) of the Act clearly stipulate that the provision of Section 127 of the Act shall apply subject to exceptions, modifications and adaptations as stipulated therein. In other words, if the faceless assessment scheme has not modified Section 127 of the Act, the powers under the said section would continue to apply to all cases in an unmodified manner.

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

51. Clause (xxi) of the Notification Nos. 61/2019 and 62/2019 dated 12-9-2019 issued in exercise of powers under Sections 143(3-A) and (3-B) of the Act in order to give effect to the e-assessment scheme authorises the National e-Assessment Centre to transfer the case of the assessee at any stage of the assessment (i.e. only when the assessment proceeding is pending before the National e-Assessment Centre) to the assessing officer having jurisdiction over such case, as the scope of power and functions of National e-Assessment Centre is limited to facilitating the conduct of e-assessment.

52. Consequently, this Court is of the view that the two Notifications dated 12-9-2019 enlarge and supplement the power of transfer by authorising the National e-Assessment Centre to transfer at any stage of assessment the case of the assessee to the assessing officer having jurisdiction over such case i.e. from faceless assessing officer to jurisdictional assessing officer (an assessing officer always having concurrent jurisdiction).

53. To the same effect are the Notifications dated 13-8-2020, which clarify, "The provisions of .... Section 127 of the Act shall apply to the assessment made in accordance the said Scheme subject to the following exceptions, modifications and adaptations .... " Clause (2) of the Notification Nos. 60 and 61 of 2020 dated 13-8-2020 enable the Principal Chief Commissioner or Principal Director General in charge of National e-Assessment Centre, at any stage of the assessment i.e. during assessment, to send back the case to the assessing officer having jurisdiction over such case, with prior approval of the Board. Clause (2) of the Scheme only authorises a transfer back to the jurisdictional assessing officer holding original jurisdiction, which he never loses as it is only the function of assessment that is to be carried out by the faceless assessing officer having concurrent jurisdiction. Consequently, clause (2) of the Scheme only retransfers the function of assessment to the jurisdictional assessing officer holding concurrent jurisdiction. Further, the said clause confers power of transfer upon Principal Chief Commissioner or Principal Director General of National e-Assessment Centre and not upon any other Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner."

As is evident from the above, the Court came to the firm conclusion that irrespective of the system of faceless assessment that had come to be introduced and adopted, it would be wholly incorrect to hold or construe the provisions of the Act as denuding the JAO of the authority to undertake an assessment or of the said authority being completely

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

deprived of authority and jurisdiction. The judgment in *Sanjay Gandhi Memorial Trust* is thus a resounding answer to the challenge as raised by the writ petitioners. That decision reinforces our conclusion of the two permissible modes of assessment being complimentary and the Act envisaging a coexistence of the two modes.

86. This quite apart from we having discerned the various sources of information which the JAO stands independently enabled to access and which could constitute material justifying initiation of reassessment. If the position as canvassed by the writ petitioners were to be accepted, those provisions would be rendered a complete dead letter and the information so gathered becoming worthless and incapable of being acted upon. This since, as we have found, such information is firstly provided to the JAO and it is that authority which is statutorily obliged to assess and evaluate the same in the first instance.

87. Within the framework of the faceless assessment system, the JAO retains powers that do not conflict with, but rather complement, the objectives of neutrality and efficiency. The faceless assessment scheme centralizes processes under the Faceless Assessing Officer (FAO) to reduce direct interaction. However, this structure does not diminish the JAO's authority. Instead, the JAO's retained jurisdiction is vital for ensuring continuity and accountability, acting as a complementary element to the faceless assessment framework. Even beyond this concurrent jurisdiction, the JAO independently wields powers under various provisions, is granted access to distinct sources of information that may substantiate grounds for reassessment. Accepting the position advocated by the petitioners—that the JAO's role is entirely overridden by the faceless system—would effectively nullify

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

these provisions, rendering such information inaccessible and unactionable. The Act specifically channels this information to the JAO, who is then statutorily responsible for the initial assessment and evaluation of this data.

88. Therefore, the JAO's powers should be understood as integral and not in conflict with faceless assessment. Rather, it represents a foundational jurisdictional safeguard, enabling the JAO to initiate reassessment based on independent, credible sources of information. This concurrent authority of the JAO reinforces the integrity and adaptability of the faceless system, ensuring that both centralized and jurisdictional assessments operate cohesively within the larger statutory framework.

89. Regard must also be had to the fact that an Assessing Unit of the NFAC derives no authority or jurisdiction till such time as a case is randomly allocated to it and which triggers the assessment process in accordance with the procedure prescribed by Section 144B. The evaluation of data and information would indubitably precede the actual process of assessment. If the interpretation which is advocated by the writ petitioners were to be countenanced, the appraisal and analysis of information and data functions which the Act entrusts upon the JAO would be rendered wholly unworkable and clearly be contrary to the purpose and intent of the assessment power as constructed under the Act.

90. The notion of entirely ousting the JAO from the assessment process is both impractical and misaligned with the objectives of the faceless assessment system. The faceless framework was established to reduce direct human interaction in assessments thereby enhancing

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

objectivity, transparency, and efficiency. However, eliminating the JAO's role altogether would not only fail to further these goals but could actually compromise the system's functionality and flexibility. The JAO's retained powers, particularly in accessing and evaluating specific information sources for reassessment, play a critical role in supplementing the centralized, algorithm-driven processes of faceless assessment. By allowing the JAO to operate in conjunction with the FAO, the Act ensures that both roles work complementarily to deliver comprehensive and balanced assessments. Far from conflicting with the faceless system, the JAO's role enhances it, ensuring that assessments remain grounded in thorough investigation.

91. The decisions of various High Courts which have taken a contrary view, have proceeded on the basis that consequent to faceless assessment coming into force by virtue of Section 144B, the JAO stands completely deprived of jurisdiction. This becomes apparent from the conclusions which the Telangana High Court came to record in *Kankanala Ravindra Reddy* when it held that after the introduction of the scheme on 29 March 2022, it becomes mandatory for the Revenue to conduct proceedings of reassessment in a faceless manner. It was this line of reasoning which appears to have been adopted by High Courts in the various decisions cited for our consideration by Mr. Goel.

92. The principal judgment which most of the High Courts have chosen to follow and reiterate is of *Hexaware Technologies*. In *Hexaware Technologies*, a specific issue with respect to the validity of the notice came to be raised with it being argued that once the scheme of faceless reassessment had come to be promulgated, the JAO would stand denuded of jurisdiction. It must at the outset be noted that apart

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

from the Faceless E-Assessment Scheme 2022 itself and the instructions which were provided to counsel appearing for the Revenue, most of the High Courts do not appear to have had the benefit of reviewing the copious material which Mr. Chawla has so painstakingly assimilated and placed for our consideration. They also do not appear to have had the advantage of a principled stand of the respondents having been placed on the record of those proceedings.

93. In *Hexaware Technologies*, the Bombay High Court ultimately came to conclude that there could be no question of a concurrent jurisdiction of the JAO and the FAO for issuance of notice under Section 148. From a reading of the record, it is unclear whether the notifications conferring jurisdiction on authorities of the NFAC for the purposes of conducting faceless assessment was placed before the High Court. At least the decision makes no reference to the notification of 13 August 2020 which has been produced in these proceedings and which in clear and unambiguous terms declares that the officers empowered to conduct faceless assessment were being conferred concurrent powers and functions of the AO. We, with respect, also find ourselves unable to concur with *Hexaware Technologies* bearing in mind the various sources of information and material which may assist a JAO in forming an opinion as to whether income had escaped assessment and have been noticed herein above. Those aspects clearly do not appear to have been either taken into consideration or engaged with by the High Court in *Hexaware Technologies*. The view expressed in *Hexaware Technologies* then came to be reiterated by the Bombay High Court in *Kairos Properties*. This decision too fails to advert or allude to the notifications in terms of which authorities forming part of the various

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

assessing units of NFAC were conferred concurrent jurisdiction.

94. The High Court of Gauhati in *Ram Narayan Sah* has essentially followed the view taken by the Bombay High Court in *Hexaware Technologies*. Although the decision of our Court in *Sanjay Gandhi Memorial Trust* appears to have been cited, the judgment neither enters any reservation nor does it record any reasons which may have assisted us in discerning what weighed with that High Court to brush aside the aspect of concurrent jurisdiction. In *Jatinder Singh Bhangu***,** the Punjab and Haryana High Court too does not appear to have had the advantage of reviewing and analysing the material that has been placed by the respondents in these proceedings. Here too, the Court was constrained to proceed merely on the basis of the instructions and letters issued to counsels appearing for the Revenue. It was perhaps in light of the state of the record as it existed that those High Courts ultimately observed that in the absence of any ambiguity in the language of the scheme, instructions and circulars can neither supplement nor supplant the statutory provisions.

95. The comprehensive material presented on the record by the respondents has afforded a holistic understanding of the nuanced aspects of the faceless assessment scheme enabling us to appreciate its intent and purpose in greater depth. Unlike prior cases where certain High Courts, including in *Hexaware Technologies*, were not provided with the full spectrum of relevant notifications and contextual information, the extensive documentation in this matter has helped clarify ambiguities in both law and fact. This record has allowed for a deeper analysis, addressing key points left unexamined in previous judgments, and has illuminated the legislative and procedural intentions

Signature Not Verified
Digitally Signed
By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

behind the faceless assessment scheme, particularly the concurrent jurisdiction between the JAO and FAO.

96. Although we had reserved judgment on this batch of writ petitions on 04 October 2024, we find that in a recent decision rendered by the Gujarat High Court on 01 October 2024, a view has been expressed which appears to be in tune with the conclusions which we have reached. We thus deem it apposite to refer to the decision of that High Court in **Talati and Talati LLP v. Office of Assistant Commissioner of Income Tax, Circle 4(1)(1), Ahmedabad**[23].

97. The solitary question which arose for consideration in the aforesaid matter was whether the Section 148 notice was rendered invalid on the ground of having been issued by the JAO. In a judgment penned by the learned Chief Justice of that High Court in *Talati and Talati LLP,* it was held as follows:-

> "(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:
>
> **xxxx xxxx xxxx**
>
> (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

[23] 2024: GUJHC: 54567-DB

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

(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 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 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

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

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 "*E-Assessment 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 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."

98. Proceeding further to notice the scheme of faceless reassessment itself, the High Court in *Talati and Talati LLP* further observed:-

" (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 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."

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

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By:KAMLESH KUMAR
Signing Date:28.10.2024
17:50:00

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.

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

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Signing Date:28.10.2024
17:50:00

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 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

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Signing Date:28.10.2024
17:50:00

expressed in this respect in *Hexaware Technologies* and 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.

J. DISPOSITION

104. We, accordingly and for all the aforesaid reasons find ourselves unable to sustain the challenge as addressed. The contention that the impugned notices are liable be quashed merely on the ground of the same having been issued by the JAO is thus negated.

105. Accordingly, while we dismiss these writ petitions, we clarify

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Signing Date:28.10.2024
17:50:00

that any other objection that the petitioners may have to the initiation of reassessment proceedings would be open to be addressed in independent proceedings.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

OCTOBER 28, 2024/*neha/*RW

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