

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13614 of 2024

=====

Awadh Kishor Singh Son of Shri Binda Singh resident of vill - Repura Rampurballi, Repura Urf Rampur Bishunath, P.O. Jaintpur Estate, P.S. Saraiyan, Muzaffarpur, Bihar - 843123.

... .. Petitioner/s

Versus

1. National Faceless Assessment Centre 2nd floor, E-Ramp, Jawaharlal Nehru Stadium, New Delhi- 110003.
2. Principal Commissioner of Income Tax- 1 having its Office at Bir Chand Patel Path, Central Revenue Building, Patna 800001.
3. Income Tax Officer, Ward 1 (1), Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Sr. Advocate Ms. Shivani Dewalla, Advocate Mr. Sadashiv Tiwary, Advocate Mr. Hiresh Karan, Advocate Ms. Prachi Pallavi, Advocate
For the Respondent/s	:	Ms. Archana Sinha @ Archana Sahi, Sr. Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 10-02-2025

This writ application has been preferred seeking the following reliefs:-

“(i) The order dated 03.03.2022 (as contained in Annexure-P5 series) passed by the respondent no.1 under Section 147 read with Section 144B of the Act for the Assessment Year 2014-15 (hereinafter called the Act) without compliance of the statutory provisions contained in Section 144B of the Act and also without grant of adequate opportunity of being heard be set aside and quashed.



(ii) For granting and other relief(s) to which the petitioner is otherwise found entitled to.”

2. Petitioner is an individual engaged in the business of trade of fish on a fixed commission basis. He is entrusted with the unloading and sale of fish on a truck load basis on a fixed commission of Rs.1500 per truck. The fishes are imported from the State of Andhra Pradesh and other coastal States outside the State of Bihar by the wholesale dealers. The petitioner deposits the sale proceeds in his bank account and remits the same to the wholesale dealers mostly in the State of Andhra Pradesh and other coastal areas through bank transfers.

3. It is the case of the petitioner that he filed a return for the assessment year 2014-15 with the help of local advocate estimating his income of commission on sale of fish on a commission basis at Rs.2,35,000/-. It is his plea that he is an illiterate person and has practically no understanding of the website of the Income Tax Department. He was not able to know all the proceedings in progress leading to an ex-parte order of assessment. He came to know about this fact only after the bank intimated him in July last week about the notice of attachment under Section 226(3) of the Act to remit the disputed demand of tax. The petitioner claims that he had discontinued his business way back in December, 2023.



Submissions on behalf of the petitioner

4. Mr. D.V. Pathy, learned senior counsel for the petitioner submits that the respondent no.3 issued a notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act of 1961') stating therein that he had reason to believe that income has escaped assessment. A copy of the notice dated 30.03.2021 for the assessment year 2014-15 has been brought on record as Annexure-P1.

5. The respondent no.3 issued a notice under Section 142(1) of the Act directing the petitioner to explain the source of income and furnished bank statement for the financial year 2013-14. Thereafter the notices were issued by the respondent no.1- National Faceless Assessment Centre (in short 'NFAC') directing the petitioner to furnish details as regards business, audit reports and other accounting details as per the annexure to the notice.

6. Learned senior counsel submits that by yet another notice dated 20.01.2022 respondent no.1 proposed variation to the returned income. The notice alleged that deposit of a sum of Rs.1,76,33,412/- in the ICICI bank account of the petitioner. The notice proposed to add the whole of the deposits as undisclosed income.



7. Learned senior counsel for the petitioner submits that the notices were displayed on the portal of the department. The petitioner being illiterate person could not ever know of the ex-parte assessment order going against him initiated by the jurisdictional officer or the Faceless Assessment Centre. The respondent no.1 passed an ex-parte order of assessment dated 03.03.2022 for the assessment year 2014-15 under Section 144 and 144B of the Act and accordingly issued a notice of demand.

8. The core contention of learned senior counsel for the petitioner is that the statutory scheme of Section 144B of the Act of 1961 provides for the manner in which an assessment under Section 143(3) and Section 144 of the Act of 1961 is to be done. It is his submission that there are several sub-clauses under Section 144B, even in case of failure of an assessee to comply with the notice the 'NFAC' must examine the draft assessment order in accordance with the risk management strategy specified by the Board including by way of an automatic examination tool and then again provide an opportunity to the assessee in case any variation prejudicial to the interest, is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made or assign the draft assessment order to review unit in



any one Regional Faceless Assessment Centre through an automated allocation system for conducting review of such order.

9. It is his submission that the respondents made an ex-parte assessment without due compliance with the specified procedure enumerated in Section 144B of the Act of 1961. In his submissions, the impugned order is without jurisdiction.

10. Learned senior counsel for the petitioner has heavily relied upon the judgment of the Hon'ble Supreme Court in the case of **Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District-1, Calcutta and Another** reported in (1961) 41 ITR 191. In the said case, the Hon'ble Supreme Court has held that if the conditions precedent for issue of a notice under Section 34 do not exist, the jurisdiction of the High Court to issue high prerogative writs under Article 226 of the Constitution to prohibit action under the notice may be exercised.

11. Relying upon the judgment in the case of **Kranti Associates Private Limited & Another Vs. Masood Ahmed Khan & Others** reported in (2010) 9 SCC 496, learned senior counsel submits that the necessity of giving reasons by a body or authority in support of its decision has been a settled proposition and it has been held that the distinction between the administrative orders and quasi-judicial orders got blurred and thinned out and



virtually reached a vanishing point in the judgment of the Hon'ble Supreme Court in the case of **A.K. Karaipak Vs. Union of India** reported in **(1969) 2 SCC 262**.

12. The learned senior counsel has relied upon the judgment of the Hon'ble Delhi High Court in the case of **Capital Broadways Pvt. Ltd. Vs. Income Tax Officer Ward 5(3) Delhi & Another in W.P.© No.4303 of 2017** reported in **2024 TAXSCAN (HC) 2100**. It is submitted that in this case the Hon'ble Delhi High Court has relied upon Pioneer Town Planners Pvt. Ltd. and other judgments. In the case of **Principal Commissioner of Income Tax-6 Vs. Meenakshi Overseas Pvt. Ltd. ITA 651/2015**, it has been held that by writing words "Yes, I am satisfied" the mandate of Section 151(1) of the Act as far as approval of Additional CIT was concerned, stood satisfied but this satisfaction arrived at by the Hon'ble Delhi High Court was in the light of the fact that the Additional CIT addressed a letter to the ITO in which he wrote that in view of the reasons recorded under Section 148(2) of the IT Act, approval for issue of notice under Section 148 is hereby given. In the case of **Capital Broadways Pvt. Ltd. (supra)**, the Hon'ble Delhi High Court held that by mere repeating the words of the statute, mere rubber stamping of the letter seeking sanction or using similar words like "Yes, I am



satisfied” will not satisfy the requirement of law. It is his submission that in the present case the procedures as prescribed under Section 151(1) for issuance of notice under Section 148 of the Act of 1961 has not been complied with.

Submissions on behalf of the respondents

13. The writ application has been contested by the respondents. It is stated that as per report available in insight portal which was uploaded by the Assistant Director of Income Tax (Investigation) Muzaffarpur on 24.04.2020 the assessee had deposited cash of Rs.1,80,48,412/- in two bank accounts, namely, Rs.55,81,967/- in A/c No.133001502345 and Rs.1,24,66,445/- in A/c No.133005500409 maintained with ICICI bank. However, the assessee had shown gross receipt of Rs.38,29,506/- only in the ITR, therefore, the balance cash deposits of Rs.1,42,18,906/- remained unexplained.

14. It is stated that since cash of Rs.1,42,18,906/- remained as unexplained money under Section 69A of the Act of 1961, it was required to be added back to the total income. Accordingly, after approval from the Principal Commissioner of Income Tax-1, Patna, notice under Section 148 of the Act of 1961 was issued on 30.03.2021. It is stated that a notice under Section 142(1) of the Act of 1961 was issued on 04.08.2021 through JAO



but the assessee did not make any compliance. Later, on 11.11.2021, the case was transferred to the Faceless Assessment Unit for completion of assessment proceeding as per provisions of Section 144B of the Act of 1961. Thereafter, notice under Section 142(1) of the Act of 1961 was issued to the assessee through 'NAFC' on 15.11.2021 but the assessee did not make any compliance. Again a notice under Section 142(1) of the Act of 1961 was issued on 06.12.2021 but the assessee failed to make any compliance. Since the assessee was not making compliance to the statutory notices, a reference was made to verification unit for serving the notice through speed post on 24.12.2021 in accordance with the procedure laid down under Section 144B of the Act of 1961. Still the assessee failed to make any compliance. Therefore, a show cause notice was issued to the assessee on 20.01.2022 requiring him to explain why the cash deposits in his bank accounts may not be treated as unexplained money. The assessee still remained non-responsive. Accordingly, a draft order proposing variation to this effect was sent for approval on 24.02.2022 and post approval, assessment order was passed making addition of Rs.1,76,33,412/- to the total income as explained money under Section 69A of the Act of 1961.



15. Ms. Archana Shahi, learned senior counsel for the Department of Income Tax has submitted that the assessee was provided with ample opportunities during the course of assessment proceedings to place his explanation but every time he failed to submit a response. In these circumstances, assessment in the case was completed under Section 147 read with Section 144B of the Act of 1961 for the assessment year 2014-15 on 03.03.2022.

16. Learned senior counsel has placed before this Court a copy of the order dated 12.09.2024 passed by this Court in the case of this very petitioner (CWJC No.3759 of 2020). It is submitted that the said writ application was filed challenging an identical order with respect to the assessment year 2013-14. The petitioner withdrew the said writ application with liberty to seek remedy before the appellate forum. This Court permitted the petitioner to withdraw the writ petition with liberty subject to just exceptions including that of limitation also. Therefore, in present case also the petitioner if so advised may seek the alternative remedy of appeal.

17. It is submitted that the impugned order of assessment has been passed after due compliances with the statutory provisions. In order to satisfy this Court, learned counsel has placed before this Court the following three judgments:-



(1) **(2003) 259 ITR 19 (SC) (GKN Driveshafts (India) Ltd. vs. Income Tax Officer & Ors.**

(2) **CWJC No.3759 of 2020 (Venky Steels Pvt. Ltd. Vs. Commissioner of Income Tax-II.**

(3) **CWJC No.3207 of 2022 (Abha Saraf Vs. Union of India & Ors.).**

18. It is submitted that in the case of **GKN Driveshafts (India) Ltd.** (supra), the Hon'ble Supreme Court refused to interfere with the order under challenge and clarified that when a notice under Section 148 of the Act of 1961 is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order.

19. In the case of **Venky Steels Pvt. Ltd.** (supra), the learned coordinate bench of this Court considered the Commissioner's approval and rejected the contention of the petitioner that the approval is mechanical and does not disclose any reason. The learned coordinate Bench has also gone through the judgments of the Hon'ble Delhi High Court in **Principal Commissioner of Income Tax Vs. N.C. Cables Ltd.; (2017) 391**



ITR 11 (Del) and Principal Commissioner of Income Tax vs. Pioneer Town Planners Pvt. Ltd.; (2024) 465 ITR 356 (Del).

The learned coordinate Bench further went through the judgment of the Hon'ble Supreme Court in the case of **Chhugamal Rajpal Vs. S.P. Chaliha and Other; (1971) 79 ITR 603 (SC)** wherein the income tax officer had not come to a prima-facie conclusion that the loan transactions to which he referred were not genuine transactions and he appeared to have entertained only a vague feeling that they might be bogus transactions which conclusion did not fulfill the requirement of Section 151(2). In the said case, it was held that the assessing officer has to give reasons for issuing a notice under Section 148 and there should be some prima facie grounds before him, for taking such action. The Hon'ble Division Bench distinguished the case in **Venky Steels Pvt. Ltd.** (supra) and refused to interfere with the notice issued under Section 148 on the grounds raised in the writ petition.

20. Learned senior counsel has further relied upon the case of **Abha Saraf** (supra) to submit that in the said case once again the learned coordinate Bench of this Court refused to interfere with the order rejecting the appeal of the petitioner on the ground of limitation.



Consideration

21. We have considered the submissions of learned senior counsel for the parties and have gone through the materials available on the record. At this stage, we think it proper to take a glance over the relevant provisions of the Act of 1961. Section 147 is attracted if any income chargeable to tax, in the case of an assessee has escaped assessment for any assessment year. According to this provision, the Assessing Officer subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year. Section 148 provides for issuance of notice where income has escaped assessment. According to this provision, before before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall , subject to the provisions of section 148A, issue a notice to the assessee, along with a copy of the order passed under sub-section (3) of Section 148A, requiring him to furnish, within such period as may be specified in the notice, not exceeding three months from the end of the month in which such notice is issued, a return of his income or income of any other person in respect of whom, he is assessable under this Act during the previous year corresponding to the relevant assessment year.



Proviso to Section 148 states 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. Section 148A lays down procedures before issuance of notice under Section 148.

22. According to Section 151, the specific authority for the purposes of sections 148 and 148A shall be the Additional Commissioner or the Additional Director or the Joint Commissioner or the Joint Director, as the case may be. Section 151A says 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 or issuance of show-cause notice or passing of order under section 148A or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—

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

(b) optimising 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.

23. In the light of the aforementioned provisions, when we go through the notice (Annexure-P1), we find that the ITO Ward 1(1), Muzaffarpur while issuing notice under Section 148 of the Act of 1961 on 30.03.2021 has specifically stated as follows:-

“Whereas I have reasons to believe that your income chargeable to Tax for the Assessment Year 2014-15 has escaped Assessment within the meaning of Section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/re-assess the income/loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT, Patna-1.”

24. It is not in dispute that the notice was duly served on the registered e-mail of the petitioner but he did not submit any response. Again a notice under sub-section (1) of Section 142 of the Act of 1961 was issued on 04.08.2021 whereby the assessee was called upon to furnish on or before 19.08.2021 the account and documents specified overleaf. Annexure to the notice states that assessee should explain the nature and source of income and he should furnish bank statement for the financial year 2013-14 of



all bank accounts. This notice also remained unresponded. By Annexure-P3 dated 15.11.2021 the assessee was called upon by the NAFC to furnish or cause to be furnished on or before 22.11.2021 the accounts and documents specified in the Annexure to the notice. The Annexure to the notice contains a detail description of the information and the explanation called for. The petitioner remained silent and did not submit his reply. Thereafter vide Annexure-P4 show cause notice as to why proposed variation should not be made was issued on 20.01.2022. The order contained in Annexure-P4 clearly stipulates that after recording reasons for reopening of the case after taking approval of PCIT-1, notice was issued under Section 148 dated 30.03.2021 but in response to the said notice the assessee has not filed any return of income till date. Annexure-P4 is a draft order of assessment made under Section 144 read with Section 148 of the Act of 1961. The petitioner was called upon to submit his objection, if any, to the office within three days of the receipt of the draft order. It is specifically stated therein that in case no response is received by the given date and time the assessment would be finalised as per the draft assessment order.

25. It is not questioned that the draft assessment order was duly served upon the petitioner. In fact, Mr. Pathy, learned



senior counsel does not dispute that the draft order was sent on the registered e-mail of the petitioner.

26. In the aforementioned background, the assessment order (Annexure-P5) has been issued.

27. In the assessment order, the learned officer of the Department in 'NFAC' has held that the assessed income of Rs.1,78,68,410/- for the assessment year 2014-15 under Section 144 read with Section 147 read with Section 144B of the Act of 1961. It is because of the mention of Section 144B of the Act of 1961, Mr. Pathy, learned senior counsel for the petitioner has submitted that the procedures as prescribed under Section 144B was required to be followed and according to him it has not been followed.

28. In order to contest the submissions of Mr. Pathy, Ms. Archana Shahi, learned senior counsel for the Department has submitted that sub-sections (1) to (8) of Section 144B has been substituted vide Finance Act, 2022 with effect from 01.04.2022. In this case, the notice (Annexure-P1) was issued on 31.03.2021. Learned counsel has taken us through sub-sections (1) to (8) as existed prior to their substitution. We, therefore, reproduce sub-sections (1) to (8) of Section 144B as existed prior to their substitution as under:-



“(1) Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in 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 serve a notice on the assessee under sub-section (2) of section 143;

(ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (1), file his response to the National Faceless Assessment Centre;

(iii) where the assessee-

(a) has furnished his return of income under section 139 or in response to a notice issued under sub-section (1) of section 142 or under sub-section (1) of section 148, and a notice under sub-section (2) of section 143 has been issued by the Assessing Officer or the prescribed income-tax authority, as the case may be; or

(b) has not furnished his return of income in response to a notice issued under sub-section (1) of section 142 by the Assessing Officer, or

(c) has not furnished his return of income under sub-section (1) of section 148 and a notice under sub-section (1) of section 142 has been issued by the Assessing Officer, 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;

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

(v) where a case is assigned to the assessment unit, it may make a request to the National Faceless Assessment Centre for-

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

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

(c) seeking technical assistance from the technical unit;

(vi) where a request for obtaining further information, documents or evidence from the assessee or any other person has been made by the assessment unit, the National Faceless Assessment Centre shall issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit;



(vii) the assessee or any other person, as the case may be, shall file his response to the notice referred to in clause (vi), 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;

(viii) where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a verification unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(ix) where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a technical unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(x) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, based on the request referred to in clause (vii) or clause (ix) to the concerned assessment unit:

(xi) where the assessee fails to comply with the notice referred to in clause (vi) or notice issued under sub-section (1) of section 142 or with a direction issued under sub-section (2A) of section 142, the National Faceless Assessment Centre shall serve upon such assessee a notice under section 144 giving him an opportunity to show cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment;

(xii) the assessee shall, within the time specified in the notice referred to in clause (xi) or such time as may be extended on basis of an application in this regard, file his response to the National Faceless Assessment Centre,

(xiii) where the assessee fails to file response to the notice referred to in clause (xi) 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:

(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the



said income or sum, and send a copy of such order to the National Faceless Assessment Centre.

(xv) the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any;

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to-

(a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to 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; or

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made, or

(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order,

(xvii) the review unit shall conduct review of the draft assessment order referred to it by the National Faceless Assessment Centre whereupon it may decide to-

(a) concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or

(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in-

(a) sub-clause (a) of clause (xvi); or

(b) sub-clause (b) of clause (xvi);

(xix) the National Faceless Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;

(xx) the assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National Faceless Assessment Centre;



(xxi) the National Faceless Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in-

(a) sub-clause (a) of clause (xvi); or

(b) sub-clause (b) of clause (xvi);

(xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;

(xxiii) the National Faceless Assessment Centre shall,-

(a) where no response to the show-cause notice is received as per clause (xiii)

(A) in a case where the draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of said assessee, forward the draft assessment order or final draft assessment order to such assessee, or

(B) in any other case, finalise the assessment as per the draft assessment order or the final draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in any other case, send the response received from the assessee to the assessment unit;

(xxiv) the assessment unit shall, after taking into account the response furnished by the assessee, make a revised draft assessment order and send it to the National Faceless Assessment Centre;

(xxv) the National Faceless Assessment Centre shall, upon receiving the revised draft assessment order,-

(a) in case the variations proposed in the revised draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and-

(A) in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of the assessee proposed in draft assessment order or the final draft assessment order, forward the said revised draft assessment order to such assessee;

(B) in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying



the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made; (xvi) the procedure laid down in clauses (xxiii), (xxiv) and (xxv) shall apply mutatis mutandis to the notice referred to in sub-clause (b) of clause (xxv);

(xxvii) where the draft assessment order or final draft assessment order or revised draft assessment order is forwarded to the eligible assessee as per item (A) of sub-clause (a) of clause (xxii) or item (A) of sub-clause (a) of clause (xxv), such assessee shall within the period specified in sub-section (2) of section 144C, file his acceptance of the variations to the National Faceless Assessment Centre: (xxviii) the National Faceless Assessment Centre shall,-

(a) upon receipt of acceptance as per clause (xxvi); or

(b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C, finalise the assessment within the time allowed under sub-section (4) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment,

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel. the National Faceless Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the concerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, prepare a draft assessment order in accordance with sub-section (13) of section 144C and send a copy of such order to the National Faceless Assessment Centre,

(xxxi) the National Faceless Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;



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

(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 Centres and units and specify their respective jurisdiction, namely:-

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make faceless assessment;

(ii) Regional Faceless Assessment Centres, as it may deem necessary, to facilitate the conduct of faceless assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make faceless assessment;

(iii) assessment units, as it may deem necessary to facilitate the conduct of 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 the 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;

(iv) 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;

(v) 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 which may be required in a particular case or a class of cases, under this section; and

(vi) review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the draft assessment order, which includes record, checking whether the relevant and material



evidence has been brought on record, whether relevant point of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of variations proposed, if any, and such other functions as may be required for the purposes of review.

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

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

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

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

(5) All communication 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 any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre,

(6) All communications 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 all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres 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 referred to in sub clause (g) of clause (xii) of sub-section (7);

(7) For the purposes of faceless assessment-

(i) an electronic record shall be authenticated by-

(a) the National Faceless Assessment Centre by affixing its digital signature.

(b) assessee or any other person, by affixing his digital signature if he is required to furnish his return of income under digital signature, and in any other case by affixing his digital signature or under electronic verification code in the prescribed manner:



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

(a) placing an authenticated copy thereof in the assessee's registered account 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 assessee's Mobile App. and followed by a real time alert;

(iii) every notice or order or any other electronic communication shall be delivered 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 acknowledgment is sent by the 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 the income-tax authority at the National Faceless Assessment Centre or Regional Faceless Assessment Centre or any unit set up under this sub-section;

(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment 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 the such draft or final draft or revised draft assessment order, 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 in any unit:

(viii) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (vi) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (h) of clause (xii)



(ix) where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, such hearing shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board;

(x) subject to the proviso to sub-section (6), any examination or recording of the statement of the assessee or any other person (other than statement recorded in the course of survey under section 133A of the Act) shall be conducted by an income-tax authority in any unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony in accordance with the procedure laid down by the Board;

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

(xii) the Principal Chief Commissioner or the Principal Director General, 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, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:-

(a) service of the notice, order or any other communication:

(b) receipt of any information or documents from the person in response to the notice, order or any other communication;

(c) issue of acknowledgment of the response furnished by the person;

(d) provision of "e-proceeding" facility including login account facility, tracking status of assessment, display of relevant details, and facility of download,



- (e) accessing, verification and authentication of information and response including documents submitted during the assessment proceedings
 - (f) receipt, storage and retrieval of information or documents in a centralised manner;
 - (g) circumstances in which proviso to sub-section (6) shall apply:
 - (h) circumstances in which personal hearing referred to clause (vii) shall be approved;
 - (i) general administration and grievance redressal mechanism in the respective Centres and units.
- (8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General 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.”

29. It is submitted that notwithstanding the fact that notice was issued on 31.03.2021 itself, once the records were transferred to the ‘NFAC’, the department has followed the procedure as envisaged under Section 144B of the Act of 1961. Learned counsel has produced the records and has taken us through the records flagged.

30. A perusal of the documents would show that in the proposal for scrutiny, reasons for selection are duly recorded. The Range Head and CIT/PCIT have also stated in their approval order that they are satisfied with the reasons recorded by the assessing officer and it is a fit case for issuing notice under Section 148. We, therefore, find that there is a due approval under Section 151 of the Act of 1961.



31. On perusal of the details as available in the computersheet of order detail, we find that in course of faceless assessment at every stage approval from competent authorities have been obtained. Prima-facie, we do not find it a case of jurisdictional error, hence this Court would refrain from exercising it’s extraordinary writ jurisdiction in the present case.

32. The petitioner has already chosen to avail alternative remedy in respect of the assessment year 2013-14. If so advised, he may avail the remedy of appeal, subject, however, to the limitation. While considering any application for condonation of delay, the period spent by the petitioner before this Court in the present writ application shall be liable to be condoned. All questions are left open to the parties.

33. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

arvind/-

AFR/NAFR	
CAV DATE	29.01.2025
Uploading Date	10.02.2025
Transmission Date	

