1.07.2025
Item No.02
Court No.01
SK(AR(CR))

In the High Court at Calcutta
Circuit Bench at Jalpaiguri

MAT/112/2024
IA NO: CAN/1/2024

RAJIB PAUL
VS
UNION OF INDIA AND ORS

Mr. Nirmalya Chakraborty,
Mr. Promit Majumdar,
Ms. Rinka Chakraborty,
……for the appellant.
Mr. Sudipto Kumar Mazumdar,
Mr. Ajoy Kumar Singhania,
…..for Income Tax

The grievance of the petitioner is directed against a notice dated 15 March, 2024 issued under section 148 of the Income Tax Act, 1961.

It is submitted on behalf of the appellant that the impugned notice has been passed in contravention of the Circular dated 29 March, 2022 issued under Section 151A(1)(2) of the Act. It is also contended that the entire scheme of the Act contemplates proceedings being conducted through faceless mode. Accordingly, the respondent authorities have no jurisdiction to issue the impugned notice and all consequential steps are *non est* and are liable to be stayed. In support of such contention, the appellant relies on the decisions in *Hexaware Technologies Ltd. vs Assistant Commissioner of Income Tax* , *[2024] 464*

ITR 430 (Bombay), Aristo Pharmaceuticals (P.) Ltd. Vs. Assistant Commissioner of Income Tax [2024] 167 Taxmann.com 315 (Bombay), and *Sri Venkataramana Reddy Patloola Vs. Deputy Commissioner of Income Tax, Circle1(1), Hyderabad & Ors. 2024 SCC OnLine TS 1792.*

On behalf of the respondent authorities, it is fairly submitted that the issue raised in this writ petition is pending before the Hon'ble Supreme Court. In any event there is a contrary view taken by the Division Bench of this Court in *Rajesh Kumar Dugar Vs. Union of India & Ors.* (unreported decision in MAT/162/2023 dated December 19, 2023). In such view of the matter there is no merit in the writ petition and the same is liable to be dismissed.

Admittedly, the appeal has been filed against an *ad interim* order dated 2 December, 2024. Significantly, by the said order the respondent authorities were also directed to file a Report. This has admittedly not been done till date. In this regard, the respondent authorities pray for an extension of time to file the Report before the Trial Court.

The short question raised in this appeal is one of jurisdiction exercised under section 148 of the Act read with section 151 of the Act. In *Hexaware*

Technologies Ltd. (Supra), it has been held as follows;

> *"35. Further, in our view, there is no question of concurrent jurisdiction of the JAO and the FAO for issuance of notice under section 148 of the Act or even for passing assessment or reassessment order. When specific jurisdiction has been assigned to either the JAO or the FAO in the Scheme dated 29th March, 2022, then it is to the exclusion of the other. To take any other view in the matter, would not only result in chaos but also render the whole faceless proceedings redundant. If the argument of Revenue is to be accepted, then even when notices reissued by the FAO, it would be open to an assessee to make submission before the JAO and vice versa, which is clearly not contemplated in the Act. Therefore, there is no question of concurrent jurisdiction of both FAO and the JAO with respect to the issuance of notice under section 148 of the Act. The Scheme dated 29th March 2022 in paragraph 3 clearly provides that the issuance of notice "shall be through automated allocation" which means that the same is mandatory and is required to be followed by the Department and does not give any discretion to the Department to choose whether to follow it or not. That automated allocation is defined in paragraph 2(b) of the Scheme to mean an algorithm for randomised allocation of cases by using suitable technological tools including artificial intelligence and machine learning with a view to optimize the use of resources. Therefore, it means that the case can be allocated randomly to any officer who would then have jurisdiction to issue the notice under section 148 of the Act. It is not the case of respondent no. 1 that respondent no. 1 was the random officer who had been allocated jurisdiction.*
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> *36. With respect to the arguments of the Revenue, i.e., the notification dated 29th March 2022 provides that the Scheme so framed is applicable only 'to the extent' provided in Section 144B of the Act and Section 144B of the Act does not refer to issuance of notice under section 148 of the Act and hence, the notice cannot be issued by the FAO as per the said Scheme, we express our view as follows:-*
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> *Section 151A of the Act itself contemplates formulation of Scheme for both assessment, reassessment or recomputation under section*

147 as well as for issuance of notice under section 148 of the Act. Therefore, the Scheme framed by the CBDT, which covers both the aforesaid aspect of the provisions of Section 151A of the Act cannot be said to be applicable only for one aspect, i.e., proceedings post the issue of notice under section 48 of the Act being assessment, reassessment or recomputation under section 147 of the Act and inapplicable to the issuance of notice under section 148 of the Act. The Scheme is clearly applicable for issuance of notice under section 148 of the Act and accordingly, it is only the FAO which can issue the notice under section 148 of the Act and not the JAO. The argument advanced by respondent would render clause 3(b) of the Scheme otiose and to be ignored or contravened, as according to respondent, even though the Scheme specifically provides for issuance of notice under section 148 of the Act in a faceless manner, no notice is required to be issued under section 148 of the Act in a faceless manner. In such a situation, not only clause 3(b) but also the first two lines below clause 3(b) would be otiose, as it deals with the aspect of issuance of notice under section 148 of the Act. Respondents, being an authority subordinate to the CBDT, cannot argue that the Scheme framed by the CBDT, and which has been laid before both House of Parliament is partly otiose and inapplicable. The argument advanced by 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 Revenue's arguments are to be accepted, there is no purpose of framing a Scheme only for clause 3(a) which is in any event already covered under faceless assessment regime in Section 144B of the Act. The argument of 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 assessee. Therefore, for

> *the purposes of making assessment or reassessment, the provisions of clause 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 is 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-section (7) and (8) of Section 144B of the Act would also be applicable to the Scheme."*

Subsequently, in *Girdhar Gopal Dalmia Vs. Union of India & Ors.* (unreported decision dated 25 September, 2023 passed in MAT 1690/2023) a Co-ordinate Bench of this Court had stayed similar notices issued under Section 148 of the Act on the ground that there was a jurisdictional issue which goes to the root of the matter.

The interim order passed in this appeal has been continuing since 24 December, 2024. The matter is pending before the Learned Single Judge.

In view of the prayer made on behalf of the respondent, the time to file the Report in terms thereof is peremptorily extended till the returnable date.

Prima facie, the assumption of jurisdiction requires examination. In order for a notice to be validly issued the same would require to be adhered to the provision of section 151(A) of the Act. Admittedly, the issue is also pending before the Hon'ble Supreme Court. In such circumstances, the balance of convenience is also overwhelmingly in favour of the appellant. In view of the above, the order dated 24 December, 2024 stands confirmed and shall continue till the disposal of the writ petition.

With the above directions, MAT/112/2024 stands disposed of. The connected application i.e. CAN/1/2024 also stands disposed of as infructuous.

(RAVI KRISHAN KAPUR, J.)

(MD. SHABBAR RASHIDI, J.)