IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-06-2025

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THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 39147 of 2024
AND
WMP NO. 42398 OF 2024,WMP NO. 42395 OF 2024

Selvaraj Savithri
W/o.Selvaraj, No.35, Dharmalingam
2nd Street, Linemedu, Salem 636 006.

Petitioner(s)

Vs

1.The Income Tax Officer,
Ward 1 (1) Salem, No.3, Gandhi Road,
Salem-636 007.

2.The Assessment Unit,
Income Tax Department,
National e-Assessment Centre,
E-Ramp, Jawaharlal Nehru Stadium,
Delhi - 110 003.

Respondent(s)

PRAYER:-Writ Petition filed under Article 226 of the Constitution of India, praying for an issuance of Writ of Certiorari, to call for the records on the file of the first respondent in impugned order passed under Section 148A(d) of the Income Tax Act, 1961 in DIN and Notice No.ITBA/AST/F/148A/2022-23/1051732521(1) dated 31.03.2023 for the A.Y.2016-17 and quash the same as invalid, violation of principal of natural justice, without jurisdiction, void ab initio and barred by limitation.

For Petitioner(s): Mr.B.Sivaraman

For Respondent(s): Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

Learned counsel for the petitioner would submit that the issue in the present case is whether the Jurisdictional Assessing Officer have jurisdiction to issue notice under Section 148A(d) of the Income Tax Act, with regard to the Faceless Assessment Scheme. The present issue is no more *res integra* in view of the decision of this Court in the case of ***Mark Studio India Private Limited, vs. Income Tax Officer and others*** made in ***W.P.Nos.25223 & 25227 of 2024 dated 20.12.2024***. The relevant portion of the aforesaid order is extracted hereunder:-

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

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

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

iii) The Directorate of Income Tax (Systems) shall have the power to make allotment of cases, through Automated Allocation System to allot cases for issuance of notice under Section 148A/148 in eligible cases based on the risk management strategy in terms of the provisions of the Scheme dated 29.03.2022, to the Jurisdictional Assessing Officer based on the PAN card jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

60. While dismissing these petitions, this Court grants liberty to the petitioners to file their reply within a period of 30 days from the date of receipt of copy of this order, in which case, the Authorities are directed to consider the said reply and pass orders after affording an opportunity of personal hearing to the petitioner.

2.Since the issue in the present case has already decided by this Court in ***Mark Studio India Private Limited case (cited supra)***, this writ petition stands dismissed and the petitioner is directed to file reply within a period of 30 days from the date of receipt of copy of this order, in which case, the Authorities are directed to consider the said reply and pass orders after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

23-06-2025

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

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KRISHNAN RAMASAMY J.

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