BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON 11.12.2024	PRONOUNCED ON 10.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.9972 of 2024 &
WMP.(MD).No.9018 of 2024

Thangamayil Jewellery Ltd.,
Rep., by its Managing Director,
No.124, Nethaji Road,
Madurai – 625 001. … Petitioner

vs.

The Assessing Officer,
National E Assessment Circle,
Income Tax Department,
New Delhi. ... Respondent

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to order dated 29.03.2024 passed by the respondent in DIN ITBA/AST/S/143(3)/2023-24/1063648523(1) regarding E Assessment Order for the Assessment Year 2022-23 passed under Section 143(3) read with Section 144B of the IT Act, 1961 as well as consequential demand Notice dated 29.03.2024 without passing 'draft assessment order' and to quash the same as illegal, contrary to statutory provisions with consequential direction to act upon in terms of Sections 144B of the IT Act, 1961.

For Petitioner : Mr.Haja Nazirudeen Sr., counsel for Mr.Hariharan for M/s.KV.Law firm

For Respondents : Mr.N.Dilip Kumar Standing counsel

ORDER

This writ petition was filed challenging the Assessment order dated 29.03.2024 and notice of demand issued under section 156 of Income Tax Act, 1961.

2.Heard Mr.Haja Nazirudeen, learned Senior counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned Standing counsel appearing for the respondent.

3.Mr.Haja Nazirudeen, the learned Senior counsel for the petitioner submits that the petitioner company was originally a Partnership firm engaged in manufacture and trading in jewelery and incorporated as Limited company in the year 2000. Later, it became public limited company and listed its shares in BSE and NSE. He submits that the Assessment order was passed on 29.03.2024 under section 143(3) read with Section 144B of Income Tax Act only based on the material gathered by the assessing officer which cannot be accepted as evidence in court of law under Section 143(3) of IT Act. He further contends that in the assessment order, the assessing officer in arbitrary manner presumptively concluded that Rs.72,09,69,942/- as unexplained expenditure under Section 69C. Though, the petitioner in objections clearly contended that New gold jewelery was purchased under Old Gold exchange scheme and mostly 916 purities of 22 carat only purchased and not 18 carat. He further contended that the assessment officer passed the impugned assessment order without issuance of 'draft Assessment Order' as per Section 144B of the IT Act. Separately, Notice for penalty under Section 274 read with Section 270A of the IT Act was caused.

4.He contends that in case of an assessment under Section 143(3) proposed to make additions or dis allowances resulting in variation of the returned total income, in an amount exceeding the prescribed amount, the Assessment Officer has to issue draft assessment to the assessee.

5. The learned Senior counsel appearing for the petitioner would submit that clause (xvi) of Section 144B envisages 'a preparation of draft order in accordance with the income or loss determination proposal'. According to him that such draft order would be reviewed by the Reviewing Unit and a report would also be filed, which would be forwarded to the Assessment Unit. The Assessment Unit can consider such review report and either accept or reject the modification that have proposed and thereafter shall prepare and send a draft order to the National Faceless Assessment Centre (hereinafter referred to as “Centre”). Relying upon clause (xxi), he would submit that if in the proposed order, any variations are sought to be made, prejudicial to the interest of the assessee, then the Centre would have to serve the draft order referred to a clause (xx) on the assessee. According to him, no such draft order had been served upon the

petitioner in compliance with clause (xxi) which itself would vitiate, the impugned assessment order.

6.Countering the arguments of the petitioner, Mr.N.Dilip Kumar, learned counsel for the respondents submit that the writ petition is not maintainable and sustainable since effective alternative statutory remedy is available and on this context relied upon judgment of the Apex Court in **CIT Vs Chhabil Dass Agarwal**. He submits that the Assessee filed ITR for the A.Y 2022-23 on 30.09.2023 declaring total income of Rs. 56,07,41,670/-. In pursuance to that the assessee case was selected for scrutiny under CASS. Therefore, the scrutiny assessment under Section 143(3) r/w Section 144B of the Act was completed on 29.03.2024 with an assessed income of Rs.128,17,11,612/- by adding a sum of Rs. 72,09,69,942/- as unexplained expenditure under Section 69C of the Act as excess payment paid to the customer on the purchase of 13,80242 grams of old gold during the FY 2021-22 and mentioned the carat purity as Mixed and taken unit rate at Rs.4,216/-. Further, final show cause notices dated 23.03.2024 and 24.03.2024 was issued to the assessee after verification and collection of relevant information. He further contends that the Assessee itself has mentioned in response to SCN that purity was the criteria for payments. In such a scenario non-maintenance of the date in terms of carat purity is against the accounting practice.

7.He submits that the submissions of the petitioner contravenes before and after the issuance of SCN, before SCN petitioner stated that they had purchased 18 carat gold also but after SCN it is specifically stated that they had purchased 22 carat or 22 carat below and above 20 carat, but not 18 carat gold. Hence, the assessing Officer finalised the average rate per gram worked out at Rs.3693 and derived the unexplained expenditure of Rs. 72,09,69,942/- and issued the Assessment order. He further submits the assessee could not give any evidence to support his contention. Further it is submitted that the petitioner has to prove the value of old gold at the purity value of 22 carat. Despite of several opportunities, the assessee could not substantiate the value adopted by at an average rate per gram at Rs.4216/-.

8.The learned Standing counsel appearing for the respondent would contend that the service of the draft order envisaged under clause (xxi) would only apply to an eligible assessee and not to all assessees. An eligible assessee had been defined under Section 144B to have the same meaning as assigned to in clause (b) of sub-section 15 of Section 144C. He would submit that clause (b) of sub-section 15 of Section 144C had defined eligible assessee to mean a person in whose case, the variations referred to in sub-section (1) had arisen as a consequence of an order of Transfer Pricing Officer passed under sub-section 3 of Section 92CA. He would further submits that Section 92 deals with Income that arises out of International transaction. Section 92CA deals with cases, where the Assessing Officer considers its necessary for referring the assessment for computation under Section 92C. Section 92CA is being exercised by the Transfer Pricing Officer for arriving at the income of an International transaction, which had been made in foreign currency and nothing else. In the present case, he would submit that the petitioner cannot be termed as an eligible assessee as his case has not been referred to a Transfer Pricing Officer and invoking the power under Section 92CA and therefore, the claim of the learned Senior counsel appearing for the petitioner should not be entertained.

9.I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

10.The primordial contention of the learned Senior counsel appearing for the petitioner is that the draft order as required under Clause (xxi) to Section 144B have not been served upon him. On the contrary, it is the case of the learned Standing counsel for the respondent that clause (xxi) would be only applicable to an eligible assessee who falls within the meaning of definition under Section 144C to sub-Section 15 clause (b) and no one else. For better appreciation, this Court is required to look into the following provisions of the Income Tax Act, 1961:-

> ***144B.*** *[6][(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;

(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 asses**144B.** [6][(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;

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

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

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

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

(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,—

(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 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;

(xxii) in any case other than that referred to in clause (xxi), the National Faceless Assessment 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

(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 144C;

(xxv) the National Faceless Assessment Centre shall,—

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

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

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

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

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

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

(xxix) the assessment unit shall, in conformity with the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any, and send a copy of the assessment order to the National Faceless Assessment Centre;

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

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

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

Section 144B Explanation

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

Section 144C.

Clause (15)(b) "eligible assessee" means:-

(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of Section 92CA and

(ii) any non-resident not being a company, or any foreign company.

11.Section 144B mandates that assessment, reassessment or re-computation under Section 144(3), or under Section 144 or under Section 147 should be made in a faceless manner. Various clauses under sub-section (1) of Section 144B envisages the procedure by which such assessment should be made under the aforesaid provisions. Sub-clause (1) envisages that such selected cases should be assigned to a specific assignment unit through an automated allocation system. Thereafter, under clause (2) an intimation should be made to the assessee by the Centre. A notice should also be served on the assessee for him to file his response to such notice. It also envisages a procedure for collecting information from the assessee or any other person, who are to file their response for such notices of information. Thereafter after providing an opportunity to the assessee concerned, the Assessment Unit shall prepare an income or loss determination proposal and forward the same to the Centre. On receipt of such proposal by the Centre, the Centre on the basis of the guidelines issued by the Board either convey to the Assessment Unit to prepare a draft order on the basis of the proposal and may assign such proposal to a Review Unit through an automated allocated system. If the same has been assigned to the Review Unit, the Review Unit on the review of the proposal shall file a report, which would also be forwarded to the Assessment Unit. The Assessment Unit on considering such Review report can either accept or reject, some or all of the modifications proposed therein and record its reasons in case of rejection of such modifications and prepare a draft order. When a draft order is prepared, the same shall be sent to an assessee who is an eligible assessee as defined under Section 144C, if such draft order is prejudicial to the interest of such eligible assessee. In all other cases, the Centre shall convey the Assessment Unit to pass the final assessment order in accordance with such draft order and thereafter pass an order of final assessment. If a final assessment order is passed, then the Centre shall serve a copy of such order and notice for initiating penalty proceedings, if any on the assessee along with the demand notice. However, when a draft order is served on the eligible assessee, he would be entitled to file his objections if any, both with the dispute resolution panel envisaged under Section 144C or with the Centre within the period prescribed under Section 144C and in such cases, upon receipt of direction issued by the Dispute Resolution Panel under sub-section (5) of Section 144C the centre shall forward such directions to the Assessment Unit which shall thereafter complete the assessment and send a copy of the assessment order to the Centre for further proceedings.

12.A reading of the provision would indicate that when a case of the assessee falls within the scope of Section 144B, in the normal course, when a draft order is prepared, such draft order is not sent to the assessee. Pursuant to such draft order, the order of assessment will be made. However, in case of an eligible assessee, such draft order would be forwarded to the assessee concerned, who if makes an objection on such draft order, it would be referred to Dispute Resolution Panel under Section 144C. Clause (xxi) envisages that an assessee who is an eligible assessee alone would be entitled for a service of the draft order. Eligible assessee had been defined to be an assessee, whose assessment had been reviewed by a Transfer Pricing Officer under Section 92C. The Transfer Pricing process is only available to an International transaction as envisaged under Chapter X, which relates to special provision relating to avoidance of tax.

13.Section 92C envisages computation of arms length prices in respect of both International and specified domestic transactions. Section 92CA envisages a reference to a Transfer Pricing Officer of an International Transaction or a specified domestic transaction in any of the previous year and if the Assessing Officer considers it necessary or expedient to do so with the previous approval of the Principal Commissioner or Commissioner refer the computation of arm's length price in relation to the said transaction to the Transfer Pricing Officer.

14.In the present case, it is not the case of the petitioner that the transaction upon income that had sought to be assessed from part of international transaction or specified domestic transaction as defined under Section 92BA. Therefore, the petitioner cannot be said to be an eligible assessee as defined under Section 144C,(15)(b) of the Income Tax Act.

15.In such view of the matter, this Court is of the view that only if an assessee is an eligible assessee as defined under Section 144C, sub-section 15(b), he would be entitled for a copy of the draft assessment order, as envisaged under clause (xxi) of Section 144B, sub-Section (1).

16.For the aforesaid reasons, I do not find any compelling circumstances for this Court to interfere with the assessment order impugned in this Writ Petition and accordingly, the Writ Petition is dismissed. Considering the fact that the petitioner had approached this Court within a period of 30 days from the date of passing of the impugned order, the period of pendency of the Writ Petition before this Court can stand excluded from computing the period of limitation in filing the Appeal, if the petitioner so proposes to do. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

10.03.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
Pbn

To

The Assessing Officer,
National E Assessment Circle,
Income Tax Department,
New Delhi.

K.KUMARESH BABU.,J.

Pbn

A Pre-delivery order made in
W.P.(MD)No.9972 of 2024 &
WMP.(MD).No.9018 of 2024

10.03.2025