IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (LODG.) NO. 22686 OF 2024

Kairos Properties Private Limited, … Petitioner

A-401 and 402, Delphi Orchard Avenue.

Hiranandani Gardens, Powai,

Mumbai - 400076

PAN: AAGCK5022K

Versus

1. Assistant Commissioner of Income-tax,
Circle-15(1)(2), Mumbai
Room No.483A, 4th Floor,
Aaykar Bhavan, Maharisi Karve Road,
Mumbai - 400 020

2. Chief Commissioner of Income-tax,
Mumbai-3, Mumbai,
Room No. 351, 3rd Floor,
Aaykar Bhavan, Maharishi Karve Road,
Mumbai - 400 020.

3. Union of India,
Through Joint Secretary & Legal Adviser,
Branch Secretariat,
Department of Legal Affairs,
Ministry of law and Justice,
2nd Floor, Aaykar Bhavan,
M. K. Road, New Marine Lines,
Mumbai - 400 020. …Respondents

Mr. Madhur Agrawal i/b Mr. Atul K. Jasani, Advocate for Petitioner.

Mr. Akhileshwar Sharma, Advocate for Respondents.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

Date : August 05, 2024

Oral Judgment (Per, G.S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waives service. By consent of the parties, heard finally.

2. This Writ Petition under Article 226 of the Constitution of India is filed to challenge a notice dated 25 April, 2024 ("***impugned notice***") issued to the Petitioner under Section 148 of the Income Tax Act, 1961 ("***the Act***"), and also the underlying prior notice and order under Section 148A(b) and Section 148A(d) of the Act, respectively. The notice under Section 148 of the Act has been issued to the Petitioner in respect of returns filed by the Petitioner-Assessee for the Assessment Year 2017-18.

3. On perusal of the record, it is apparent that the impugned notice dated 30 March, 2024 issued under Section 148A(b) and the order passed thereon under Section 148A(d) dated 25 April, 2024 and the consequent notice dated 25 April, 2024 issued under Section 148 of the Act are issued by the Jurisdictional Assessing Officer ("**JAO**") and not by a Faceless Assessing Officer ("**FAO**"), as required by the provisions of Section 151A of the Act.

4. To give effect to the provisions of Section 151A, the Central Government has issued a Notification dated 29 March 2022 whereby faceless mechanism has been introduced. Thus, necessarily by resorting to a procedure under Section 148A the consequent notice is required to be issued under Section 148 of the Act, the Assessing Officer needs to adhere to the provisions of Section 151 read with the said notification. Thus, for a notice under Section 148 of the Act to be validly issued, the Respondent-Revenue is required to comply with the provisions of Section 151A, which has been interpreted and analysed in detail by a Division Bench of this Court in the case of *Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors.* [1] (***"Hexaware"***). The Division Bench has clearly declared the law 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 are issued 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 or 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

[1] (2024) 464 ITR 430

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 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 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:-

> **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 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 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.** ……..”
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> 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 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 assessee.** Therefore, there is no question of petitioner having to prove further prejudice before arguing the invalidity of the notice.
>
> [**Emphasis Supplied]**

5. In the present case, it is apparent that the Respondent-Revenue has not complied with the Scheme notified by the Central Government pursuant to Section 151A(2) of the Act. The Scheme has also been tabled before the Parliament and is in the character of subordinate legislation, which governs the conduct of proceedings under Section 148A as well as Section 148 of the Act. In view of the explicit declaration of the law in ***Hexaware***, the grievance of the Petitioner-Assessee insofar as it relates to an invalid issuance of a notice is sustainable.

6. Learned Counsel for the parties agree that the proceedings initiated under the impugned notice issued to the Petitioner under Section 148 of the Act, would not be sustainable in view of the judgment rendered in ***Hexaware.*** Learned Counsel for

the Petitioner-Assessee has also drawn our attention to a recent decision of this Court in *Nainraj Enterprises Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax, Circle-4(3)(1), Mumbai & Ors.*[2], whereby in similar circumstances, this Court has allowed the petition considering the provisions of Section 151A of the Act.

7. This apart it is submitted by Mr. Mohanty, Learned Counsel for the Revenue that while the notice issued under Section 148 may be quashed and set aside, considering the law declared by this Court in ***Hexaware*** (supra), however, the order passed under Section 148A(d) and the notice issued by the JAO under Section 148A(b) cannot be set aside, since the requirement to issue notice in the faceless mode, is a requirement attached only to Section 148 and not to Section 148A.

8. On a perusal of the notification and the relevant provisions of the Act, namely Section 148A Clauses (b) and (d), it cannot be held that the proceedings under these provisions would fall outside the scope of the Scheme, namely the "E-Assessment of Income Escaping Assessment Scheme, 2022" ("***Scheme***"), as defined in paragraph 3, as notified by the Central Government under notification dated 29 March, 2022 issued by the Ministry of Finance (Department of Revenue (Central Board of Direct Taxes) ("***notification***"), it would be difficult to accept a proposition that only the notice under Section 148 of the Act, in such circumstances, would be

[2] Writ Petition (L.) No. 16918 of 2024 dt. 2-07-2024

required to be quashed and set aside, and not the notice issued by the JAO under Section 148A(b) and the order passed under Section 148A(d), as a consequence of which the JAO has issued a notice under Section 148. The reasons for which are discussed hereunder.

9. The Scheme under such notification has been issued to give effect to the provisions of Section 151A of the Act, as the notification explicitly provides that it has been issued under the powers conferred by sub-sections (1) and (2) of Section 151A of the Act by the Central Government. Paragraph 3 defining the scope of the Scheme reads thus :

> 3. **Scope of the Scheme – 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,
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> shall be through automated allocation, in accordance with risk management strategy formulated by the Board be 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 or total income or loss of the assessee.

10. On a plain reading of paragraph 3, it is clear to us that the provision of Section 148A would also fall within the ambit/scope of the Scheme. All aspects pertaining to 'assessment', 're-assessment' or 're-computation' under Section 147 of

the Act and issuance of notice under Section 148 of the Act, are to be undertaken through automated allocation, in accordance with risk management strategy formulated by the Board, as provided for in Section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided under Section 144B of the Act, in making assessment or reassessment of total income or loss of assessee.

11. Having noted the scope of the Scheme under the aforesaid notification, the basic provision under which such notification is issued, namely Section 151A would also be required to be noted, which reads thus :

> **[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 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][3] 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;
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> (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.
>
> (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

[3] Inserted by the Finance Act, 2021, w.e.f. 1-4-2021.

> 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.]

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 sub-section (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) inparagraph 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 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 re-computation, 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 sub-section (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 sub-section (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.

16. For the aforesaid reasons, we would not accept Mr. Mohanty's submission that the scope of the Scheme would exclude the applicability of Section 148A and if steps are taken by the JAO under Section 148A culminating into issuance of a notice under Section 148 of the Act, the entire exercise being undertaken outside the faceless mechanism would be required to be quashed and set aside. There cannot be any other reading of these provisions along with the notification.

17. In the light of the above discussion, and as there is no dispute that the JAO had no jurisdiction to issue the impugned notice, the Writ Petition is accordingly allowed in terms of prayer clause (a) which reads thus :

> (a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned initial notice (Exhibit L) dated 30th March 2024, passing of the impugned order (Exhibit P) dated 25th April 2024 and the issue of the impugned notice (Exhibit Q) dated 25th April 2024 and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned initial notice (Exhibit L) dated 30th March 2024, the impugned order (Exhibit P) dated 25th April 2024 and the impugned notice (Exhibit Q) dated 25th April 2024;

18. We make it clear that having disposed of this petition on the ground of non-compliance with Section 151A of the Act, we have not expressed any opinion on the other issues raised in the Writ Petition. The other questions raised in this petition are not being answered since it is not necessary to do so.

19. Rule is made absolute in the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI , J.)