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[2024] 163 taxmann.com 478 (Gauhati)[20-05-2024]

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**INCOME TAX : Where in notice under section 148 issued upon assessee, name of Income Tax Officer who was Assessing Officer had been reflected, impugned notice reflecting name of concerned Income Tax Officer was contrary to provisions of section 151A and schemes framed thereunder, whereby Income Tax Authority was required to undertake these proceedings in a 'faceless' manner, and accordingly, department would withdraw impugned notice and issue fresh notices if permissible under law as per scheme read with section 151A**

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[2024] 163 taxmann.com 478 (Gauhati)

HIGH COURT OF GAUHATI

Ram Narayan Sah

v.

Union of India\*

SOUMITRA SAIKIA, J.

WP(C) NO. 2438 OF 2024

MAY 20, 2024

**Section 148A, read with sections 144B, 148 and 151A, of the Income-tax Act, 1961 - Income escaping assessment - Conducting inquiry, providing opportunity before issue of notice (Faceless assessment) – A notice under section 148 was issued upon assessee - In notice, name of Income Tax Officer who was Assessing Officer had been reflected – Whether notices are required to be issued in an automated manner without there being any interface between department and assessee – Held, yes – Whether impugned notice reflecting name of concerned Income Tax Officer was contrary to provisions of section 151A and schemes framed thereunder, whereby Income Tax Authority was required to undertake these proceedings in a 'faceless' manner – Held, yes – Whether, accordingly, department would withdraw impugned notice and issue fresh notices if permissible under law as per scheme read with section 151A – Held, yes [Paras 9, 11 and 12] [In favour of assessee]**

**Circulars and Notifications: Notification dated 29.03.2022**

## **FACTS**

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- A notice under section 148 was issued upon the assessee. In the notice, name of the Income Tax Officer who was the Assessing Officer had been reflected.
- In instant writ petition to the High Court, the assessee contended that in the notice the name of the Income Tax Officer who is the Assessing Officer has been reflected. This particular notice reflecting the name of the concerned Income Tax Officer is contrary to the provisions of section 151A and the schemes framed thereunder, whereby the Income Tax Authority was required to undertake these proceedings in a 'faceless' manner.

## **HELD**

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- Under the said provisions of the Act, the scheme by the Ministry of Finance have already been framed. The scheme relevant for this purpose was brought in by notification dated 29.03.2022. [Para 7]

- A careful perusal of the scheme reveals that the scope of the scheme is for the purpose of the assessment, re-assessment, re-computation under section 158 and issuance of notices under section 148 and the same shall be by a process through automated allocation in accordance with the risk management strategy formulated by the Court as referred to under section 148 issuance of the notice and in a faceless manner and to the extent provided under section 144B with reference to make the assessment, re-assessment of total income or loss of the assessee. [Para 8]
- Perusal of the section 151A along with the scheme reveals that the statute in order to obviate prejudice and bias has resorted to issuance of notices by the automated allocation through the risk management strategy. The Judgments referred to by the petitioner supports the contention raised by the writ petition and hold that the notices are required to be issued in an automated manner without there being any interface between the department and the assessee. The Judgment relied upon by the respondent however discussions and issue as to whether there is any vested or any fundamental right in respect of the assessee remand for automated issuances of notice. There is no fundamental right or legal right available to an assessee to demand that the notices though automated digital allocation should be issued. [Para 9]
- The question of whether the petitioner has the fundamental right or not may not be required to be answered to the present proceedings inasmuch as the department has fairly submitted that in terms of the provisions under section 151A, the department has already framed a scheme and the same is notified by notification dated 29.03.2022. [Para 10]
- As discussed above, the scope of the scheme is for the purposes of the assessment, re-assessment, computation under section 147 and for issuances of notices under 148 and which shall be done through automated allocations by the department. [Para 11]
- If that be so then the department is required to follow the procedure prescribed in terms of the scheme and accordingly the department will withdraw the notices and thereafter issue fresh notices if permissible under law as per the scheme read with section 151A. [Para 12]
- In the event the department proceeds to issue fresh notices then the petitioner shall also be granted liberty to file their appropriate reply under the provision of section 148. [Para 13]

## CASE REVIEW

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W.P.(C) No. 3535/2021 & C.M. Appl. No. 10693/2021 & Ors (Para 9) *followed*.

**O.P. Bhati** for the Petitioner. **DY.S.G.I.** for the Respondent.

## ORDER

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1. Heard Mr. O.P. Bhati, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, Income Tax Department.
2. This writ petition has been filed by the petitioner putting to challenge the impugned Notice dated 26.03.2024 (Annexure-F) against another notice dated 26.03.2024 (Annexure-H) whereby the Income Tax Authority had sought to reopen the assessment under Section 147 of the Income Tax Act.
3. The learned counsel for the petitioner submits that in both the notices the name of the Income Tax Officer who is the assessing officer has been reflected. This particular notice reflecting the name of the concerned Income Tax Officer is contrary to the provisions of Section 151A and the schemes framed thereunder, whereby the Income Tax Authority was required to undertake these proceedings in a 'faceless' manner. Referring to Section 151A, the learned counsel for the petitioner submits that this particular provision was inserted in the statute with effect from 01.11.2020 and under the provision of this Act for the purposes of assessment, re-assessment or re-computation under Section 147 or issuance of notice under Section 148, the Central Government may make a scheme by a notification in the official gazette reflecting the manner and the procedure for issuance of notice. Section 151A was brought into the statute to eliminate interface between the Income Tax authority and the assessee to the extent technologically feasible. It is further submitted that in terms of Section 151A, the schemes have been brought into effect by the Ministry of Finance whereby automated allocation in accordance with risk management strategy formulated by the Board for issuance of notice and in a faceless manner has been brought into effect. The learned counsel for the petitioner submits that perusal of these notices reveal that the procedure prescribed under the scheme with has been followed by

the department under the Schemes framed under Section 151A. He further submits that this is violative of the statutory provisions and in support thereof he has relied upon the Judgment of the Bombay High Court rendered in Hexaware Technologies Limited v. Assistant Commissioner of Income Tax & Ors. vide Judgment and Order dated 03.05.2024 passed in W.P.(C) No. 1778/2023 as well as the Judgment of the Andhra Pradesh High Court 14.09.2023 passed in bunch of writ petitions being W.P.(C) No. 25903/2023 and Ors. The petitioner submits that both these Judgments have held that it is mandatory for the Department to follow the procedure prescribed under the Scheme framed under 151A of the Income Tax Act.

4. Per contra, Mr. S.C. Keyal, learned Standing Counsel for the Department submits that as permitted by the Court he has obtained his instructions. He submits that the notices were issued online and there was no physical interface between the assessee and the department and therefore the impugned notices issued. It is further submitted that the writ petitioner having responded to the notice by filing their written objections did not raise this issue before the departmental authorities. He however fairly submits that the department has framed the scheme and does not dispute the copies of the scheme enclosed to the writ petition.

5. The learned counsel for the parties have been heard. Pleadings on records have been carefully perused. The short point involved in the writ petition is whether in terms of the scheme framed under Section 151, department is required to issue notices in a faceless manner as has been sought to be undertaken by the Department in terms of the provisions of the Section 151A of the Income Tax Act.

6. Section 151A of the Income Tax Act provides for as under:

"151A. Faceless assessment of income escaping assessment.

(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 10[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 incometax 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, recomputation 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 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.]"

7. Under the said provisions of the Act, the scheme by the Ministry of Finance have already been framed. The scheme relevant for this purpose was brought in by notification dated 29.03.2022. The scheme is called the E-assessment of Income Escaping Assessment Scheme, 2022. The scheme reads as under:

"MINISTRY OF FINANCE  
(Department of Revenue)  
(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 29th March, 2022

S.O. 1466(E).—In exercise of the powers conferred by sub-sections (1) and (2) of section 151A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement.—(1) This Scheme may be called the eAssessment of Income Escaping Assessment Scheme, 2022.
- (2) It shall come into force with effect from the date of publication in the Official Gazette.
2. Definitions.—(1) In this Scheme, unless the context otherwise requires, —

- (a) —Act means the Income-tax Act, 1961 (43 of 1961);
  - (b) —automated allocation means 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.
- (2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.
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, shall be through automated allocation, in accordance with risk management strategy formulated by the Board 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 of total income or loss of assessee.

[Notification No. 18/2022/F. No. 370142/16/2022-TPL(Part1)]

SHEFALI SINGH, Under Secy."

**8.** A careful perusal of the scheme reveals that the scope of the scheme is for the purpose of the assessment, re-assessment, re-computation under section 158 of the Act and issuance of notices under Section 148 of the Act and the same shall be by a process through automated allocation in accordance with the risk management strategy formulated by the Court as referred to under Section 148 of the Act for issuance of the notice and in a faceless manner and to the extent provided under Section 144 B of the Act with reference to make the assessment, re-assessment of total income or loss of the assessee.

**9.** Perusal of the Section 151A along with the scheme reveals that the statute in order to obviate prejudice and bias has resorted to issuance of notices by the automated allocation through the risk management strategy. The Judgments referred to by the learned counsel for the petitioner supports the contention raised by the writ petition and hold that the notices are required to be issued in an automated manner without there being any interface between the department and the assessee. The Judgment relied upon by the learned counsel for the respondent however discussions and issue as to whether there is any vested or any fundamental right in respect of the assessee remand for automated issuances of notice. The Delhi high Court vide Judgment and order dated 26.05.2023 passed in W.P.(C) No. 3535/2021 & C.M. Appl. No. 10693/2021 & Ors has categorically held that there is no fundamental right or legal right available to an assessee to demand that the notices though automated digital allocation should be issued.

**10.** The question of whether the petitioner has the fundamental right or not may not be required to be answered to the present proceedings inasmuch as Mr. Keyal has fairly submitted that in terms of the provisions under Section 151A, the Department has already framed a scheme and the same is notified by notification dated 29.03.2022.

**11.** As discussed above, the scope of the scheme is for the purposes of the assessment, re-assessment, computation under Section 147 and for issuances of notices under 148 and which shall be done through automated allocations by the department.

**12.** If that be so then the department is required to follow the procedure prescribed in terms of the scheme and accordingly the department will withdraw the notices and thereafter issue fresh notices if permissible under law as per the scheme read with Section 151A.

**13.** In the event the department proceeds to issue fresh notices then the petitioner shall also be granted liberty to file their appropriate reply under the provision of Section 148.

**14.** Accordingly, the writ petition stands disposed of.

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\*In favour of assessee.