

Sahib Singh Agencies (Bombay) Private ... vs Deputy Commissioner Of Income Tax ... on 27 August, 2024

Author: G. S. Kulkarni

Bench: G. S. Kulkarni

2024:BHC-OS:13257-DB

921-WP(

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 22301 OF 2024

Sahib Singh Agencies (Bombay) Private ... Petitioner
Limited

Versus

Deputy Commissioner of Income Tax, Circle
- 4(3) (1), Mumbai & Ors.

... Responde

Mr. Dharan V. Gandhi, a/w. Aanchal Vyas for the Petitioner.
Ms. Shilpa Goel for the Respondents.

CORAM:

G. S. KULKARNI &
SOMASEKHAR
SUNDARESAN, JJ.

Date : 27 AUGUST, 2024.

PC:

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 has been filed to challenge a notice dated 28 th March 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 reassessment August 27, 2024 921-WP(L)-22301-2024.DOCX under Section 148 of the Act has been initiated in respect of returns filed by the Petitioner-Assessee for the Assessment Year 2020-2021.

3. On perusal of the record, it is apparent that the impugned notice dated 11th March 2024 issued

under Section 148A(b), the order passed thereon under Section 148A(d) dated 28 th March 2024 and the consequent notice dated 28 th March 2024 issued under Section 148 of the Act are all issued by the Jurisdictional Assessing Officer ("JAO") and not by a Faceless Assessing Officer ("FAO"), as is 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 a faceless mechanism has been introduced. Thus, necessarily in resorting to a procedure under Section 148A and the consequent notice to be issued under Section 148 of the Act, the Assessing Officer is required to adhere to the provisions of Section 151 read with the Notification. Thus, for a notice to be validly issued for reassessment under Section 148 of the Act, the Respondent-Revenue would need to be compliant with Section 151A, which has been interpreted and analysed in detail August 27, 2024 Ganesh Lokhande, PA 921-WP(L)-22301-2024.DOCX by a Division Bench of this Court in the case of Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors. ("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 29 th 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 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 (2024) 464 ITR 430 August 27, 2024 Ganesh Lokhande, PA 921-WP(L)-22301-2024.DOCX 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 August 27, 2024 Ganesh Lokhande, PA 921-WP(L)-22301-2024.DOCX 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."

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 statute, itself causes prejudice to assessee. All assesseees 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 in 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, August 27, 2024 Ganesh Lokhande, PA 921-WP(L)-22301-2024.DOCX the grievance of the Petitioner-Assessee insofar as it relates to an invalid issuance of a notice is sustainable and consequently, the very manner in which the proceedings have been initiated, vitiates the proceedings.

6. Learned Counsel for both the parties agree that the proceedings initiated 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. We also find substance in the contentions of the Petitioner that the Petitioner's application dated 9 August 2021 filed praying for condonation of delay in filing of return of income and tax audit report for the assessment year 2020-21 could not have been kept pending for so long. The said application was required to be decided as expeditiously as possible. In these circumstances, we are also inclined to Writ Petition (L.) No. 16918 of 2024 dt. 2-07-2024 August 27, 2024 Ganesh Lokhande, PA 921-WP(L)-22301-2024.DOCX consider granting of prayer clause b(iii).

8. 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) and b(iii) which reads thus :

"(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the impugned order u/s 148A(d) of the Act dated 28.03.2024 ("Exhibit I") the impugned notice u/s 148 of the Act dated 28.03.2024 ("Exhibit J") the notices u/s 148 A(b) of the Act dated 11.03.2024, ("Exhibit G") and the notices u/s 148A(a) of the Act dated 02.02.2024, ("Exhibit E");

(b) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature off Mandamus or any other appropriate Writ, Order or direction, directing the Respondents, its servants, subordinates, agents and successors in office:

(iii) the Respondent no. 2 to allow the application of the Petitioner dated 09.08.2021 ("Exhibit A") and condone the delay in filing of the return of income and tax audit report for the AY 2020-21 and consequently, impugned order u/s 148A(d) of the Act dated 28.03.2024 ("Exhibit I") the impugned notice u/s 148 of the Act dated 28.03.2024 ("Exhibit J") should be quashed and set aside."

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9. 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.

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

(SOMASEKHAR
SUNDARESAN, J.)

(G. S. KULKARNI

Digitally
signed by
GANESH
GANESH SUBHASH
SUBHASH LOKHANDE
LOKHANDE Date:
2024.08.29
17:31:51

August 27, 2024

Ganesh Lokhande, PA