IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI YOGESH KUMAR U.S., JM

ITA No.611/JODH/2024		A.Y.2018-19
Vinayak Traders, C/o Rajendra Jain Advocate, 106, Akshay Deep Complex, 5th B Road, Sardarpura, Jodhpur	Vs.	Income Tax Officer, Sriganganagar.
(Appellant)		(Respondent)
PAN		AALFV 7985Q
Assessee by		Shri Rajendra Jain Advocate & Smt. Raksha Birla, C.A.
Revenue by		Shri Karni Dan, Addl. CIT (Sr. DR),
Date of hearing		23rdSeptember, 2024
Date of pronouncement		26th September, 2024

O R D E R

PER PRASHANT MAHARISHI, AM:

1. ITA No. 611/Jodh/2024 is filed by Vinayak Traders (the assessee/appellant) for Assessment Year (A.Y.) 2018-19 against the appellate order passed by the National Faceless Appeal Centre (NFAC) [the learned 'CIT(A)']

Delhi for Assessment Year 2018-19 dated 24.07.2024 wherein the appeal filed by the assessee against the reassessment order passed under Section (u/s.) 147 r.w.s. 144B of the Income Tax Act, 1961 ('the Act') dated 24.03.2023 by Faceless Assessment Centre, was dismissed.

2. The assessee has preferred the appeal raising the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the Id CIT(A) eared in upholding the legality & validity of order passed by ld AO.

2. That on the facts and in the circumstances of the case, the ld CIT(A) eared in upholding the legality & validity of notice u/s 148 of the Act

3. That on the facts and in the circumstances of the case, the ld CIT(A) erred in upholding the finding of ld AO that the sales made by appellant to M/s Sonu Monu Telecom Centre Pvt Ltd as bogus particularly when the sales are subject to GST and dully disclosed in the GST return and also part of audited trading and P&L account.

4. That on the facts and in the circumstances of the case, the ld CIT(A) erred in sustaining addition of Rs 85,69,197/- by upholding the genuine sales made by appellant as bogus sales u/s 68 of the Act.

5. That on the facts and in the circumstances of the case, the ld CIT(A) erred in upholding the provision of section 68 of the Act as the sales made by appellant are duly recorded and income earned on such sales are offered for taxation.

6. That on the facts and in the circumstances of the case, the ld CIT(A) erred in not appreciating the submission, evidence and legal position of law in right perspective and judicious manner and made arbitrary allegation while sustaining the addition made by ld AO.

7. That on the facts and in the circumstances of the case, the ld CIT(A) erred in upholding the validity of

report given by the Investigation wing without any corroborative material or evidence in support of such report.

8. That on the facts and in the circumstances of the case, the ld CIT(A) erred in not following the binding decision of Hon'ble Courts and Tribunals

9. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing."

3. Facts in assessment proceedings shows that.

i. Assessee is a Partnership Firm who filed its Return of Income [ROI] for A.Y. 2018-19 on 18.09.2018 at a total income of Rs.4,80,260/-.

ii. Assessee is engaged in the business of wholesale and retail trade of Macro Max Mobiles. The return was not picked up for scrutiny.

iii. ROI of the assessee was reopened on receipt of information through insight portal wherein it is mentioned that one firm M/s. Sonu Monu Telecom Centre Pvt. Ltd. is involved in the practice of issuing bogus sales/purchase bills.

iv. Out of these bogus sales purchase bills of Rs.76,47,675/- have been availed by the assessee.

v. On examination of the return of income it was found that the return is not in consonance with the aforesaid sales and purchase bills.

vi. The learned Assessing Officer carried out enquiry where the assessee did not submit any explanation.

vii. The show cause notice was issued to the assessee under Clause-b of Section 148 after prior approval of Principal Commissioner of Income Tax (PCIT), Jodhpur dated 08.03.2022.

viii. In response to that no reply was received,

ix. Therefore, the order u/s. 148A(d) was issued to the assessee on 27.03.2022 stating that income of the assessee chargeable to tax for the A.Y. 2018-19 amounting to Rs.76,47,675/- has escaped assessment.

x. The approval of PCIT, Jodhpur was obtained on 27.03.2022 u/s. 151 of the Act.

xi. Notice u/s. 148 of the Act was issued on 27.03.2022.

xii. Assessee filed an objection on 18.02.2023 wherein the assessee objected that from the reasons recorded, it is not clear whether the assessee has purchased the goods or sold goods to Sonu Monu Telecom Centre Pvt. Ltd.

xiii. Assessee reiterated the original return filed and submitted that assessee is working as a super stockiest of mobile set of Micromax Company,

therefore, purchase and sale of such mobile set are made on wholesale basis.

xiv. It was submitted that all the invoices of purchases are made from the principal whereas the sale is made to the retailers and wholesalers.

xv. Assessee has not made any purchase from the above said party but has sold goods to that party.

xvi. The sale consideration is received by cheque, the relevant quantitative details also disclosed the same and such sale transaction of Rs.85,69,197/-, therefore, amount stated of Rs.76,47,675/- in reasons recorded is incorrect. It was submitted that reopening proceedings may be dropped.

xvii. The Assessing Officer found that DGIT, Investigation has communicated on 29.06.2021 that M/s. Sonu Monu Telcom Centre Ltd. is engaged in providing bogus taxes invoices to various entities without physical supply of goods with a view to passing irregular input tax credit to other entities. For doing this M/s. Sonu Monu has also availed itself of an input tax credit against fake invoices issued by other entities. The GST return of M/s. Sonu Mony was downloaded. The Assessing Officer noted that assessee is also one of the beneficiaries.

xviii. The Assessing Officer noted that the transaction of Rs.85,69,197/- as stated by the assessee genuine, but assessee has failed to prove receipt bills, transportation, loading and unloading and godown details with respect to the sale.

xix. Therefore, the Assessing Officer has made an addition of Rs.85,69,197/- stating that sales consideration received by the assessee is from non existing entity, found in the books of account of the assessee, therefore, the addition u/s. 68 r.w.s. 115BBE of the Act was made determining total income of the assessee at Rs.90,49,457/- against the return of income of Rs.4,80,260/- whereby the addition of Rs.85,69,197/- is made by the assessment order dated 24.03.2023 passed u/s. 147 r.w.s. 144B of the Act.

4. The assessee aggrieved with the reassessment order preferred appeal before the learned CIT(A). In appellate proceedings

i. Assessee challenged the reopening of the assessmentas well as the addition on the merits of the case.

ii. Assessee also filed certain additional evidence which were sent for remand report to the Assessing Officer. Remand report was submitted on

09.07.2024 which was provided to the assessee for rejoinder which was submitted on 16.07.2024.

iii. Based on this, the learned CIT(A) upheld the reopening of the assessment which is based on the facts corroborated by CBIC and DGIT. Therefore, the reopening of the assessment was upheld.

iv. On the grounds of addition on the merits, he held that the assessee has failed to prove the legitimacy of the transaction as assessee failed to provide bills in respect of transport delivery, loading and unloading of the goods as well as the godown details. It was further held that the details submitted by the assessee are mere paper trade. Accordingly, the addition was confirmed.

v. In the result, the appeal of the assessee was dismissed.

5. On Appeal before us submission of the assessee was that:-

i. Vide Ground Nos. 1 and 2, the reopening of the assessment was challenged and by Ground Nos. 3 to 8 the addition was challenged on the merits of the case.

ii. The contentions of the assessee were that reopening of the assessment was made for the reason that M/s. Sonu Monu has issued the invoices without

supply of material to various parties by issuing the bogus tax invoices with a view to passing irregular input to tax credit to other tax entities. He submits that such information received was that assessee has made bogus purchase of Rs.76,47,675/- to M/s. Sonu Monu Telecom Centre Pvt. Ltd.

iii. He submits that assessee has not executed sales of the above amount at Rs.85,69,197/-.

iv. He submitted a paper book wherein the various documents such a sale bill, stock register, bank statement, copy of the account of Sonu Monu Telecom Service Pvt. Ltd. was submitted .

v. He submits that the goods sold by the assessee are subject to goods and service @ 12% which received by the assessee and deposited to the Sales Tax Department.

vi. On the issue of reopening of the assessment, he submitted that assessment has been carried out in the case of the assessee by the National Faceless e-Assessment team. He referred to the paper book and submitted that the notice u/s. 148 of the Act has been issued by the Jurisdictional Assessing Officer on 27.03.2022. He referred to Page-11 of the P.B. and submitted that there is no justification of reopening of notice issued by the learned Income Tax Officer, Shri Ganganagar, who is the

jurisdictional Assessing Officer when the assessment is carried out by the Faceless Assessment Unit.

vii. He supported its contention. He referred to the decision of the Hon'ble Bombay High Court in the case of Hexaware Technologies Ltd. vs. ACIT &, 464 ITR 430, and stated that when the notice issued itself is invalid, subsequent reassessment order is also invalid.

viii. He, therefore, submitted that on this ground also the issue squarely covered in favour of the assessee.

ix. On the merits of the case, he submitted that assessee has made a genuine sale to M/s. Sonu Monu Telecom Pvt. Ltd. wherein the ledger account of the sales of 12% IGST were shown wherein the sale to M/s. Sonu Monu was accounted for. He referred to the ledger account of that party submitted that sale of Rs.85,69,197/- was made to that party. Out of that as on 31.03.2018, the payment of Rs.40,52,000/- was already received through account payee cheque. A balanceoutstanding sum was also received subsequently. He referred to the tax invoices issued to that party. The assessee also submitted stock register to show that the goods were purchased from Micromax which were sold to several

distributors and dealers including M/s. Sonu Monu Telecom Pvt. Ltd. Thus, it was submitted that the sales have already been counted for on the credit side of the P&L Account and due tax earned on the transaction has been offered by the assessee. Therefore, even otherwise no further addition can be made.

x. It was further submitted that assessee has produced the overwhelming evidence such a sales bills, the source of purchases of goods, stock register and payment of goods received through banking channel. All these evidence though placed before learned Assessing Officer, without any enquiry, the addition is made u/s. 68 of the Act.

xi. He submits that the nature and source of the above credit is sales of goods and, therefore, the same cannot be added u/s. 68 of the Act.

6. Submission on behalf of AO, the learned Departmental Representative (DR), vehemently supported the orders of the learned lower authorities. It was submitted that.

i. The argument of the learned A.R. that reopening of the assessment is made on the basis that assessee has purchased goods from M/s. Sonu Monu Telecom Pvt. Ltd. If the information of DGCI can be looked into, that agency has doubted that when M/s. Sonu Monu Telecom Pvt. Ltd. have issued sales bill

without delivery of the goods then wherefrom those purchase bills were obtained by M/s. Sonu Monu Telecom Pvt. Ltd. The source shows that assessee has sold goods without supply of material to M/s. Sonu Monu Telecom Pvt. Ltd. Therefore, the reasons recorded for reopening of the assessment and the facts before the Assessing Officer cannot be doubted. Thus, the reopening of the assessment is valid.

ii. On the issue of notice u/s. 148 of the Act issued by the jurisdictional Assessing Officer, it was submitted that the law does not bar the jurisdictional Assessing Officer to issue notice u/s. 148 of the Act.

iii. On the merits of the addition, it was submitted that assessee has failed to provide any information such as receipt bills in respect of transport, delivery, loading/unlading of articles and godowns. There is no evidence that assessee has make sold goods to the M/s. Sonu Monu Telecom Pvt. Ltd.

iv. Merely preparation of bills, entry in the stock register and receipt of payment by cheque prove the genuineness of the credit.

v. Therefore, the learned Assessing Officer has correctly made the addition of Rs.85,69,197/- u/s. 68 of the Act.

7. In rejoinder, the learned A.R. reiterated the submission made earlier.

8. We have carefully considered the rival contention and have perused the orders of the learned lower authorities. Facts shows that the assessee is an authorized dealer and stockiest of Micromax Mobile. The information was received from CBIC, wherein it was reported that the entities are involved in the practice of availing/issuing bogus sales/stock/purchase bills. The transactions are being facilitated through chain of many entities. The name of M/s. Sonu Monu Telecom Pvt. Ltd. also appears in the list. On perusal of the trade of transaction it was seen that many intermediary entities are involved in this practice. Data of the purchase of M/s. Sonu Monu Telecom Pvt. Ltd. was examined and it was noticed that most of the entities from whom substantial purchases have been made are either non filer or have declared negligible income. Out of these bogus purchases, sales have been made to beneficiaries' entities by M/s. Sonu Monu Telecom Pvt. Ltd. Thus M/s. Sonu Monu Telecom Pvt. Ltd. has acted as a conduit for bogus transactions. CBIC further suggested that a commission income @ 2% is to be added in the hands of M/s. Sonu Monu Telecom Pvt. Ltd. The addition of bogus purchases in the case of beneficiaries and further commission income @2% from whom purchases have been made by M/s. Sonu Monu Telecom Pvt. Ltd. as commission income should be

added. On verification of the data, it was noted that M/s. Sonu Monu Telecom Pvt. Ltd. has executed sales of Rs. 76,47,675/- to assessee. However, when the information was furnished by the assessee, it was found that assessee had sold goods to M/s. Sonu Monu Telecom Pvt. Ltd. of Rs.85,69,197/-. Assessee also submitted that it has a total sales Rs.36.00 crores and further purchases from Micromax also of Rs.36.83 crores.

9. Now, the notice issued u/s. 148 of the Act placed at Page 11 of the paper book shows that it was issued on 27.03.2022 by ITO, Ward-1, Shri Ganganagar, he is the jurisdictional Assessing Officer. This notice is challenged by the assessee stating that JAO could not have issued the notice u/s. 148 of the Act it should have been issued by the Faceless Assessing Officer who conducted the assessment proceedings.

10. The Hon Bombay High Court has dealt with identical issue in the case of Hexaware Technologies Ltd. (supra), and it is held as under:

> **32.** As regards issue no. 4, Section 151A reads as under :
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> 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 recomputation 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] or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—
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> (*a*) eliminating the interface between the income-tax 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.

Section 151A of the Act gives the power to the Central Board of Direct Taxes ("CBDT") to notify the Scheme for :

(*i*) the purpose of assessment, reassessment or recomputation under section 147; or

(*ii*) issuance of notice under section 148; or

(*iii*) conducting of inquiry or issuance of show cause notice or passing of order under section 148A; or

(*iv*) sanction for issuance of notice under section 151;

so as to impart greater efficiency, transparency and accountability by *inter alia* eliminating the interface between the Income-tax Authorities and assessee. Sub-section 3 of Section 151A of the Act also provides that every notification issued under sub-section (1) and (2) of Section 151A of the Act shall be laid before each House of Parliament.

In exercise of the powers conferred by sub-sections (1) and (2) of Section 151A of the Act, CBDT issued a notification dated 29th March, 2022 [Notification No. 18/2022/F. No. 370142/16/2022-TPL and formulated a Scheme. The Scheme provides that -

(*a*) the assessment, reassessment or recomputation under section 147 of the Act,

(*b*) and the 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. The impugned notice dated 27th August, 2022 has been issued by respondent no. 1 (JAO) and not by the NFAC, which is not in accordance with the aforesaid Scheme.

33. The guideline dated 1st August 2022 relied upon by the Revenue is not applicable because these guidelines are internal guidelines as is clear from the endorsement on the first page of the guideline - "*Confidential For Departmental Circulation Only*". The said guidelines are not issued under section 119 of the Act. Any such guideline issued by the CBDT is not binding on petitioner. Further the said guideline is also not binding on respondent no. 1 as they are contrary to the provisions of the Act and the Scheme framed under section 151A of the Act. The effect of a guideline came up for discussion in *Sofitel Realty LLP* v. ITO (TDS) [2023] 153 taxmann.com 496/294 Taxman 766/457 ITR 18 (Bom.) wherein this Court has held that the guidelines which are contrary to the provisions of the Act cannot be relied upon by the Revenue to reject an application for compounding filed by an assessee. The Court held that guidelines are subordinate to the principal Act or Rules, it cannot restrict or override the application of specific provisions enacted by legislature. The guidelines cannot travel beyond the scope of the powers conferred by the Act or the Rules.

The guidelines do not deal with or even refer to the Scheme dated 29th March 2022 framed by the Government under section 151A of the Act. Section 151A(3) of the Act provides that the Scheme so framed is required to be laid before each House of the Parliament. Therefore, the Scheme dated 29th March 2022 under section 151A of the Act, which has also been laid before the Parliament, would be binding on the Revenue and the guideline dated 1st August 2022 cannot supersede the Scheme and if it provides anything to the contrary to the said Scheme, then the same is required to be treated as invalid and bad in law.

34. As regards ITBA step-by-step Document No. 2 regarding issuance of notice under section 148 of the Act, relied upon by Revenue, an internal document cannot depart from the explicit statutory provisions of, or supersede the Scheme framed by the Government under section 151A of the Act which Scheme is also placed before both the Houses of Parliament as per Section 151A(3) of the Act. This is specially the case when the document does not even consider or even refer to the Scheme. Further the said document is clearly intended to be a manual/guide as to how to use the Income-tax Department's portal, and does not even claim to be a statement of the Revenue's position/stand on the issue in question. Our observations with respect to the guidelines dated 1st August 2022 relied upon by the Revenue will equally be applicable here.

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 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. The argument advanced by respondent expressly makes clause 3(*b*) otiose and impliedly makes the whole Scheme otiose. If clause 3(*b*) of the Scheme is not applicable, then only clause 3(*a*) of the Scheme remains. What is covered in clause 3(*a*) of the Scheme is already provided in Section 144B(1) of the Act, which Section provides for faceless assessment, and covers assessment, reassessment or recomputation under section 147 of the Act. Therefore, if Revenue's arguments are to be accepted, there is no purpose of framing a Scheme only for clause 3(*a*) which is in any event already covered under faceless assessment regime in Section 144B of the Act. The argument of respondent, therefore, renders the whole Scheme redundant. An argument which renders the whole Scheme otiose cannot be accepted as correct interpretation of the Scheme. The phrase "to the extent provided in Section 144B of the Act" in the Scheme is with reference to only making assessment or reassessment or total income or loss of assessee. Therefore, for the purposes of making assessment or reassessment, the provisions of Section 144B of the Act would be applicable as no such manner for reassessment is separately provided in the Scheme. For issuing notice, the term "to the extent provided in Section 144B of the Act" is not relevant. The Scheme provides that the notice under section 148 of the Act, shall be issued through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the Act and in a faceless manner. Therefore, "to the extent provided in Section 144B of the Act" does not go with issuance of notice and is applicable only with reference to assessment or reassessment. The phrase "to the extent provided in Section 144B of the Act" would mean that the restriction provided in Section 144B of the Act, such as keeping the International Tax Jurisdiction or Central Circle Jurisdiction out of the ambit of Section 144B of the Act would also apply under the Scheme. Further the exceptions provided in sub-section (7) and (8) of Section 144B of the Act would also be applicable to the Scheme.

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.

38. With respect to the Office Memorandum dated 20th February 2023, the said Office Memorandum merely contains the comments of the Revenue issued with the approval of Member (L&S) CBDT and the said Office

Memorandum is not in the nature of a guideline or instruction issued under section 119 of the Act so as to have any binding effect on the Revenue. Moreover, the arguments advanced by the Revenue on the said Office Memorandum dated 20th February 2023 is clearly contrary to the provisions of the Act as well as the Scheme dated 29th March 2022 and the same are dealt with as under -

(*i*) It is erroneously stated in paragraph 3 of the Office Memorandum that "The scheme clearly lays down that the issuance of notice under section 148 of the Act has to be through automation in accordance with the risk management strategy referred to in section 148 of the Act." The issuance of notice is not through automation but through "automated allocation". The term "automated allocation" is defined in clause 2(1)(*b*) of the said Scheme to mean random allocation of cases to Assessing Officers. Therefore, it is clear that the Assessing Officer are randomly selected to handle a case and it is not merely a case where notice is sought to be issued through automation.

(*ii*) It is further erroneously stated in paragraph 3 of the Office Memorandum that "To this end, as provided in the section 148 of the Act, the Directorate of Systems randomly selects a number of cases based on the criteria of Risk Management Strategy." The term 'randomly' is further used at numerous other places in the Office Memorandum with respect to selection of cases for consideration/issuance of notice under section 148 of the Act. Respondent is clearly incorrect in its understanding of the said Scheme as the reference to random in the said Scheme is reference to selection of Assessing Officer at random and not selection of Section 148 cases as random. If the cases for issuance of notice under section 148 of the Act are selected based on criteria of the risk management strategy, then, obviously, the same are not randomly selected. The term 'randomly' by definition mean something which is chosen by chance rather than according to a plan. Therefore, if the cases are chosen based on risk management strategy, they certainly cannot be said to be random. The Computer/System cannot select cases on random but selection can be based on certain well-defined criteria. Hence, the argument

of respondents is clearly unsustainable. If the case of respondent is that the applicability of Section 148 of the Act is on random basis, then the provision of Section 148 itself would become contrary to Article 14 of the Constitution of India as being arbitrary and unreasonable. Randomly selecting cases for reopening without there being any basis or criteria would mean that the section is applied by the Revenue in an arbitrary and unreasonable manner. The word 'random' is used in clause 2(1)(*b*) of the said Scheme in the definition of "automated allocation". "Automated allocation" is defined in the said clause to mean "an algorithm for randomised allocation of cases…..". The term 'random', in our view, has been used in the context of assigning the case to a random Assessing Officer, *i.e.,* an Assessing Officer would be randomly chosen by the system to handle a particular case. The term 'random' is not used for selection of case for issuance of notice under section 148 as has been alleged by the Revenue in the Office Memorandum. Further, in paragraph 3.2 of the Office Memorandum, with respect to the reassessment proceedings, the reference to 'random allocation' has correctly been made as random allocation of cases to the Assessment Units by the National Faceless Assessment Centre. When random allocation is with reference to officer for reassessment then the same would equally apply for issuance of notice under section 148 of the Act.

(*iii*) The conclusion at the bottom of page 2 in paragraph 3 of the Office Memorandum that "Therefore, as provided in the scheme the notice under section 148 of the Act is issued on automated allocation of cases to the Assessing Officer based on the risk management criteria" is also factually incorrect and on the basis of incorrect interpretation of the Scheme. Clause 2(1)(*b*) of the Scheme defined 'automated allocation' 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'. The said definition does not provide that the automated allocation of case to the

Assessing Officer is based on the risk management criteria. The reference to risk management criteria in clause 3 of the Scheme is to the effect that the notice under section 148 of the Act should be in accordance with the risk management strategy formulated by the board which is in accordance with *Explanation 1* to Section 148 of the Act. In our view, the Revenue is misinterpreting the Scheme, perhaps to cover its deficiency of not following the Scheme for issuing notice under section 148 of the Act.

(*iv*) In paragraph 3.1 of the Office Memorandum, it is stated that the case is selected prior to issuance of notice are decided on the basis of an algorithm as per risk management strategy and are, therefore, randomly selected. It is further stated that these cases are 'flagged' to the JAO by the Directorate of Systems and the JAO does not have any control over the process. It is further stated that the JAO has no way of predicting or determining beforehand whether the case will be 'flagged' by the system. The contention of the Revenue is that only cases which are 'flagged' by the system as per the risk management strategy formulated by CBDT can be considered by the Assessing Officer for reopening, however, in clause (*i*) in the *Explanation 1* to Section 148 of the Act, the term "flagged" has been deleted by the Finance Act, 2022, with effect from 1st April 2022. In any case, whether only cases which are flagged can be reopened or not is not relevant to decide the scope of the Scheme framed under section 151A of the Act, which required the notice under section 148 of the Act to be issued on the basis of random allocation and in a faceless manner.

(*v*) The Revenue has wrongly contended in paragraph 3.1 of the Office Memorandum that "Therefore, whether JAO or NFAC should issue such notice is decided by administration keeping in mind the end result of natural justice to the assessees as well as completion of required procedure in a reasonable time." In our opinion, there is no such power given to the administration under either Section 151A of the Act or under the said Scheme. The Scheme is clear and categorical that notice under section 148 of the Act shall be issued through

automated allocation and in a faceless manner. Therefore, the argument of the Revenue is clearly contrary to the provisions of the Scheme.

(*vi*) In paragraph 3.3 of the Office Memorandum, it is again erroneously stated that "Here it is pertinent to note that the said notification does not state whether the notices to be issued by the NFAC or the Jurisdictional Assessing Officer ("JAO")……It states that issuance of notice under section 148 of the Act shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in faceless manner to the extent provided in section 144B of the Act." The Scheme is categoric as stated aforesaid that the notice under section 148 of the Act shall be issued through automated allocation and in a faceless manner. The Scheme clearly provides that the notice under section 148 of the Act is required to be issued by NFAC and not the JAO. Further, unlike as canvassed by Revenue that only the assessment shall be in faceless manner, the Scheme is very clear that both the issuance of notice and assessment shall be in faceless manner.

(*vii*) In paragraph 5 of the Office Memorandum, a completely unsustainable and illogical submission has been made that Section 151A of the Act takes into account that procedures may be modified under the Act or laid out taking into account the technological feasibility at the time. Reading the said Scheme along with Section 151A of the Act makes it clear that neither the Section or the Scheme speak about the detailed specifics of the procedure to be followed therein. This argument of the Revenue is clearly contrary to the Scheme as the Scheme is very specific to provide, *inter alia*, that the issuance of notice under section 148 of the Act shall be through automated location and in a faceless manner. Therefore, the Scheme is mandatory and provides the specification as to how the notice has to be issued. Further the argument of the Revenue that Section 151A of the Act takes into account that the procedure may be modified under the Act is without appreciating that if the procedure is required to be modified then the same would require modification of the

notified Scheme. It is not open to the Revenue to refuse to follow the Scheme as the Scheme is clearly mandatory and is required to be followed by all Assessing Officers.

(*viii*) The argument of the Revenue in paragraph 5.1 of the Office Memorandum that the Section and Scheme have left it to the administration to device and modify procedures with time while remaining confined to the principles laid down in the said Section and Scheme, is without appreciating that one of the main principles laid down in the Scheme is that the notice under section 148 of the Act is required to be issued through automated allocation and in a faceless manner. There is no leeway given on the said aspect and, therefore, there is no question of the administration to device and modify procedures with respect to the issuance of notice.

39. With reference to the decision of the Hon'ble Calcutta High Court in *Triton Overseas (P.) Ltd.* (*supra*), the Hon'ble Calcutta High Court has passed the order without considering the Scheme dated 29th March 2022 as the said Scheme is not referred to in the order. Therefore, the said judgment cannot be treated as a precedent or relied upon to decide the jurisdiction of the Assessing Officer to issue notice under section 148 of the Act. The Hon'ble Calcutta High Court has referred to an Office Memorandum dated 20th February 2023 being F No. 370153/7/2023 TPL which has been dealt with above. Therefore, no reliance can be placed on the said Office Memorandum to justify that the JAO has jurisdiction to issue notice under section 148 of the Act. Further the Hon'ble Telangana High Court in the case of *Kankanala Ravindra Reddy* v. *ITO* [2023] 156 taxmann.com 178/295 Taxman 652 (Telangana) has held that in view of the provisions of Section 151A of the Act read with the Scheme dated 29th March 2022 the notices issued by the JAOs are invalid and bad in law. We are also of the same view."

11. Thus, the notice could not have been issued by the Jurisdictional Assessing Officer, the notice issued by the learned JAO cannot be upheld. Accordingly, respectfully following the decision of the Hon’ Bombay High Court we hold that notice u/s. 148 of the Act issued on 27.03.2022 by the Jurisdictional Assessing Officer is bad and invalid. The reassessment proceedings carried out on the basis of

invalid notice cannot be sustained. Therefore, we quash the assessment order passed by the learned Assessing Officer.

12. Even otherwise coming to the issue of reopening, we find that information received was that assessee has purchases goods from M/s. Sonu Monu Telecom Pvt. Ltd. of Rs.76,47,675/-. Thus, the information was that M/s. Sonu Monu Telecom Pvt. Ltd. has executed sales of Rs.76,47,675/- to M/s Vinayak Traders. However, the correct facts were found that assessee has sold goods worth Rs.85,69,197/- to M/s. Sonu Monu Telecom Pvt. Ltd. Thus, the reopening is based on incorrect information.

13. The reasons for reopening also shown the same reason that the assessee has purchased goods from M/s. Sonu Monu Telecom Pvt. Ltd., which is incorrect. Therefore, as the information received it is not correct, reopening made on that basis is invalid.

14. Even otherwise on the merits of the case, when the assessee is found to have sold goods to M/s. Sonu Monu Telecom Pvt. Ltd., the directions suggested by the CBIC clearly shows that entities from whom purchases have been made by the M/s. Sonu Monu Telecom Pvt. Ltd., addition to the extent of 2% of such purchases can be made. However, the learned Assessing Officer has made addition of 100% sales already recorded in the Profit &

Loss Account as income of the assessee, added the same amount to the total income of the assessee. This addition was made u/s. 68 of the Act.

15. The addition u/s. 68 of the Act could be made only when the assessee fails to show that the nature and source of credit in the books of account. Here in this case, the nature of credit in the books of account is sale of goods, such sale of goods is supported by sale bill, stock register, and availability of goods from the principal, receipt of consideration by cheque. Therefore, the nature of credit in the books of account is sales. When all these details are placed before the learned Assessing Officer, he did not make any enquiry but rejected the evidences produced by the assessee. When the assessee discharges its onus by producing overwhelming evidences of the sales already recorded in the books of account, the rejection of the arguments and submission of the assessee without making any enquiry and then making an addition is not correct. It is case of the assessee that assessee has recorded this sales in the P&L account and resulted profit thereon have already been offered for taxation. Details of s carriage cost and godown etcwas disputed in the case of assessee for sale of 85 lakhs where the assessee has sold goods worth Rs 35 Crores . Thus, this reason does not support the case of revenue. Therefore, addition of the above sum once again by the

Assessing Officer, which is confirmed by the learned CIT(A) , is not sustainable.

16. In view of facts,

i. reopening of the assessment stands quashed for the twin reasons that notice u/s. 148 of the Act is issued by the Jurisdictional Assessing Officer and

ii. further the reopening is made on the incorrect information.

iii. Even on the merits, the addition cannot be made in case of discharge of onus by the assessee of credit or sales and further offering the profit thereon to the taxation, in absence of any specific enquiry Contrary to the above evidences.

iv. Accordingly, Ground No.2 is allowed on reopening of the assessment and Ground Nos. 3 to 8 are allowed on the merits of the addition.

17. In the result, the appeal of the assessee is allowed.

(Order pronounced in the open court on 26/09/2024.).

Sd/-	Sd/-
(YOGESH KUMAR U.S.)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Jodhpur, Dated: 26.09.2024
Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Jodhpur