



***THE HON'BLE SRI JUSTICE SUJOY PAUL**
AND
***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ WRIT PETITION Nos.13353, 16141 AND 16877 OF 2024

% 24-07-2024

Sri Venkataramana Reddy Patloola

...Petitioner

vs.

\$ Deputy Commissioner of Income Tax,
Circle 1(1), Hyderabad and Others

... Respondents

!Counsel for the Petitioners

: Sri Dundu Manmohan
Sri A.V.Raghu Ram
Sri A.V.A. Siva Kartikeya

^Counsel for Respondents

: Sri Vijhay K.Punna,
Senior Standing Counsel
for Income Tax

<Gist :

>Head Note :

? Cases referred

1. (2023) 156 taxmann.com 178 (Telangana)
2. (2024) 464 ITR 430 (Bom)
3. AIR 1963 SC 946
4. AIR 1992 SC 604
5. (1951) 2 All ER 473

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

* * * *

WRIT PETITION Nos.13353, 16141 AND 16877 OF 2024
(Per Hon'ble Sri Justice Sujoy Paul)

Between:

Sri Venkataramana Reddy Patloola

...Petitioner

vs.

Deputy Commissioner of Income Tax,
Circle 1(1), Hyderabad and Others

... Respondents

JUDGMENT PRONOUNCED ON: 24.07.2024

**THE HON'BLE SRI JUSTICE SUJOY PAUL
AND
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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION Nos.13353, 16141 AND 16877 OF 2024

COMMON ORDER:

The singular and pivotal question raised in these Writ Petitions filed under Article 226 of the Constitution is whether show cause notices issued under Section 148 of the Income Tax Act, 1961 (for short, the Act) in matters relating to international tax charges are exempted to follow the statutory faceless procedure?

2. Heard Sri Dundu Manmohan, Sri A.V. Raghu Ram and Sri A.V.A. Siva Kartikeya, learned counsel for the petitioners in W.P.Nos.13353, 16141 and 16877 of 2024 respectively and Sri Vijhay K.Punna, learned Senior Standing Counsel for Income Tax Department.

3. These matters were analogously heard on the joint request of the parties, and during the course of hearing, the bone of contention of learned counsel for the petitioners was that the notices under Sections 148 of the Act were issued in utter violation of the prescribed procedure of faceless assessment.

4. In addition, in W.P.No.13353 of 2024, the argument of learned counsel for the petitioner is that the notice under Section 148 of the Act was issued by the DCIT, Circle 1(1), Hyderabad on 26.04.2022 and not by an officer holding charge of international tax cases. For this reason also, the impugned orders deserve to be interfered with.

5. It is a common ground taken by learned counsel for the petitioners that Section 151A of the Act permits the Central Government to frame a scheme by notifying the same in the official gazette for various purposes including for issuance of notice under Section 148 in order to ensure greater efficiency, transparency and accountability. The whole exercise is done to eliminate the interface between the income tax authority and the assessee.

6. It is urged that in exercise of power under Section 151A of the Act, a gazette notification dated 29.03.2022 (scheme) was issued. The scope of scheme clearly shows that it relates with issuance of notice under Section 148 of the Act in a faceless manner. A conjoint reading of Section 151A of the Act and scheme dated 29.03.2022 makes it crystal clear that for the purpose of issuance of notice under Section 148 of the Act, the

respondents are bound to follow the prescribed faceless procedure. Admittedly, in the instant cases, the show cause notices were issued by a faced authority, and for this reason alone, the notices run contrary to the mandatory procedure prescribed in the notification dated 29.03.2022. In support of above submissions, the learned counsel for the petitioners placed reliance on a judgment of this Court in **Kankanala Ravindra Reddy v. Income-tax Officer**¹. Reference is also made on a recent Division Bench judgment of Bombay High Court in the case of **Hexaware Technologies Ltd. v. Assistant Commissioner of Income-Tax**².

7. It is contended that Bombay High Court held that scheme and Section 144B do not provide any exemption to the revenue so far issuance of notice under Section 148 is concern, the exemption may be in relation to assessment and reassessment.

8. *Per contra*, Sri Vijhay K.Punna, learned Senior Standing Counsel for Income Tax Department, submits that the matter relates with the interpretation of scheme, Section 144B and CBDT's order dated 06.09.2021. He strenuously contended that a combined reading of both the provisions makes it clear like

¹ (2023) 156 taxmann.com 178 (Telangana)

² (2024) 464 ITR 430 (Bom)

cloudless sky that the international tax charges are exempted from faceless procedure. Sections 144B and 151A cannot be read in isolation. The Board's order dated 06.09.2021 gives exemption to international tax charges cases with regard to applicability of faceless procedure. Thus, as per newly introduced Section 148 through the Finance Act, 2021, the JAOs of regular charges are not barred from conducting the proceedings under Section 148A and issuance of notice under Section 148. The new faceless assessment procedure is applicable only for completion of assessment/reassessment. Even after introduction of faceless scheme, except for completion of assessment and penalty proceedings, all other works, including conducting of proceeding under Section 148A and issuance of notice under Section 148 remain with the JAOs.

9. It is urged that the judgment of Telangana High Court in **Kankanala Ravindra Reddy** (supra) and Bombay High Court in **Hexaware Technologies Ltd.** (supra) are called in question by revenue by filing SLPs before the Supreme Court and same are pending consideration. The petitioners in the instant cases are Non-resident Indians (NRIs) and the faceless scheme is applicable only for residents and that too for conducting assessment

proceeding. By placing reliance on the Supreme Court judgments in **State of U.P. v. Vijay Anand**³ and **State of Haryana v. Bhajanlal**⁴, it is submitted that when the language of statute is plain and unambiguous, it must be given effect to, irrespective of consequences. Learned Senior Standing Counsel for the Income Tax has also filed brief synopsis.

10. The parties confined their arguments to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

11. Before dealing with the rival contentions, it is apposite to reproduce Section 151A of the Act which reads 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 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 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;

³ AIR 1963 SC 946

⁴ AIR 1992 SC 604

(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 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.”

(Emphasis Supplied)

12. Section 151A of the Act is an enabling provision which permits the Central Government to make a scheme for following purposes:

- (i) Assessment, reassessment or computation under Section 147;
- (ii) Issuance of notice under Section 148;**
- (iii) Conducting enquiries or issuance of notice under Section 148A; and
- (iv) Sanction for issue of such notice under Section 151.

13. The Central Government was competent to make changes but no such directions could be issued after 31.03.2022. Admittedly, in exercise of power under Section 151A, the notification dated 23.09.2022 was issued which 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 e-Assessment of Income Escaping Assessment Scheme, 2022.

(2) It shall come into force with effect from the date of its 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.”

(Emphasis Supplied)

14. The argument of learned Senior Standing Counsel for Income Tax Department is based on conjoint reading of scheme dated 29.03.2022 and language employed in Section 144B(2) and CBDT's order dated 06.09.2021. Thus, it is apposite to reproduce the relevant portions of the same.

“ **Section 144B(2) of the Income Tax Act, 1961**

144B. Faceless Assessment:

(1)...

(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, **as may be specified by the Board.**

(Emphasis Supplied)

CBDT's Order dated 06.09.2021:

**F.No.187/3/2020-ITA-I
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Direct Taxes)**

**North Block, New Delhi
Dated, the 6th September, 2021.**

ORDER

Subject:- Order under section 119 of the Income-tax Act, 1961 (the Act) providing exclusions to section 144B of the Act.

The Faceless Assessment Scheme, 2019 (the Scheme) has been incorporated in the Act vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Section 144B of the Act pertaining to Faceless Assessment has been inserted by the said amendment w.e.f. 01.04.2021.

2. The Central Board of Direct Taxes vide Order F.No.187/3/2020-ITA-I dated 13th August, 2020 (the Order) read with order under section 119 of the Act regarding *mutatis mutandis* application of Orders, Circulars etc., issued in order to implement the Scheme to Faceless Assessment u/s 144B of the Act, F.No.187/3/2020-ITA-I dated 31st March, 2021 directed that **all the Assessment Orders shall be passed by the** National Faceless Assessment Centre (NaFAC) u/s 144B of the Act **except** as under:-

- i. *Assessment orders in cases assigned to Central Charges.*
- ii. **Assessment Orders in cases assigned to International Tax Charges.”**

(Emphasis Supplied)

15. Sub-section (2) of Section 144B of the Act makes it obligatory for undertaking faceless assessment in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, *as may be specified by the Board*. The sheet anchor of argument of the Revenue is based on this italic portion which gives power to the Board to specify in relation to persons, class of incomes and persons, etc.

16. It is strenuously contended that the order dated 06.09.2021 provides for such exception, and in no uncertain terms, makes it clear that one of the exception is regarding assessment orders in cases assigned to international tax charges. In other words, assessment orders relating to international tax charges are exempted from the purview of faceless assessment

system. In our opinion, the argument on the face of it appears to be attractive, but lost much of its shine when provisions were examined minutely.

17. Sub-section (2) of Section 144B of the Act is also an enabling provision to the extent it gives authority to the Board to ‘specify’ about applicability of faceless assessment in respect of class, income, group, etc. Clause 3(b) of notification/scheme dated 29.03.2022 shows that issuance of notice under Section 148 is squarely covered and mandated under clause 3 by making it clear that it 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 same has to be in a faceless manner. The parties are at loggerheads because of expression i.e., “*to the extent provided in Section 144B of the Act*” used in clause 3(b) of the notification dated 29.03.2022.

18. Learned counsel for the petitioners, by placing reliance on the judgment of Bombay High Court in **Hexaware Technologies Ltd.** (supra), argued that the provision has already been interpreted by the Bombay High Court, and therefore, the aforesaid expression ‘*to the extent provided in Section 144B of the*

Act' does not deal with the aspect of issuance of notice under Section 148 of the Act.

19. As noticed, learned Senior Standing Counsel for Income Tax Department has taken a diametrically opposite stand by contending that the said expression, indeed, covers the issuance of notice under Section 148 of the Act. His contention was that issuance of notice under Section 148 of the Act was also part of assessment procedure.

20. In the considered opinion of this Court, clause 3(b) of the notification dated 29.03.2022, in specific, deals with issuance of notice under Section 148 of the Act. For that purpose, the notification seeks to apply e-assessment of income escaping assessment scheme, 2022. A microscopic reading of clause 3(b) shows that its only literal interpretation could be that issuance of notice under Section 148 of the Act is squarely covered under the scheme, and for the purpose of issuance of notice, the faceless procedure must be followed. The expression '*to the extent provided in Section 144B of the Act*' in our judgment does not deal with 'issuance of notice' under Section 148. The said expression is applicable with reference to 'assessment' and 'reassessment'.

Sub-section (2) of Section 144B relates to “assessment” and does not deal with issuance of notice under Section 148 of the Act.

21. In order to understand the provision in a better way, we deem it proper to split it as under:

“3. Scope of the Scheme- For the purpose of this Scheme:-

(a) assessment, reassessment of 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.”

(Scheme)

22. A careful reading of the scheme points out that law makers consciously provided two different sub clauses (a) and (b). Clause 3 ‘(a)’ specifically deals with assessment, reassessment and recomputation whereas sub-clause ‘(b)’ deals with notice under Section 148 of the Act and gives reference of Section 144B for providing ‘extent’ for the purpose of ‘assessment’ and ‘reassessment’. Putting it differently, sub-clause (b) of Clause 3 of the scheme, before use of word ‘and’ is complete in itself and makes it obligatory to issue notice under Section 148 as per

automated allocation procedure envisaged in clause 2 (b) of the scheme. The sentence after use of word 'and' in sub-clause (b) of clause 3 talks about 'extent' provided in Section 144B with reference to assessment and reassessment. The second portion of sub-clause (b) of clause 3 after 'and' does not deal with issuance of notice under Section 148 of the Act. Therefore, sub-clause (b) of clause 3 is in two parts. First part is confined to notice under Section 148 of the Act, whereas, second part after the word 'and' is confined to 'assessment' and 'reassessment'.

23. It is noteworthy that the order of CBDT dated 06.09.2021 deals with "assessment orders". The said order is passed in exercise of power under Section 144B of the Act. The order of CBDT is clear that direction was issued about passing of "assessment orders" by the National Faceless Assessment Centre under Section 144B of the Act *except* in two situations, one of which is passing of assessment orders in cases assigned to International Tax Charges.

24. Thus, there is no cavil of doubt that Section 144B of the Act and order of CBDT dated 06.09.2021 give exemption from following the mandatory faceless procedure only in relation to passing of assessment orders in cases of central charges and

international tax charges. Any other interpretation would amount to doing violence with the language employed in the scheme/notification dated 29.03.2022, Section 144B(2) of the Act and order dated 06.09.2021. Since in our view, the plain and unambiguous language used in the scheme and order dated 06.09.2021 shows that the notice under Section 148 does not fall within the 'exception', the judgments cited by the learned Senior Standing Counsel for Income Tax Department are of no assistance. The Taxpayer is nowhere distinguished between NRIs and Indian Citizens. The notice issued under Section 148 must comply with the requirement of the Scheme whether or not the Taxpayer is NRI/Indian Citizen. Thus, the second limb of argument of the learned Senior Standing Counsel for Income Tax Department deserves to be rejected.

25. Pertinently, this Court in **Kankanala Ravindra Reddy** (supra), held as under:

“25. A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated 28.03.2022 and 29.03.2022, it would clearly indicate that the Central Board of Direct Taxes was very clear in its mind when it framed the aforesaid two schemes with respect to the proceedings to be drawn under Section 148A, that is to have it in a faceless manner. There were two mandatory conditions which were required to be adhered to by the Department, firstly, the allocation being made through the automated allocation system in accordance with the risk management strategy formulated by the Board under Section

148 of the Act. Secondly, the re-assessment has to be done in a faceless manner to the extent provided under Section 144B of the Act.”

(Emphasis Supplied)

26. The Bombay High Court in **Hexaware Technologies Ltd.**

(supra) held as under:

“36.1 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 Central Board of Direct Taxes, 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."**

27. We are in respectful agreement with the view taken by the Bombay High Court and are of the opinion that the aforesaid underlined expression used in clause 3(b) of the scheme dated 29.03.2022 does not preclude the mandatory faceless procedure for issuance of notice under Section 148 of the Act. Any other interpretation, in our humble view, will not only cause violence to the language used, but will also defeat the object for which a transparent 'faceless procedure' was introduced. Hence, we are

unable to persuade ourselves to accept a different meaning than the literal meaning flowing and conveyed from the provisions.

28. In interpreting a section in a taxing statute, according to LORD SIMONDS, “the question is not at what transaction the section is according to some alleged general purpose aimed, but what transaction its language according to its natural meaning fairly and squarely hits (see **St. Aubyn (LM) v. A.G.**⁵). LORD SIMONDS call this “the one and only proper test”. This principle is followed by the Indian Supreme Court in catena of judgments. Thus, in our view, no such exemption from faceless procedure can be read by combined reading of aforesaid provisions for the purpose of issuance of notice under Section 148 of the Act.

29. In view of foregoing analysis, it is clear that the respondents have erred in not following the mandatory faceless procedure as prescribed in the scheme dated 29.03.2022. Since notices under Section 148 of the Act were not issued in a faceless manner, the entire further proceeding founded upon it and assessment orders stand vitiated. Thus, the impugned notices under Section 148 of the Act and all consequential assessment orders based

⁵ (1951) 2 All ER 473

thereupon are set aside. Liberty is reserved to the respondents to proceed against the petitioners in accordance with law.

30. The Writ Petitions are **allowed** to the extent indicated above. There shall be no order as to costs. Miscellaneous applications pending, if any, shall stand closed.

SUJOY PAUL, J

NAMAVARAPU RAJESHWAR RAO, J

Date: 24.07.2024
L.R. copy be marked.
B/o. TJMR