

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CIVIL APPLICATION NO. 9909 of 2022  
With  
R/SPECIAL CIVIL APPLICATION NO. 7481 of 2022  
With  
R/SPECIAL CIVIL APPLICATION NO. 7616 of 2022  
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R/SPECIAL CIVIL APPLICATION NO. 7632 of 2022  
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R/SPECIAL CIVIL APPLICATION NO. 7660 of 2022  
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R/SPECIAL CIVIL APPLICATION NO. 12991 of 2024  
With  
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2025  
In R/SPECIAL CIVIL APPLICATION NO. 12991 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 12994 of 2024  
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R/SPECIAL CIVIL APPLICATION NO. 16316 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16381 of 2024  
With

R/SPECIAL CIVIL APPLICATION NO. 16409 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16496 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16528 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16535 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16582 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16639 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16641 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16648 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16654 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16748 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16812 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16835 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 16933 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 17018 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 17108 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 17263 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 17627 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 17655 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 100 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 110 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 147 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 233 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 369 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 1296 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 1600 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 1710 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 1805 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 1843 of 2025

With  
R/SPECIAL CIVIL APPLICATION NO. 2711 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 3171 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 3862 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 6468 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 10749 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 11484 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 11499 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 12129 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 12138 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 12162 of 2025  
With  
R/SPECIAL CIVIL APPLICATION NO. 6054 of 2024  
With  
R/SPECIAL CIVIL APPLICATION NO. 9937 of 2024

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SNEHDHAM TRUST  
Versus  
ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 2(2),  
AHMEDABAD

=====

Appearance:

MR S.N.SOPARKAR, LD.SR.ADV with MR B S SOPARKAR(6851) , MR.TUSHAR HEMANI, LD.SR.ADV with MS.VAIBHAVI PARIKH and MR.PARIMALSINH PARMAR, MR.R.K.PATEL, LD.SR.ADV with MR DARSHAN PATEL, MR.S.N.DIVATIA, MR DARSHAN GANDHI, MR.HARDIK VORA with MS.PALAK KSHATRIYA, MR.MANISH SHAH, MR.KRUTARTH DESAI, MR KETAN SHAH, MR DHINAL SHAH, MR RAHUL HAKANI with MR.SHYAMAL BHIMANI, MR JAIMIN DAVE, MR ASHUTOSH DAVE and MR.HIREN TRIVEDI for the petitioners in the respective petitions.

MR.VARUN K.PATEL(3802) with MR.DEV D. PATEL, MR.KARAN G. SANGHANI, MR RUDRAM TRIVEDI for MRS KALPANA RAVAL and MR.NIKUNT RAVAL for the respondent in the respective petitions.

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**  
and  
**HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Date : 17/09/2025

**COMMON ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Advocate

Mr.S.N.Soparkar with learned advocate  
Mr.B.S.Soparkar, learned Senior Advocate  
Mr.Tushar Hemani with learned advocate  
Ms.Vaibhavi Parikh and learned advocate  
Mr.Parimalsinh Parmar, learned Senior Advocate  
Mr.R.K. Patel with learned advocate Mr.Darshan  
Patel, learned advocate Mr.S.N.Divatia,  
learned advocate Mr.Darshan Gandhi, learned  
advocate Mr.Hardik Vora with learned advocate  
Ms.Palak Kshatriya, learned advocate Mr.Manish  
J. Shah, learned advocate Mr.Krutarth K.  
Desai, learned advocate Mr.Darshan Patel,  
learned advocate Mr.Ketan Shah, learned  
advocate Mr.Dhinal Shah, learned advocate  
Mr.Rahul Hakani with learned advocate  
Mr.Shyamal Bhimani, learned advocate Mr.Jaimin



Dave, learned advocate Mr.Ashutosh Dave, learned advocate Mr.Hiren Trivedi for the petitioners in the respective petitions and learned Senior Standing Counsel Mr.Varun K. Patel with learned advocate Mr.Dev D. Patel, learned Senior Standing Counsel Mr.Karan G. Sanghani and learned advocate Mr.Rudram Trivedi for learned advocate Mrs.Kalpana Raval and learned advocate Mr.Nikunt Raval for the respondent in the respective petitions.

2. This group of petitions is arising from the common issue of assumption of jurisdiction by the Assessing Officer to issue notice after 01.04.2022 under Section 148 of the Income Tax Act, 1961 (for short 'the Act') on the ground that such notice was issued by Jurisdictional

Assessing Officer and not by Faceless Assessing Officer.

3. The petitioners relied upon the provisions of Section 151A of the Act which is inserted by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short 'the TOLA, 2020') with effect from 01.11.2020 and E-Assessment of Income Escaping Assessment Scheme, 2022 (for short 'the Scheme, 2022') as per Notification S.O. 1466 (E) No.18/2022/F.NO.370142/16/2022-TPL (Part 1) dated 29th March, 2022 framed by the Central Government in exercise of the powers conferred by Sub-sections (1) and (2) of Section 151A of the Act.

4. By order dated 5th August, 2024, majority of the petitions were admitted to consider this issue. These petitions also involve issues other than the common issue of jurisdiction of the notice issued by the Jurisdictional Assessing Officer under Section 148 of the Act instead of Faceless Assessing Officer in view of the Scheme, 2022.

5. Learned advocates for the petitioners mainly relied upon the decision of the Bombay High Court in case of **Hexaware Technologies Ltd. Versus Assistant Commissioner of Income-tax reported in [2024] 162 taxmann.com 225 (Bombay)** holding that the notice issued by the Jurisdictional Assessing Officer after 01.04.2022 is without jurisdiction in view of

the provisions of the Scheme, 2022.

6. It was also brought to the notice of the Court that being aggrieved by the decision of the Hon'ble Bombay High Court, the Revenue has preferred the Special Leave Petition before the Hon'ble Apex Court which is pending and therefore, these petitions were admitted and kept pending for the decision, if any, which may be rendered by the Hon'ble Apex Court.

7. It was also brought to the notice of the Court that there are about ten decisions on the issue of jurisdiction of the Jurisdictional Assessing Officer to issue notice under Section 148 of the Act available as on today rendered by the various Hon'ble

High Courts either in favour of the assessee or against the assessee and similar matters are also pending at hearing stage before Hon'ble Patna High Court, Hon'ble Chhattisgarh High Court, Hon'ble Rajasthan High Court and Hon'ble Calcutta High Court.

8. As more than four hundred matters are pending on the common issue of jurisdiction of the Jurisdictional Assessing Officer to issue notice under Section 148 of the Act after 01.04.2022 in view of the Scheme, 2022 and in view of the diverse views given by the various High Courts on the same issue, learned advocates for both the sides have made their submissions so as to decide this issue by this Court. Therefore, we have heard the learned

advocates for both the sides at length on this common issue.

9. Before adverting to the elaborate submissions made by learned advocates for both the sides, it would be germane to refer to the relevant provisions of the Act and the Scheme, 2022 to decide the short issue as to whether the Jurisdictional Assessing Officer has jurisdiction to issue notice under Section 148 of the Act in view of the Scheme, 2022 or not, which read as under :

**(i) Section 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; 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.

**(ii) NOTIFICATION S.O.1466 (E) [NO. 18/2022/F.NO.370142/16/2022-TPL(PART1)], DATED 29-3-2022:-** 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:—*

***Short title and commencement***

*1. (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.*

***Definitions***

*2. (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.*

### ***Scope of the Scheme***

***3. 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.*

**(iii) Section 144B:-Faceless Assessment**

*(1) Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:-*

*(i) the National Faceless Assessment*

*Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system;*

*(ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;*

*(iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under subsection (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the*

*National Faceless Assessment Centre  
which shall forward the same to the  
assessment unit.*

**(iv) NOTIFICATION S.O. 1400 (E) [NO.  
15/2022/F. NO. 370142/13/2022-TPL],  
DATED 28-3-2022:-** *In exercise of the  
powers conferred by sub-sections (1)  
and (2) of section 130 of the Income-  
tax Act, 1961 (43 of 1961), the Central  
Government hereby makes the following  
Scheme, namely:-*

***Short title and commencement.***

***1. (1) This Scheme may be called the  
Faceless Jurisdiction of Income-tax  
Authorities Scheme, 2022.***

*(2) It shall come into force with  
effect from the date of its publication  
in the Official Gazette.*

***Definitions.***

*2. (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.*

***Scope, Powers and Performance of functions of income-tax authorities.***

**3. For the purpose of this Scheme, –**

*(a) the exercise of all or any or the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities, by or under the Act as referred to in section 120 of the Act; or*

*(b) vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act, shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in–*

*(i) section 144B of the Act with reference to making faceless assessment of total income or loss of assessee;*

*(ii) the Faceless Appeal Scheme,*

*2021 notified under sub-sections (6B) and (6C) of section 250 of the Act with reference to the disposal of appeals;*

*(iii) the Faceless Penalty Scheme, 2021 notified under sub-sections (2A) and (2B) of section 274 of the Act with reference to imposition of penalty under Chapter XXI of the Act;*

*(iv) the e-Verification Scheme, 2021 notified under sub-sections (1) and (2) of section 135A of the Act with reference to the calling for of information under section 133 of the Act, collecting certain information under section 133B of the Act, or calling for information by prescribed authority under*



*section 133C of the Act, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 of the Act;*

*(v) the e-Settlement Scheme, 2021 notified under sub-sections (11) and (12) of section 245D of the Act with reference to the settlement of pending applications by the interim Board;*

*(vi) the e-advance rulings Scheme, 2022 notified under sub-sections (9) and (10) of section 245R of the Act with reference to dispute resolution for persons or class of persons, as specified by the Board, who may opt for*

dispute resolution under the Chapter XIX-AA of the Act with reference to dispute arising from any variation in the specified order fulfilling the specified conditions.

**(v) Section 120:- Jurisdiction of income-tax authorities** (1) Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under this Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities.

[Explanation.-For the removal of doubts, it is hereby declared that any income-tax authority, being an

*authority higher in rank, may, if so directed by the Board, exercise the powers and perform the functions of the income-tax authority lower in rank and any such direction issued by the Board shall be deemed to be a direction issued under sub-section (1).]*

*(2) The directions of the Board under sub-section (1) may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.*

*(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :-*

- (a) territorial area;
- (b) persons or classes of persons;
- (c) incomes or classes of income;
- and
- (d) cases or classes of cases.

**(vi) Section 124:- Jurisdiction of Assessing Officers** (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction-

- (a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the

*principal place of his business or profession is situate within the area, and*

*(b) in respect of any other person residing within the area.*

**(vii) Section 127:- Power to transfer**

**cases** (1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case 7 from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether

with or without concurrent jurisdiction)  
also subordinate to him.

(viii) **Section 130:- Faceless**

**jurisdiction of income-tax authorities**

(1) The Central Government may make a  
scheme, by notification in the Official  
Gazette, for the purposes of-

(a) exercise of all or any of the  
powers and performance of all or any  
of the functions conferred on, or,  
as the case may be, assigned to  
income-tax authorities by or under  
this Act as referred to in section  
120; or

(b) vesting the jurisdiction with  
the Assessing Officer as referred to  
in section 124; or

*(c) exercise of power to transfer cases under section 127; or*

*(d) exercise of jurisdiction in case of change of incumbency as referred to in section 129, so as to impart greater efficiency, transparency and accountability by-*

*(i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;*

*(ii) optimising utilisation of the resources through economies of scale and functional specialisation;*

*(iii) introducing a team-based exercise of powers and performance of functions by two*

*or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, 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.*

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

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**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-1 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.*

*3. In partial modification of the said Order, the Central Board of Direct Taxes in exercise of powers under section 119 of the Act, hereby directs that in addition to exceptions (i) & (ii) provided in Para 2 of the Order, the following exception is also hereby added as under:-*

*iii. Assessment Orders in cases where pendency could not be created on ITBA because of technical reasons or cases not having a PAN, as the case may be.*

*4. Further, the Central Board of Direct Taxes clarifies that assessment in cases transferred by the Principal Chief Commissioner or the Principal Director General in charge of National Faceless Assessment Centre (NaFAC) u/s 144B(8) of the Act shall be handled as*

per the procedure specified in the letter F.No. 225/97/2021/ITA-II dated 06th September, 2021.

**(x) SECTION 120 READ WITH SECTION 144B OF THE INCOME-TAX ACT, 1961 - INCOME-TAX AUTHORITIES - JURISDICTION OF - INCOME-TAX AUTHORITIES OF REGIONAL FACELESS ASSESSMENT CENTRE SHALL EXERCISE POWERS AND FUNCTIONS OF ASSESSING OFFICER TO FACILITATE CONDUCT OF FACELESS ASSESSMENT PROCEEDINGS IN TERRITORY OF INDIA - SUPERSESSION OF NOTIFICATION S.O. 1435 (E) [NO. 23/2021/F. NO.187/3/2020-ITA-I], DATED 31-3-2021**

**NOTIFICATION S.O. 2693 (E) [NO. 61/2022/F. NO. 187/3/2020-ITA-I], DATED 10-6-2022**

**AS AMENDED BY NOTIFICATION NO. SO. 5255 (E) [NO. 121/2022 F. NO.**

**187/3/2020-ITA-1], DATED 14-11-2022 AND**  
**NOTIFICATION NO. S.O. 951(E), DATED 1-**  
**3-2023**

*In exercise of the powers conferred by sub-sections (1), (2) and (5) of section 120 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act) and in supersession of Notification No. 23/2021 bearing S.O. 1435(E), dated the 31st March, 2021 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes hereby directs that the Income-tax Authorities of Units specified in Column (2) of the Schedule below, having their headquarters at the places mentioned in Column (3) of the said Schedule, shall exercise the powers*

*and functions of Assessing Officers concurrently, to facilitate the conduct of Faceless Assessment proceedings under section 144B of the said Act, in respect of all persons or class of persons, or incomes or class of incomes, or cases or class of cases in the territory of India, excluding the persons or class of persons, or incomes or class of incomes, or cases or class of cases covered by the Notification No. 57/2014 bearing S.O. 2814(E), dated the 3rd November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) or by the Notification No. 70/2014 bearing S.O. 2915(E), dated the 13th November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii)*

**(xi) F.NO 225/135/2021/ITA.-II**

**Government of India**

**Ministry of Finance**

**Department of Revenue**  
**Central Board of Direct Taxes**

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**North Block, New Delhi**  
**Dated 10th December, 2021**

To,

All Principal Chief Commissioners of  
Income Tax,

All Chief Commissioners of Income Tax

Madam/Sir

**Subject: Instructions under section 119  
of the Income-tax Act, 1961 regarding  
uploading of information on the VRU  
functionality on Insight portal for  
implementation of risk management  
strategy - for issue of notice u/s 148  
of the Income-tax Act, 1961 -reg**

Kindly refer to the above.

2. As per the amended provisions of the  
section 148 of the Income-tax Act, 1961  
( 'the Act'), the information which has  
escaped assessment has been defined to

*include the two categories of information, i.e., (i) the information which is flagged in accordance with the risk management strategy formulated by the Board; and (ii) final audit objection raised by the C&AG.*

*3. For effective implementation of risk management strategy, the Central Board of Direct Taxes (Board), in exercise of its powers under section 119 of the Act, directs that the Assessing Officers shall identify the following categories of information pertaining to Assessment Year 2015-16 and Assessment Year 2018-19, which may require action under section 148 of the Act, for uploading on the Verification Report Upload (VRU) functionality on Insight portal.*

*6. The above exercise of identifying and uploading the information along with*



the underlying documents in the above categories of cases must be completed by 20.12.2021.

**(xii) LETTER F.No.225/72/2024/ITA-II**

**GUIDELINES FOR COMPULSORY SELECTION OF RETURNS FOR COMPLETE SCRUTINY DURING FINANCIAL YEAR 2024-25 - PROCEDURE FOR COMPULSORY SELECTION IN SUCH CASES**

**LETTER F.NO. 225/72/2024/ITA-II, DATED 3-5-2024**

Kindly refer to the above.

2. The parameters for compulsory selection of returns for Complete Scrutiny during Financial Year 2024-25 and procedure for compulsory selection in such cases are prescribed as under:-

(4) Cases in which notices u/s 148 of the Act have been issued:

Cases where return is either furnished or not furnished in response to notice u/s 148 of the Act:

*(i) Cases, where notices u/s 148 of the Act have been issued pursuant to search & seizure/survey actions conducted on or after the 1st day of April, 2021:*

*These cases shall be selected for compulsory scrutiny with prior administrative approval of Pr. CIT/Pr.DIT/CIT/DIT concerned who shall ensure that such cases, if lying outside Central Charges, are transferred to Central Charges u/s 127 of the Act within 15 days of service of notice u/s 143(2)/142(1) of the Act calling for information by the Jurisdictional Assessing Officer concerned. (subject to para 4.2)*

*(ii) Cases other than search & seizure/survey:*

*(a) For those cases which are to be completed by NaFAC on or before 31.03.2025. Jurisdictional Assessing Officers (JAOs) shall upload the underlying documents, on the basis of which notice u/s 148 was issued, on ITBA, for access by NaFAC.*

*The Directorate of Income-tax (Systems) shall forward these cases to NaFAC, which will take further necessary action.*

Notice us 143(2)/142(1) of the Act calling for information shall be served on the assessee through NaFAC.

(For Assessing Officers in International Taxation and Central, Circle charges: refer Para 4.1 at Page No. 5)

**Submissions on behalf of the petitioners :**

10.1. Learned Senior Advocate Mr. Tushar Hemani for the petitioners, at the outset, submitted that the issue is squarely covered in favour of the petitioners as per the decision of the Hon'ble Bombay High Court in case of **Hexaware Technologies Ltd. Versus Assistant Commissioner of Income-tax** reported in **[2024] 162 taxmann.com 225 (Bombay)** and the decision of Hon'ble the Telangana High Court in case of **Kankanala Ravindra Reddy Versus Income-tax Officer** reported in **[2023] 156 taxmann.com 178**

**(Telangana)**. It was submitted that these two decisions are followed subsequently in the decisions in the following cases :

(i) **Ram Narayan Sah Versus Union of India** reported in [2024] 163 taxmann.com 478 (Gauhati);

(ii) **Jatinder Singh Bhangu Versus Union of India** reported in [2024] 165 taxmann.com 115 (Punjab & Haryana);

(iii) **Sri Venkataramana Reddy Patloola Versus Deputy Commissioner of Income-tax** reported in [2024] 167 taxmann.com 411 (Telangana);

(iv) **Kairos Properties (P.) Ltd. Versus Assistant Commissioner of Income-tax** reported in [2024] 165 taxmann.com 760 (Bombay);

(v) **CapitalG LP Versus Assistant Commissioner of Income-tax, Int. Tax.** reported in [2024] 165 taxmann.com 718 (Bombay);

(vi) **Sharda Devi Chhajjer Versus Income-tax Officer and another** reported in 477 ITR 228: 2025 SCC OnLine Raj 3386;

(vii) **Tecumseh Products India (P.) Ltd. Versus Deputy Commissioner of Income-tax** reported in [2025] 174 taxmann.com 1203 (Telangana);

(viii) **Patran Foods (P.) Ltd. Versus Union of India** reported in [2025] 170 taxmann.com 470 (Punjab & Haryana);

(ix) **Shree Cement Ltd. Versus Assistant Commissioner of Income-tax** reported in [2025] 177 taxmann.com 538 (Rajasthan);

(x) **Southern Power Distribution Company of Telangana Ltd. versus Assistant**

**Commissioner of Income-tax** reported in  
**[2025] 175 taxmann.com 800 (Telangana)**.

10.2. It was also pointed out by learned Senior Advocate Mr. Tushar Hemani that Hon'ble the Calcutta High Court in case of **Triton Overseas (P.) Ltd. Versus Union of India** reported in **[2023] 156 taxmann.com 318 (Calcutta)** has dismissed the petition of the assessee. It was also pointed out that Hon'ble the Delhi High Court in case of **T.K.S. Builders (P.) Ltd Versus Income-tax Officer** reported in **[2024] 167 taxmann.com 759 (Delhi)** has also dismissed the petition. Learned Senior Advocate Mr. Tushar Hemani submitted that Hon'ble the Single Judge of the Hon'ble Madras High Court in case of **Mark Studio India**

**(P.) Ltd. Versus Income-tax Officer** reported in **[2024] 169 taxmann.com 542 (Madras)** dismissed the petition, however, in case of **TVS Credit Services Ltd. Versus Deputy Commissioner of Income-tax** reported in **[2025] 174 taxmann.com 1078 (Madras)**, the Hon'ble Single Judge of the Hon'ble Madras High Court referred the matter to the Larger Bench and the Larger Bench in the decision in case of **TVS Credit Services (Supra)** has followed the Bombay High Court by allowing the reference by order dated 24th June, 2025.

10.3. Learned Senior Advocate Mr. Tushar Hemani referred to and relied upon paragraph No.26 of the decision of the Hon'ble Apex Court in case of **Union of India versus Rajeev Bansal**

reported in **[2024] 167 taxmann.com 70 (SC)** to canvass the proposition of law that the assessment is a quasi-judicial function, which reads as under:

*“26. An assessment acquires finality on the making of an assessment order by the assessing officer. It creates a vested right in favour of the assessee. Section 2(8) of the Income Tax Act defines “assessment” to include reassessment. Reassessment is nothing but a fresh assessment. The effect of reopening the assessment is to vacate or set aside the order of assessment and to substitute in its place the order of reassessment. The procedure of reassessment of tax is quasi-judicial because it prejudicially affects the vested rights. Justice H R Khanna, speaking for a Bench of three Judges,*



*explained the quasi-judicial function performed by the assessing officers during the process of assessment and reassessment thus:*

*“10. [...] The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. We are wholly unable to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the revenue and consequently most adverse to the assessee, they should be deemed not*

*to have exercised it in a proper and judicious manner.”*

10.4. Learned Senior Advocate Mr. Tushar Hemani also referred to paragraph Nos. 30, 32 and 35 of the aforesaid decision to buttress his submissions that in exercise of powers, statutory authority inconsistent with the statutory prescription is invalid and the statutory authority may lack jurisdiction if it does not fulfill the preliminary conditions laid down under the statute and further that in the situations where interpretation of taxing legislation is ambiguous or leads to two possible interpretations, the interpretation most beneficial to the subject of the tax should be adopted, which reads as

under :

*“30. If a statute expressly confers a power or imposes a duty on a particular authority, then such power or duty must be exercised or performed by that authority itself. Further, when a statute vests certain power in an authority to be exercised in a particular manner, then that authority has to exercise its power following the prescribed manner. Any exercise of power by statutory authorities inconsistent with the statutory prescription is invalid. Section 34 of the Income-tax Act 1922 prescribed a duty on Income-tax Officers to seek prior approval of the Commissioner before issuing a reassessment notice. In CIT v. Maharaja Pratapsingh Bahadur of Gidhaur, [1961] 41 ITR 421 (SC)/1960 SCC OnLine SC 55 a three-Judge Bench of this Court held*

*that a notice issued under section 34 without prior approval of the Commissioner was invalid.*

*32. A statutory authority may lack jurisdiction if it does not fulfil the preliminary conditions laid down under the statute, which are necessary to the exercise of its jurisdiction. There cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment. An order passed without jurisdiction is a nullity. Any consequential order passed or action taken will also be invalid and without jurisdiction. Thus, the power of assessing officers to reassess is limited and based on the fulfillment of certain preconditions.*

*35. It is a well-accepted rule of*

*construction that in situations where the interpretation of taxing legislation is ambiguous or leads to two possible interpretations, the interpretation most beneficial to the subject of the tax should be adopted. It would not be an unjust result if a taxpayer escapes the tax net on account of the legislature's failure to express itself clearly.*

10.5. It was therefore submitted that quasi-judicial function of an Assessing Officer requires finality on the making of an assessment order which created vested right in favour of the assessee and re-assessment is nothing but a fresh assessment. It was pointed out that the effect of reopening the assessment is to vacate or set-aside the order of assessment and to substitute in its place

the order of re-assessment which ultimately prejudicially affects the vested rights of the assessee. It was therefore submitted that assumption of jurisdiction by the Jurisdictional Assessing Officer, contrary to the Scheme, 2022, is required to be quashed and set-aside as held by the Hon'ble the Bombay High Court and Hon'ble the Telangana High Court, followed subsequently by the various High Courts.

10.6. It was also submitted that there cannot be any imposition of tax without authority of law which has to be unambiguous and should prescribe the liability to pay tax in clear terms vis-a-vis the concerned provisions of the taxing statute, as against that, if the

concerned provisions of taxing statute are ambiguous, vague and are susceptible to two interpretations, the interpretation which favours the assessee as against the Revenue is required to be preferred. It was submitted that this is a well established principle of statutory interpretation.

10.7. Learned Senior Advocate Mr. Tushar Hemani referring to the above settled principles of law submitted that the E-Assessment of Income Escaping Assessment Scheme, 2022 stipulates the purpose of the assessment, re-assessment or re-computation under Section 147 of the Act as provided in paragraph No.3(a) of the said Scheme and issuance of notice under Section 148 of the Act, as provided under paragraph

No.3(b) of the said Scheme, shall be through the automated allocation in accordance with the risk management strategy formulated by the Board as referred to in Section 148 of the Act for issuance of the notice, and in faceless manner, to the extent provided in Section 144B of the Act. It was pointed out that paragraph No.2(b) of the said Scheme defines automated allocation and Section 144B of the Act is a code by itself which provides the procedure for making assessment or reassessment of the total income or losses of the assessee to be conducted in a faceless manner and therefore, for both the functions of framing the assessment and issuance of the notice under Section 148 of the Act has to be through



automated allocation and in the faceless manner as provided under Section 144B of the Act.

10.8. Learned Senior Advocate Mr. Tushar Hemani further submitted that on perusal of the Notification dated 29th March, 2022 enacting "E-assessment of Income Escaping Assessment Scheme, 2022" placed at Page No.339 of the compilation, it appears that some of the Hon'ble Courts took the view that the words "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" used under Clause 3 of the Scheme suggests that the Scheme only applies to faceless assessment or reassessment

under Section 144B of the Act and not for issuance of notice under Section 148 of the Act, as such procedure is not prescribed under Section 144B of the Act.

10.9. Learned Senior Advocate Mr. Tushar Hemani submitted that the reference to Section 144B of the Act is made since it specifies the general "faceless manner" in which, proceedings are to be conducted. It was submitted that there is no specific requirement to make an altogether different Section for each "faceless proceeding" under the Act when there is a specific Section in the statute providing comprehensive faceless procedure which can also be made applicable to other faceless proceedings under the Act and

as Section 144B of the Act provides the "faceless manner" for "assessment, reassessment or recomputation", the comprehensive procedure prescribed under such Section can also be made applicable to other faceless proceedings under the Act and hence, the words "to the extent" provided in Section 144B of the Act are used in the Scheme. It was therefore submitted that the faceless manner or procedure prescribed under Section 144B of the Act needs to be applied while issuing notice under Section 148 of the Act to the extent applicable.

10.10. Learned Senior Advocate Mr. Tushar Hemani submitted that the procedure prescribed under Section 144B of the Act is also workable

for issuance of notice under Section 148 of the Act as evident from the following:

(i) As referred in clause (i) of Section 144B(1) of the Act, based on information available with Department, NFAC shall assign the case selected for the purpose of making inquiries under Section 148A of the Act to a Faceless Assessing Officer or specific assessment unit through an "automated allocation system";

(ii) As referred in clause (iii) of Section 144B(1) of the Act, a notice shall be served on the assessee, through NFAC under Section 148A of the

Act and the assessee may file response to such notice to NFAC;

(iii) As referred to in clause (iv) of Section 144B(1) of the Act, the Faceless Assessing Officer or assessment unit may make a request through NFAC for obtaining further information, documents or evidence from the assessee or any other person or conducting inquiry or verification by verification unit in the course of proceedings under Section 148A of the Act;

(iv) As referred to in clause (vi) of Section 144B(1) of the Act, the request

of the Faceless Assessing Officer or assessment unit shall be assigned by NFAC to verification unit through an "automated allocation system" who will make verification with reference to "information suggesting that income chargeable to tax has escaped assessment" based on which case can be reopened under Section 147 of the Act;

(v) As referred to in clause (xxii) of Section 144B(1) of the Act, the Faceless Assessing Officer or assessment unit shall pass the final order under Section 148A of the Act and issue notice under Section 148 of the Act;

(vi) As referred to in clause (xxiii) of Section 144B(1) of the Act, upon receipt of the final order under Section 148A of the Act and notice under Section 148 of the Act, NFAC shall serve the same on the assessee.

10.11. Referring to the above, learned Senior Advocate Mr. Tushar Hemani submitted that though each and every requirement specified in the procedure under Section 144B of the Act is not applicable while conducting proceedings under Section 148A of the Act and issuing notice under Section 148 of the Act, such procedure shall be applied "to the extent provided" in order to achieve the object of

the Parliament of promoting "transparency" in various proceedings conducted under the Act by "eliminating the interface between the Income Tax Authority and assessee".

10.12. Learned Senior Advocate Mr. Tushar Hemani therefore referred to Section 144B of the Act and submitted that it covers both Section 147 and Section 148 of the Act and it starts with a non-obstante clause. It was submitted that Section 144B of the Act also refers to methodology of issuance of the notice under Section 143(2) and Section 142(1) of the Act and therefore, when the legislation is provided under the Scheme, 2022 covering the issuance of notice under Section 148 of the Act in a faceless manner, the



Jurisdictional Assessing Officer has no jurisdiction to issue the notice under Section 148 of the Act.

10.13. It was therefore submitted that Hon'ble the Telangana High Court in case of **Kankanala Ravindra Reddy (Supra)** considered the Notifications issued by the Central Government dated 28th March, 2022 and 29th March, 2022 and held as under :

*“25. A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated 28-3-2022 and 29-3-2022, 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.*

*26. After the introduction of the above two schemes, it becomes mandatory for the Revenue to conduct/initiate proceedings pertaining to reassessment under section 147, 148 & 148A of the Act in a faceless manner. Proceedings under section 147 and section 148 of the Act would now have to be taken as per the procedure legislated by the Parliament*

*in respect of reopening/re-assessment i.e., proceedings under section 148A of the Act.*

*27. In the present case, both the proceedings i.e., the impugned proceedings under section 148A of the Act, as well as the consequential notices under section 148 of the Act were issued by the local jurisdictional officer and not in the prescribed faceless manner. The order under section 148A(d) of the Act and the notices under section 148 of the Act are issued on 29-4-2022, i.e., after the "Faceless Jurisdiction of the Income-tax Authorities Scheme, 2022" and the "e-Assessment of Income Escaping Assessment Scheme, 2022" were introduced.*

*28. From the afore given factual matrix, firstly the statutory provisions*

enumerated in the preceding paragraphs and secondly, the subsequent direction given by the Hon'ble Supreme Court in the case of Ashish Agarwal, supra, what is clearly reflected is the fact that when the Hon'ble Supreme Court had partly allowed the petitions which were filed by the Union of India challenging the judgements of various High Courts whereby the notice under section 148 of the unamended Act were set aside by the High Courts, the Hon'ble Supreme Court has only permitted the Union of India to proceed further with the reassessment proceedings under the amended provision of law, more particularly, as amended by the Finance Act, 2021. It never intended the authorities concerned to continue with the proceedings from the stage of the issuance of notices under section 140, nor is the directions to that effect. And there cannot be any

*confusion, ambiguity or misconception for the respondent-Department to have in this regard.*

*31. It is well settled principle of law that where the power is given to do certain things in certain way, the thing has to be done in that way alone and no any other manner which is otherwise not provided under the law."*

10.14. Referring to the above observations of Hon'ble the Telangana High Court, reliance was placed on the conclusion arrived at in paragraph No.35 of the said decision, which reads as under :

*"35. In view of the aforesaid discussions, it is by now very clear that the procedure to be followed by the respondent-Department upon treating the*

*notices issued for reassessment being under section 148A, the subsequent proceedings was mandatorily required to be undertaken under the substituted provisions as laid down under the Finance Act, 2021. In the absence of which, we are constrained to hold that the procedure adopted by the respondent-Department is in contravention to the statute i.e. the Finance Act, 2021, at the first instance. Secondly, it is also in direct contravention to the directives issued by the Hon'ble Supreme Court in the case of Ashish Agarwal, supra."*

10.15. Referring to the decision of Hon'ble the Bombay High Court in case of **Hexaware Technologies Ltd. (Supra)** on the issue of notice issued by the Jurisdictional Assessing Officer, reliance was placed on the following

observations of Hon'ble the Bombay High Court :

*"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 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."*

10.16. Referring to the above decisions, learned Senior Advocate Mr.Tushar Hemani submitted that as per the Scheme, 2022, notice under Section 148 of the Act is required to be issued only in a faceless manner that is by NFAC and not by the Jurisdictional Assessing Officer. In support of his contentions, reference was made to the Notification No.S.O. 1400(E) dated 28th March, 2022 whereby, the Faceless Jurisdiction of Income-tax Authorities Scheme, 2022 was notified in

exercise of the powers conferred under Sub-sections (1) and (2) of Section 130 of the Act. Referring to the said Notification, it was submitted that the Assessing Officers are conferred with the powers assigned by the Income-tax Authorities by or under the Act as referred to under Section 120 of the Act and are vested with jurisdiction as referred to in Section 124 of the Act in a faceless manner through automated allocation to the extent provided under Section 144B of the Act and other Schemes referred therein. It was therefore submitted that in order to implement the E-Assessment of Income Escaping Assessment Scheme, 2022, the faceless jurisdiction of the Income-tax Authority is also notified.



10.17. It was further submitted that by Notification No.S.O.1468 (E) dated 30th March, 2022, even the Faceless Inquiry or Valuation Scheme, 2022 is also notified which provides for issuance of notice under Section 142(1) of the Act or making inquiry before assessment under Section 142(2) of the Act or directing the assessee to get the account audited or estimating the value of an asset by a Valuation Officer as prescribed to be in a faceless manner, through automated allocation, in accordance with and to the extent provided under Section 144B of the Act. It was therefore submitted that the endeavor of the Revenue is to conduct all the proceedings in a faceless manner including the issuance of the

notice under Section 148 of the Act.

10.18. It was further submitted that whenever the Revenue is of the view that the Jurisdictional Assessing Officer is required to exercise its jurisdiction or conduct the assessment, the powers are reserved to assign the case to the Jurisdictional Assessing Officer. Reference was made to the Notification dated 6th September, 2021 issued by the CBDT where the cases assigned to Central Charges and International Tax Charges were excluded from the faceless assessment procedure. It was also pointed out that when it was thought fit by the CBDT, assessment orders in the cases where pendency could not be created on ITBA because of technical

reasons or cases not having a PAN were to be conducted by the Jurisdictional Assessing Officer.

10.19. Learned Senior Advocate Mr.Tushar Hemani also referred to the Notification No.S.O.2693 (E) dated 10th June, 2022 to point out that Assessing Officers referred therein, comprise all the Officers of the Department and by this Notification, the CBDT has issued direction that Income-tax Authorities of Units specified in Column (2) of the Schedule of the Notification, having their headquarters at the places mentioned in Column (3) of the Schedule of the Notification, shall exercise the powers and functions of the Assessing Officers concurrently, to facilitate the conduct of

faceless assessment proceedings under Section 144B of the Act. It was therefore submitted that once the provisions of Section 144B of the Act are placed into service, the Assessing Officers mentioned in the said Notification will have concurrent jurisdiction. It was therefore submitted that on combined reading of the Notification dated 28th March, 2022 with Notification dated 10th June, 2022 referred hereinabove, it appears that the Revenue has no option but to issue the notice under Section 148 of the Act in a faceless manner.

10.20. It was further submitted that the CBDT, by Notification dated 10th December, 2021 issued under Section 119 of the Act, has given direction to the Assessing Officers to

identify the information which may require action under Section 148 of the Act, for uploading on the Verification Report Upload (VRU) functionally on Insight Portal. It was therefore submitted that the Assessing Officers are required to upload the information on the Insight Portal which would be considered for the purpose of initiation of the proceedings under Section 147 of the Act to issue the notice and for that purpose, for issuance of notice under Section 148 of the Act, procedure is also required to be followed under Section 148A of the Act. It was therefore submitted that once the case is selected by automated allocation, the same is required to be further allocated by automated

allocation as provided under Section 144B(1) (i) of the Act by the NFAC for following the procedure prescribed under Section 148A of the Act and thereafter, to issue notice under Section 148 of the Act in a faceless manner and not by the Jurisdictional Assessing Officer, as it is being followed by the Revenue in spite of the mandatory binding Scheme, 2022.

10.21. Learned Senior Advocate Mr.Tushar Hemani also referred to the guidelines for complete scrutiny for various financial years issued by the CBDT from time to time to submit that for selection of the cases for re-opening and for the scrutiny, the guidelines are issued and therefore, the same are not to be

considered for the purpose of automated allocation as there is no question of selection, as the selection of the cases is prescribed by the guidelines issued by the CBDT in the Risk Management Strategy formulated as per the Explanation 1(i) of the Section 148 of the Act.

10.22. It was therefore submitted that the contention of the Revenue that the automated allocation as per the Scheme, 2022 means automated selection of the case for re-opening is contrary to the Scheme, 2022, as the Scheme, 2022 is required to be read as a whole so as to implement the legislative intention to conduct the proceedings in a faceless manner. It was submitted that on plain reading

of the Scheme, 2022, as it is having an unambiguous language, it is clear that there cannot be an another interpretation so as to come to the conclusion that the Jurisdictional Assessing Officer has also a jurisdiction to issue a notice under Section 148 of the Act, contrary to the Scheme which provides for issuance of notice in a faceless manner by automated allocation in accordance with the Risk Management Strategy formulated for issuance of notice under Section 148 of the Act as well as procedure to the extent provided under Section 144B of the Act with reference to the assessment or re-assessment of the assessee.

10.23. It was further submitted that the



guidelines issued for each Assessment Year provide for selection of the cases in a faceless manner and in the case of initiation of the re-opening proceedings under Section 147 of the Act, the case is required to be mandatorily allocated to the NFAC for issuance of the notice in a faceless manner to the extent provided under Section 144B of the Act.

10.24. Learned Senior Advocate Mr. Tushar Hemani submitted that the proceedings under Section 148A of the Act are also required to be conducted in a faceless manner and further, referred to and relied upon the decision of Hon'ble the Bombay High Court in case of ***Kairos Properties (P.) Ltd. (Supra)*** wherein, Hon'ble the Bombay High Court, after

considering the decision of the **Hexaware Technologies Ltd. (Supra)**, considered the applicability of the Scheme, 2022 to the proceedings to be conducted in a faceless manner for inquiry and issuance of notice to the assessee under Section 148A of the Act and held as under :

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

*Finance (Department of Revenue (Central Board of Direct Taxes) ("notification"), it would be difficult to accept a proposition that only the notice under Section 148 of the Act, in such circumstances, would be Writ Petition (L.) No. 16918 of 2024 dt. 2-07-2024 required to be quashed and set aside, and not the notice issued by the JAO under Section 148A(b) and the order passed under Section 148A(d), as a consequence of which the JAO has issued a notice under Section 148. The reasons for which are discussed hereunder.*

*9. The Scheme under such notification has been issued to give effect to the provisions of Section 151A of the Act, as the notification explicitly provides that it has been issued under the powers conferred by sub-sections (1) and (2) of Section 151A of the Act by*

*the Central Government. Paragraph 3 defining the scope of the Scheme reads thus:*

*3. Scope of the Scheme - For the purpose of this Scheme,-*

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

*(b) issuance of notice under section 148 of the Act, shall be through automated allocation, in accordance with risk management strategy formulated by the Board be as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to making assessment or reassessment or total income or loss of the assessee.*

10. On a plain reading of paragraph 3, it is clear to us that the provision of Section 148A would also fall within the ambit/scope of the Scheme. All aspects pertaining to 'assessment', 're-assessment' or 're-computation' under Section 147 of the Act and issuance of notice under Section 148 of the Act, are to be undertaken through automated allocation, in accordance with risk management strategy formulated by the Board, as provided for in Section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided under Section 144B of the Act, in making assessment or reassessment of total income or loss of assessee.

13. It is thus clear from the implications as brought about by the provisions of Section 151A that the

*notification dated 29th March, 2022 is issued in terms of what has been provided under Section 151A. It has been issued after the amendments were incorporated in sub-section (1) by Finance Act, 2021 with effect from 1 April, 2022. It would be thus difficult to accept a proposition when in paragraph 3(a) of the Scheme defining the scope of the Scheme when the words "assessment", "reassessment" or "re-computation" under Section 147 of the Act are explicitly provided, and further when clause (b) in paragraph 3 of the Scheme provides for issuance of notice under Section 148 of the Act, it would not take within its ambit the provisions of Section 148A which are the initial steps, which in a given case are required to be taken in issuance of notice under Section 148 of the Act. Section 148A provides for*

*"Conducting inquiry, providing opportunity before issue of notice under section 148". Thus, this provision postulates a procedure inextricably linked to Section 148 which would apply to all cases of reassessment with a proviso stipulating exceptions to the rule. In other words, Section 148A in its object, intent and purpose is inextricably connected with the assessment, re-assessment or recomputation, for which a notice under Section 148 may be issued. Any other view would mean that the requirement to adopt the faceless procedure under the Scheme is a mere ministerial requirement for issuance of the notice. Such a reading would not be in conformity with the objectives spell out in clauses (a), (b) and (c) of Section 151A(1).*

14. Thus, to accept a contention that merely because the notification does not explicitly refer to the provisions of Section 148A, the scope of the Scheme as defined in paragraph 3 would exclude the applicability of Section 148A, would lead to an absolute absurdity, and more particularly, considering the express provisions of subsection (1) of Section 151A. Also it is not possible to accept reading of the provisions of Section 144B de-hors Section 151A(1). Sub-section (2) of Section 151A is specifically incorporated to empower the Central Government to exclude the applicability of any of the provisions of the Act and/or to make such provisions applicable with exceptions, modifications and adaptations. Nothing of this nature is found in the notification to infer any exclusion of



*Section 148A, and when it clearly concerns the entire assessment, reassessment or re-computation under Section 147 and issuance of notice in that regard under Section 148 of the Act.*

*15. Thus, the Central Government has not applied the provisions of subsection (2) of Section 151A to specifically exclude the application of Section 148A from the scope of the Scheme in paragraph 3 of the notification dated 29th March, 2022, it would hence be not be possible to accept the Revenue's contention that the provision of Section 148A stands excluded from the applicability of the faceless mechanism."*

10.25. It was therefore submitted that the main object of introduction of the faceless

regime is to conduct the proceedings in a transparent manner and if the contention of the Revenue is accepted that the issuance of notice under Section 148 for re-opening of the assessment by the Jurisdictional Assessing Officer is not covered by the Scheme, 2022, the very purpose of the Scheme to make the proceedings transparent would be frustrated.

Learned Senior Advocate Mr.Tushar Hemani further referred to and relied upon the decision of Hon'ble the Apex Court in case of

***Bansal Wire Industries Limited and Another versus State of Uttar Pradesh and Others***

reported in ***(2011) 6 Supreme Court Cases 545***

wherein, the Hon'ble Apex Court, while considering the provisions of Section 2(c)

read with Section 14 of the Central Sales Tax Act, 1956, referred to and relied upon the decision in case of **State of T.N. Versus Pyare Lal Malhotra** reported in **(1976) 1 SCC 834** and decision in case of of the **Rajasthan Roller Flour Mills Assn. Versus State of Rajasthan** reported in **1994 Supp (1) SCC 413** and held as under :

*"29. It is a settled principle of law that the words used in the section, rule or notification should not be rendered redundant and should be given effect to. It is also one of the cardinal principles of interpretation of any statute that some meaning must be given to the words used in the section. The expression "wire rods and wires" which is mentioned in Entry (xv) would not and*

*cannot cover the expression "tools. alloy and special steels" of Entry (ix) nor would it refer to the expression "iron and steel" as each item used in Entries (ix) and (xv) are independent items not depending on each other at all as has been held in Pyare Lal Malhotra."*

10.26. It was therefore submitted that while interpreting the statute, as the impugned Notification is in form of statute as per Sub-section (3) of Section 151A of the Act playing an ordinary meaning, must be given effect and when the language of the statute is unambiguous, the effect to the words used that is to say "automated allocation in a faceless manner" is required to be given effect and therefore, there is nothing to be read or nothing to be implied and there is no room for

any intendment and one can only look fairly the language used by the legislature. It was therefore submitted that as per the Scheme, 2022, the notice under Section 148 of the Act can only be issued in a faceless manner as provided under Section 144B of the Act, however, in a faceless manner, the same procedure is required to be adopted for the purpose of issuance of the notice under Section 148 of the Act by the NFAC. It was therefore submitted that the impugned notice issued by the Jurisdictional Assessing Officer under Section 148 of the Act is bad in law, without jurisdiction and liable to be quashed and set aside.

11.1. Learned advocate Mr.Manish J. Shah

appearing for the assessee/petitioners adopted the submissions made by learned Senior Advocate Mr. Tushar Hemani and further submitted that the Scheme, 2022 is framed as per the provisions of Section 151A of the Act by the Central Government and therefore, the same is binding upon the Revenue and it is mandatory for issuance of the notice by the Faceless Assessing Officer.

11.2. Learned advocate Mr. Manish Shah referred to and relied upon the decision of the Hon'ble Apex Court in case of ***Sandur Micro Circuits Limited versus Commissioner of Central Excise, Belgaum*** reported in ***(2008) 14 Supreme Court Cases 336*** wherein, the Hon'ble Apex Court while considering the effectiveness of the

Circular, contrary to the Notification statutorily issued, has held that the Circular cannot take away the effect of the Notification statutorily issued and it was further held by the Hon'ble Apex Court that by issuing a Circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down cannot be imposed.

11.3. Learned advocate Mr.Manish Shah placed reliance upon the aforesaid decision and submitted that the Guidelines, provided by the CBDT for scrutiny of the assessment referring to Jurisdictional Assessing Officer whereby, the reference is made to the Jurisdictional Assessing Officer for uploading of the

information up to the issuance of the notice under Section 148 of the Act, cannot be considered to nullify or whittling down the Notification of the E-Assessment of Income Escaping Assessment Scheme, 2022.

12.1. Learned advocate Mr.B.S.Soparkar for the petitioners has also adopted the submissions made on behalf of the petitioners by learned Senior Advocate Mr.Tushar Hemani. Learned advocate Mr.B.S.Soparkar has referred to the each of the decisions on the issue rendered by the various Hon'ble High Courts. It was submitted by learned advocate Mr.B.S.Soparkar that the Hon'ble Calcutta High Court in case of ***Triton Overseas (P.) Ltd. (Supra)*** has not made any discussion on the Scheme, 2022 by



dismissing the Writ Petitions and there is no reference to Scheme, 2022. It was submitted that the said decision was rendered in light of the decision in case of **Union of India Versus Ashish Agarwal** reported in **[2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1 (SC)** wherein, the Hon'ble Apex Court has exercised the powers under Article 142 of the Constitution of India to consider the notice issued after 01.04.2021 as a valid notice.

12.2. Learned advocate Mr.B.S.Soparkar thereafter referred to the decisions in favour of the assessee, more particularly, decision in case of **Hexaware Technologies Ltd. (Supra)** of Hon'ble the Bombay High Court and decision in case of **Kankanala Ravindra Reddy (Supra)** of

Hon'ble the Telangana High Court.

12.3. Reference was also made to the decision of this Court in case of **Talati and Talati LLP (Supra)** wherein, the petition is dismissed on the ground that the notice under Section 148 of the Act was issued in a search case by the Jurisdiction Assessing Officer as per Explanation 2 to Section 148 of the Act. It was pointed out by learned advocate Mr.B.S.Soparkar that while dismissing the petition, this Court has not observed anything contrary to the applicability of the Scheme, 2022 for issuance of the notice in a faceless manner by the NFAC and in the facts of the case, as the notice was issued in the search case where the jurisdiction to make the

assessment is with the Jurisdictional Assessing Officer, this Court dismissed the petition raising the issue of issuance of notice by the Jurisdictional Assessing Officer.

12.4. Learned advocate Mr.B.S.Soparkar referring the decision of the Hon'ble the Delhi High Court in case of **T.K.S. Builders (P.) Ltd (Supra)** submitted that the said decision does not lay down a correct law as against various Hon'ble High Courts which have held that as per the Scheme, 2022, only the Faceless Assessing Officer has jurisdiction to issue the notice under Section 148 of the Act.

13.1. Learned advocate Mr.S.N.Divatia for the

petitioners referred to and relied upon the introduction of the e-assessment proceedings under the Income Tax Act since 2019. It was submitted that on 12th September, 2019, the E-Assessment Scheme, 2019 was made applicable to regular assessment under Section 143(3) [417 ITR 12 (st)] and thereafter, Faceless Assessment schemes applicable to all except search and non-resident assessments was introduced by Notification dated 13th August, 2020. It was submitted that thereafter, by TOLA, 2020, Section 144B was introduced from 01.04.2021, applicable to assessments under Section 143(3) and 144 except search and other relocated cases.

13.2. Learned advocate Mr.S.N.Divatia

thereafter referred to the faceless assessments brought on statute by the Finance Act, 2022 applicable to all assessment proceedings except search cases and cases under Section 142(2A) of the Act and other relocated cases by amending Section 144B(1) [442 ITR 91(st)].

13.3. It was submitted that thereafter, the new regime of re-assessment under Section 147 of the Act was introduced by Finance Act, 2021 [432 ITR 52 (st)] and after insertion of Section 151A of the Act by TOLA with effect from 01.11.2020, the Central Government has framed the E-assessment of Income Escapement Scheme, 2022 with effect from 29th March, 2022. It was submitted that the proceedings in

a faceless manner has been extended to collection of information under Section 135A of the Act, faceless inquiry or valuation under Section 142B of the Act, faceless rectification under Section 157A of the Act, faceless collection and recovery under Section 231 of the Act, faceless revision under Section 264A of the Act and faceless appeal for giving effect to the orders passed under Section 264B of the Act. It was therefore submitted that the endeavor of the legislature is to see that the entire proceedings to be conducted under the provisions of the Act are required to be conducted in a faceless manner.

13.4. It was therefore submitted that the Scheme, 2022 is clear and categorical which

provides that the notice under Section 148 of the Act shall be issued through automated allocation and in a faceless manner and thereafter, the assessment shall be made in a faceless manner to the extent provided in Section 144B of the Act. It was therefore submitted that the Scheme, 2022 is mandatory, which provides the specification as to how the notices are to be issued. It was therefore submitted that the initial stage is allocation of data collected by the Income Tax Department randomly selected by the DIT (Systems) and the next stage is automated allocation of the cases for the purpose of re-opening to Faceless Assessing Officer as per the Scheme, 2022 and thereafter, the third stage is to

conduct the very assessment proceedings as per the faceless assessment procedure to the extent provided under Section 144B of the Act.

13.5. It was submitted that as held by Hon'ble the Bombay High Court in case of ***Hexaware Technologies Limited (Supra)***, there would be no question of concurrent jurisdiction of Jurisdictional Assessing Officer and Faceless Assessing Officer for issuance of notice under Section 148 of the Act because when the specific jurisdiction would be assigned to either Jurisdictional Assessing Officer or Faceless Assessing Officer as per the scheme, 2022, it is to the exclusion of the other as paragraph No.3 of the Scheme clearly provides that issuance of the notice shall be through



automated allocation which means that the same is mandatory for the Department to follow.

13.6. Reference was made to the definition of "automated allocation" in paragraph No.2(b) of the Scheme, 2022 meaning thereby that an algorithm for randomised allocation of the cases by using suitable technological tools like artificial intelligence and machine learning.

13.7. Learned advocate Mr.S.N.Divatia referring to the aforesaid decision of Hon'ble the Bombay High Court in case of **Hexaware Technologies Limited (Supra)** distinguished the decision of Hon'ble the Delhi High Court in case of **T.K.S. Builders (P.) Ltd (Supra)**

wherein, it is held that the Act does not distinguish between the Jurisdictional Assessing Officer or NFAC Centre with respect to the jurisdiction over a case in view of the Circular issued by the CBDT on 13.08.2020 which provides that both the Jurisdictional Assessing Officer and the Faceless Assessing Officer would have concurrent jurisdiction in the sense that the Faceless Assessing Officer will have jurisdiction over any case assigned to it from whole of the Country to make assessment to the extent provided under Section 144B of the Act and that the Notification issued by the CBDT allowed designated Tax Authority to share the powers and duties of an Assessing Officer in a

concurrent manner, meaning multiple Officers can simultaneously exercise the function of an Assessing Officer in a faceless system.

13.8. It was submitted that the above findings arrived at by Hon'ble the Delhi High Court are not relevant inasmuch as it would otherwise depict the entire object and intent behind the faceless proceedings. It was therefore submitted that the reference to Sections 120 and 127 of the Act made by the Hon'ble the Delhi High Court is also not relevant as the Circular dated 13th August, 2020 relied upon by Hon'ble the Delhi High Court relates to the National E-assessment Scheme, 2019 notified on 12.09.2019 which was replaced by the Faceless Assessment Scheme notified on 13th August,

2020 which stipulates that provisions of Section 127 of the Act shall apply subject to exceptions, modifications and adaptations as stipulated therein. It was therefore submitted that the said Notification is issued in exercise of powers under Sections 143(3A) and 143(3B) of the Act to give effect to E-Assessment Scheme which enables the Chief Commissioner and Principal Director General to change the jurisdiction at any stage of the assessment, however, the Scheme, 2022, clearly provides for the issuance of the notice under Section 148 of the Act through automated allocation in a faceless manner and therefore, as per paragraph No.3(b) of the Scheme, 2022, only the Faceless Assessing Officer has the

jurisdiction to issue notice under Section 148 of the Act.

13.9. It was further submitted that Hon'ble the Delhi High Court has observed that the reference to Notification dated 13.08.2020 was not made before Hon'ble the Bombay High Court in the case of **Hexaware Technologies Limited (Supra)**, which declares that the Officers empowered to conduct faceless assessment were being conferred concurrent powers and functions of the Assessing Officers and the various sources of information and material may assist the Jurisdictional Assessing Officer in forming an opinion as to whether the income has escaped the assessment. It was therefore submitted that the intent and

purpose of the Scheme, 2022 is automated allocation as defined in paragraph No.2(1)(b) to mean random allocation of cases to Assessing Officer and therefore, the Assessing Officers will be randomly selected so as to conduct the proceedings and it is not merely a case where the notice is to be issued through an automated allocation. It was submitted that the term "an algorithm for randomised allocation of cases" in the definition would mean something which is chosen by chance rather than according to a plan and therefore, the cases are chosen based on the Risk Management Strategy formulated by the Board for the purpose of issuance of the notice under Section 148 of the Act which is in

accordance with the Explanation 1 to Section 148 of the Act.

13.10. It was therefore submitted that the evaluation of the faceless scheme under the Act is considered than earlier E-Assessment Scheme, 2019 which was applicable only to regular assessments under Section 143(3) of the Act or best judgment assessment under Section 144 of the Act selected on a pilot bases which was replaced by the Faceless Assessment Scheme, 2020 wherein, all assessments specified except non-resident and search cases were covered, whereas, Section 144B of the Faceless Assessment Scheme, 2022 introduced under TOLA Act, 2020 is now applicable to all assessments excluding search

cases and other re-located cases. It was therefore submitted that the Faceless Assessment Scheme, 2022 provided under Section 144B of the Act would be applicable to all assessments including assessments under Sections 143(3), 144 and 147 of the Act except assessment under Section 142A of the Act and other relocated cases.

13.11. It was therefore submitted that the rational and legislative intent underlying the Faceless Assessment Scheme is that the prevalent scheme of the scrutiny assessment at the relevant time involved high degree of direct interface and interaction between the tax payers and the Department which was not desirable and hence, the Faceless Assessment



Scheme regime was introduced to enhance efficiency, transparency and accountability in the process of assessment and reducing the human interface. It was therefore submitted that the Scheme, 2022 is to achieve the above objectives and therefore, the contention of the Revenue that the Jurisdictional Assessing Officer is also empowered to issue notice under Section 148 of the Act, is contrary to such objectives to be achieved for transparency and accountability in the assessment and re-assessment proceedings.

**Submissions on behalf of the respondent-Revenue:-**

14.1. Learned Senior Standing Counsel Mr. Varun K. Patel for the respondent-Revenue submitted

that under the provisions for re-opening prescribed under the Act, there are four stages. Firstly, the information is required to be collected so as to initiate the proceedings for re-opening. Secondly, such information is required to be analysed, if inquiry is to be made by the Assessing Officer under Section 148A(a) of the Act and thereafter, issuance of the notice to the assessee under Section 148A(b) of the Act to file a reply raising the objections, if any, and thereafter, considering the reply, to pass an order under Section 148A(d) of the Act to prima-facie come to the conclusion that whether it is a fit case to reopen or not and thirdly, getting the sanction of the higher

authority under Section 151 of the Act and fourthly, on receipt of the sanction, to issue the notice under Section 148 of the Act by the Assessing Officer.

14.2. In light of these four stages of re-opening prescribed under the Act, learned Senior Standing Counsel Mr.Varun K. Patel referred to and relied upon the provisions of Section 151A of the Act and submitted that as per Section 151A of the Act, which has come into effect from 01.11.2020 as inserted by the TOLA, 2020, the Central Government has granted powers to make a scheme by notification in Official Gazette for the functions which are prescribed in clauses (a) to (c) so as to eliminate interface between the Income-tax

Authority and the assessee or any other person to the extent technologically feasible and to optimise utilisation of the resources through economies of scale and functional specialisation and to introduce a team-based assessment, re-assessment, recomputation or issuance or sanction of notice with dynamic jurisdiction. Reference was also made to Sub-section (2) of Section 151A of the Act which also provides powers to the Central Government to work out an exception to the applicability of the Notification which may be issued under Sub-section (1) of Section 151A of the Act along with a timeline to issue the Notification on or before 31st March, 2022. It was also pointed out that Sub-section (3) of

Section 151A of the Act provides that every notification issued under Sub-sections (1) and (2) of Section 151A of the Act, to be laid before each House of the Parliament.

14.3. Referring to the above provisions, it was submitted that the E-Assessment of Income Escaping Assessment Scheme, 2022 was notified on 29th March, 2022 for only two functions of the re-assessment proceedings i.e. assessment, re-assessment and recomputation under Section 147 of the Act and issuance of notice under Section 148 of the Act. It was submitted that so far as the other functions regarding inquiry under Section 148A(a) of the Act, issuance of show-cause notice under Section 148A(b) of the Act, passing of order under

Section 148A(d) of the Act and granting of sanction under Section 151 of the Act, are not covered by the Scheme, 2022.

14.4. It was submitted that the Scheme, 2022 is scrupulously followed by the respondent-Revenue by automated allocation of the case on the basis of the information in accordance with the Risk Management Strategy formulated by the Board as referred to in Section 148 of the Act for issuance of notice to the Jurisdictional Assessing Officer. It was submitted that as per the Risk Management Strategy formulated by the Board, information gathered in the system is analysed by automated allocation and thereafter the case is selected using the suitable technological

tools and algorithm for randomised allocation of cases considering such information, so as to avoid any human interference for the cases for reopening. It was submitted that thereafter, the Jurisdictional Assessing Officer is required to conduct the inquiry with prior sanction as provided under Section 148A(a) of the Act and thereafter, to issue the show-cause notice under Section 148A(b) and after considering the reply filed by the assessee, to pass an order under Section 148A(d) of the Act. It was therefore submitted that the contention of the petitioners that such proceedings for conducting inquiry and passing of an order under Section 148A(d) of the Act are also required to be conducted in

the faceless manner, is not provided under the Scheme, 2022. It was submitted that there is no reference to the provisions of Section 148A of the Act in the Scheme, 2022 and the contention of the petitioners would lead to the conclusion that the provisions which are not referred in the Scheme, 2022 by the legislature is to be read, which is not permissible.

14.5. It was further submitted that Section 144B of the Act does not refer to Section 148 of the Act and no procedure is prescribed under the provisions of Section 144B of the Act for issuance of the notice under Section 148 of the Act and therefore, only the assessment, re-assessment and recomputation



under Section 147 of the Act is required to be conducted in a faceless manner to the extent provided under Section 144B of the Act with a reference to make assessment and re-assessment of total income or loss of the assessee. It was submitted that on perusal of Section 144B of the Act entirely, it appears that it only refers to automated allocation of the cases for assessment and re-assessment to the Faceless Assessing Officers and thereafter, to issue the notice for assessment proceedings under Sections 142(1) and 143(2) of the Act in a faceless manner so as to maintain the transparency of the assessment proceedings as provided under Section 144B of the Act.

14.6. It was further submitted that the phrase

“to the extent provided under Section 144B of the Act with reference to making assessment or re-assessment of total income of the assessee or loss of assessee” is required to be strictly construed to mean that the procedure prescribed under Section 144B of the Act, so far as it relates to assessment and reassessment proceedings to be conducted in a faceless manner, whereas, issuance of notice under Section 148 of the Act is concerned, the same is to be issued through automated allocation to the Jurisdictional Assessing Officer who will conduct the proceedings as required under Section 148A of the Act to issue the notice to come to the prima-facie conclusion that whether it is a fit case to

re-open the assessment or not.

14.7. Learned Senior Standing Counsel Mr. Varun Patel also referred to the Office Memorandum dated 20th February, 2023 in support of his contentions and submitted that the said Office Memorandum issued by the Central Board of Direct Taxes in view of the various Writ Petitions filed before the various High Courts challenging the notices issued by the Jurisdictional Assessing Officer, clearly provides that the procedure for issuance of notice under Section 148 of the Act as well as the consequent assessment proceedings are being followed as per the Scheme notified under Section 151A of the Act as the Jurisdictional Assessing Officer is empowered

to issue notice under Section 148 of the Act as the Scheme, 2022 only speaks of the scope with regard to the procedures covered by it and lays down a legal contours of how such procedures are to be carried out. It was submitted that as per the Office Memorandum, the issuance of notice under Section 148 of the Act shall be through automated allocation in accordance with the Risk Management Strategy and the assessment shall be in the faceless manner to the extent provided under Section 144B of the Act and therefore, it is apparent that in the procedure for reassessment, as it exists on the date, both the aspects are followed and therefore, it is not correct to state that the issuance of

notice by the Jurisdictional Assessing Officer is without jurisdiction.

14.8. It was submitted that the Office Memorandum is misconstrued by Hon'ble the Bombay High Court in the decision in case of **Hexaware Technologies Limited (Supra)** because the Office Memorandum only explains the stand of the Department as to how the Notification issued, is understood and interpreted by the CBDT.

14.9. It was further submitted that the observations made by Hon'ble the Bombay High Court in case of **Hexaware Technologies Limited (Supra)** in Sub-paragraph Nos.(i) to (viii) of paragraph No.38, are not as per the

interpretation of the Scheme, 2022 made by the CBDT.

14.10. It was submitted that paragraph No.3 of the Office Memorandum refers to the scope of the Scheme, 2022 for issuance of notice under Section 148 of the Act and thereafter, assessment, reassessment or recomputation under Section 147 of the Act is to be carried out. It was submitted that Hon'ble the Bombay High Court has mixed up the issue of notice under Section 148 with assessment, reassessment and recomputation under Section 147 of the Act by making observations in paragraph No.38 of the said decision. It was submitted that the Revenue has not misinterpreted the Scheme, 2022 because it is

the same authority, who has issued the Office Memorandum and therefore, the misinterpretation of the Scheme, 2022 is beyond comprehension.

14.11. It was submitted that as per the Office Memorandum, the notice is only to be issued through automated allocation and thereafter, the proceedings for assessment, reassessment and recomputation under Section 147 of the Act are to be conducted under faceless manner to the extent as provided under Section 144B of the Act with reference to the assessment and reassessment.

14.12. It was submitted that the thrust given by Hon'ble the Bombay High Court is only on

combined section of automated allocation and in faceless manner, whereas, as per the Scheme, 2022, the notice is to be issued by automated allocation of the cases and thereafter, the assessment is to be done in the faceless manner.

14.13. Learned Senior Standing Counsel Mr.Varun Patel while referring to the Scheme, 2022 submitted that paragraph No.3 of the Scheme, 2022 provides for scope of the scheme regarding assessment, reassessment or recomputation under Section 147 of the Act in clause (a) and issuance of notice under Section 148 of the Act in clause (b) and it was submitted that both the clauses are separated by "comma". It was also pointed out



that after the words "shall be through automated allocation" there is "comma" and before the words "and in a faceless manner", there is "comma" which clearly shows that the comma before the word "and" would be applicable to assessment, reassessment or recomputation under Section 147 of the Act, whereas, issuance of notice under Section 148 of the Act is to be read with words "shall be through automated allocation".

14.14. In support of such interpretation, reliance was placed on the decision of the Hon'ble Apex Court in case of ***State of West Bengal & Others vs Swapan Kumar Guha & Others*** reported in ***1982 (1) SCC 561*** wherein, the Hon'ble Apex Court while considering the use

of "comma" in a statute has held as under :

*"5. Since the sole question for consideration arising out of the F.I.R., as laid, is whether the accused are conducting a money circulation scheme, it is necessary to understand what is comprehended within the statutory meaning of that expression. Section 2(c) of the Act provides:*

*"Money circulation scheme' means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any A event or contingency relative or applicable to the enrollment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical*

*subscriptions."*

*Grammar and punctuation are hapless victims of the pace of life and I prefer in this case not to go merely by the commas used in clause (c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I, therefore, consider it more safe and satisfactory to discover the true meaning of clause (c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the*

*expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences.*

*6. Commas or no commas, and howsoever thoughtfully one may place them if they are to be there, I find it impossible to take clause (c) to mean that any and every activity "for the making of quick or easy money" is comprehended within its scope. For the matter of that, I cannot believe any law to ban every kind of activity for making quick or easy money, without more, on pain of penal consequences. It is far too vague and arbitrary to prescribe that "whosoever makes quick or easy money shall be liable to be punished with fine or imprisonment". For then, in the*

absence of any demarcation of legitimate money-making activities from those which fall within the ban, the question whether the penal provision is attracted in a given case will depend upon the will and temper, sweet or sour, of the magistracy. Besides, speaking of law and morals, it does not seem morally just or proper to say that no person shall make quick or easy money, especially quick. A person who makes quick money may do so legitimately by the use of his wits and wisdom and no moral turpitude may attach to it. One need not travel after to find speaking examples of this. Indeed, there are honourable men (and now women) in all professions recognised traditionally as noble, who make quite quick money by the use of their talents, acumen and experience acquired over the years by dint of hard

*work and industry. A lawyer who charges a thousand rupees for a Special Leave Petition lasting five minutes (that is as far as a Judge's imagination can go), a doctor who charges a couple of thousands for an operation of tonsillitis lasting ten minutes, an engineer, an architect, a chartered accountant and other professionals who charge likewise, cannot by any stretch of imagination be brought into the dragnet of clause (c) Similarly, there are many other vocations and business activities in which, of late, people have been notoriously making quick money as, for example, the builders and real estate brokers. I cannot accept that the provisions of clause (c) are directed against any of these J categories of persons. I do not suggest that law is powerless to reach easy or quick money and if it wills to reach*

*it, it can find a way to do it. But the point of the matter is that it will verge upon the ludicrous to say that the weapon devised by law to ban the making of quick or easy money is the provision contained in section 2(c) of the Prize Chits and Money Circulation Schemes (Banning) Act.”*

14.15. Referring to the above, it was submitted that commas after the words “shall be through automated allocation” and before the words “and in a faceless manner” would have to be made applicable to clauses (b) and (a) of the Scheme, 2022 respectively. It was submitted that commas are only for the purpose of helping to interpret the intention of the legislature and the same are placed both for matter of convenience and for meaningfulness.

It was therefore submitted that the interpretation made by the petitioners that words "and in a faceless manner" would also apply to issue of notice under Section 148 of the Act, is not intended by the legislature as there is no mechanism provided under Section 144B of the Act to issue notice under Section 148 of the Act and therefore, the words "and in faceless manner" have to be read with following words to the extent provided under Section 144B of the Act which provides procedure for making assessment or reassessment of the total income or losses of the assessee to be conducted in a faceless manner. It was therefore submitted that the contention raised by the petitioners is



contrary to the Scheme, 2022.

14.16. Learned advocate Mr.Varun Patel also referred to and relied upon the decision of the Hon'ble Apex Court in case of **Kantaru Rajeevaru Versus Indian Young Lawyers Association** reported in **(2020) 9 Supreme Court Cases 121** wherein, the Hon'ble Apex Court considered the provisions of the Order 47 Rule 1 of the Code of Civil Procedure, which provides for review of the Judgment/Order of the Court as referred to the Internal Aids by way of punctuation, prepositions and comma which does not control plain meaning but weight should be given to it in case of doubt about meaning of the provisions. It was submitted that the Hon'ble Apex Court while

considering the intact of comma and punctuation, has held as under :

*"18. When a statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation. However, punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning. Clause 13(3) (v) of the C.P. and Berar Letting of Premises and Rent Control Order, 1949 fell for interpretation of this Court in M.K.Salpekar v. Sunil Kumar Shamsunder Chaudhari. Clause 13(3) (v) reads:*

*"13. (3) (v) that the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and*

*does not reasonably need the house."*

*This Court was of the opinion that the punctuation mark "comma" which appears in the sub-clause after "alternate accommodation" and before the rest of the sentence indicates that the last part of the sub-clause, namely, "and does not reasonably need the house" governs only the second part of the sub-clause."*

14.17. It was therefore submitted that the commas mentioned in the Scheme, 2022 cannot be regarded as a controlling element and cannot be allowed to control the plain meaning. It was submitted that comma before the word "and" governs only the second part of the sub-clause meaning thereby that in the facts of the case, faceless manner to the extent provided in

Section 144B of the Act only is governed by the word "and" and not the issuance of notice under Section 148 of the Act in faceless manner.

14.18. Learned Senior Standing Counsel Mr.Varun Patel also referred to the Notification dated 28th March, 2022 whereby, the Scheme as prescribed under Section 130 of the Act is framed by the Central Government for exercise of powers conferred by the Assessing Officers assigned to the Income-tax Authorities as per Sections 120 and 124 of the Act. It was therefore submitted that if the said Notification is considered vis-a-vis the Scheme, 2022, it also refers to the scope, powers and performance of functions of the

Income-tax Authorities under Section 120 of the Act and jurisdiction of the Assessing Officer as per Section 124 of the Act having the same convocations of automated allocations to the extent provided under Section 144B of the Act with reference to making faceless assessment of total income or loss of the assessee and other Schemes, which provides for faceless proceedings and for appeal, penalty, e-verification, e-settlement, e-advance ruling etc. It was therefore submitted that the intention of the legislature is clear that whenever it requires the faceless proceedings, the same are specified in the Scheme itself, whereas, in the facts of the case, the proceedings under Section 148A of the Act is

not at all prescribed in the Scheme, 2022 and it refers only to issuance of notice through automated allocation and in the assessment proceedings, there is no provision for issuance of notice under Section 144B of the Act.

14.19. It was therefore submitted that the decision in case of the **Hexaware Technologies Ltd. (Supra)** rendered by Hon'ble the Bombay High Court as well as the decisions of the other Hon'ble High Courts following the said decision are under challenge before the Hon'ble Apex Court and considering the submissions made before this Court, the decisions of Hon'ble the Delhi High Court and Hon'ble the Calcutta High Court may be

followed to hold that the notices issued under Section 148 of the Act by the Jurisdictional Assessing Officer are valid notices and no interference is called for by entertaining these petitions.

**Analysis:-**

15. We are having the benefit of having two views on the subject, one in favour of the petitioners as held by Hon'ble the Bombay High Court, Hon'ble the Telangana High Court, Hon'ble the Punjab and Haryana High Court and Hon'ble the Rajasthan High Court, whereas, the views are also expressed by Hon'ble the Delhi High Court and Hon'ble the Calcutta High Court in favour of the Revenue.

16. We have perused the decisions rendered on the issue by various High Courts. However, before adverting to our view on the issue, it would be necessary to analyse the entire Scheme of the reassessment proceedings and the amendments made from time to time for conducting faceless proceedings after 2019.

17. E-assessment Scheme, 2019 came into effect from 12th September, 2019 applicable to assessment proceedings under Section 143(3) of the Act. Thereafter, the Faceless Assessment Scheme was brought in operation from 13th August, 2020 applicable to all types of assessment i.e under Section 143(3) of the Act as well as reassessment except search cases



and assessment of non-residence.

18. TOLA, 2020 inserted Section 144B of the Act with effect from 01.04.2021. Earlier Section 144B of the Act was omitted by Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989. Original Section 144B of the Act was inserted by Taxation Laws (Amendment) Act, 1975 with effect from 01.04.1976 and amended by Taxation Laws (Amendment) Act, 1984 with effect from 01.10.1984.

19. Section 144B of the Act provides for "faceless assessment". Section 144B of the Act starts with a non-obstante clause which provides that notwithstanding anything to the contrary contained in any other provision of

the Act, the assessment, reassessment or recomputation under Sub-section (3) of Section 143 or under Section 144 or under Section 147 of the Act as the case may be with respect to the cases referred to in Sub-section (2) of Section 144B of the Act, shall be made in a faceless manner as per the procedure prescribed in Clauses (i) to (xxxii).

20. Section 144 of the Act has been substituted by the Finance Act, 2022 with effect from 01.04.2022. Prior to its substitution, Sub-section (1) of Section 144B of the Act provides for the assessment under Section 143(3) and under Section 144 of the Act only and there was no reference to the reassessment or recomputation under Section

147 of the Act. As per clause (i), the procedure is prescribed for "assessment in a faceless manner" provides that National Faceless Assessment Centre shall assign the case selected for the purpose of faceless assessment under this Section to a specified assessment unit through an automated allocation system. Prior to 01.04.2022, the clause (i) only provides that the National Faceless Assessment Centre shall serve a notice upon the assessee under Sub-section (2) of Section 143 of the Act.

21. Thus, clause (i) of Section 144B of the Act which has been substituted with effect from 01.04.2022, empowers the National Faceless Assessment Centre to assign a case

selected for the purpose of faceless assessment under Section 144B of the Act to a specific assessment unit through an automated allocation system.

22. Clause (ii) of Sub-section (1) of Section 144B of the Act which came into effect from 01.04.2022 provides that the National Faceless Assessment Centre shall intimate the assessee that the assessment in his case shall be completed in accordance with the procedure laid down under Section 144B of the Act and thereafter, clause (iii) provides for issuance of notice under Section 143(2) or Section 142(1) of the Act so as to enable the assessee to file response to such notice within the date specified therein, to the National

Faceless Assessment Centre which shall forward the same to the assessment unit. Clauses (i) and (ii) of Section 144B(1) of the Act are now combined in clause (iii) of the substituted Section 144B(1) of the Act and clause (i) and (ii) are brought on statute which provides that the National Faceless Assessment Centre to assign the case selected for the purpose of faceless assessment to a specific assessment unit through automated allocation system.

23. On perusal of clauses (i) and (ii) in Sub-section (1) of Section 144B with effect from 01.04.2022, it is apparent that the provisions of Section 144B of the Act applies to faceless assessment. Therefore, clause (i) of Sub-section (1) of Section 144B authorises the

National Faceless Assessment Centre to assign the case selected for the purpose of faceless assessment to a specific assessment unit through automated allocation system. Therefore, on reading this Clause (i) of Section 144B(1) of the Act, it is clear that the National Faceless Assessment Centre has the only function of selecting a case for the purpose of faceless assessment to allocate to a specific assessment unit through automated allocation and considering the provisions of Section 144B(1)(i) of the Act which has come into effect from 01.04.2022, it appears that the Scheme, 2022 as notified under exercise of powers under Section 151A of the Act is required to be considered.

24. On perusal of the Scheme, 2022, which has been notified on 29th March, 2022, it appears that the same provides for e-assessment of income escaping assessment in exercise of the powers conferred in Sub-sections (1) and (2) of Section 151A of the Act. The definition provided in paragraph No.(2) of the Scheme, 2022 is relevant so far as clause (b) which defines "automated allocation". The definition of automated allocation is consistent in the different Schemes which are notified by the legislature which means that the 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.

As far as the words and expressions used in the Scheme, 2022 are as defined in the Act shall have the meaning respectively assigned to them in the Act which means that the words "assessment", "reassessment", "recomputation", "notice" and "faceless manner", as used in the Scheme, 2022 are to be considered as provided in the Act.

25. The scope of the Scheme, 2022 is stated in paragraph No.3 which is sub-divided into two parts. Clause (a) refers to assessment, reassessment and recomputation under Section 147 of the Act as Section 147 of the Act refers to the assessment of income escaping assessment. Whereas, Clause (b) refers to the issuance of notice under Section 148 of the



Act which is prior to the stage of reassessment as to whether the reassessment is to be initiated or not as provided under Section 148 of the Act.

26. The Scheme, 2022 has come into effect from 29th March, 2022 but effectively from 01.04.2022 and as such, the provisions of Section 148 of the Act as it existed on the statute on the said date i.e. on 01.04.2022 has to be considered for the purpose of applicability of the Scheme, 2022. Section 148 of the Act reads as under :

***“148. Issue of notice where income has escaped assessment: (1) Before making the assessment, reassessment or recomputation under section 147, the***

*Assessing Officer shall, subject to the provisions of section 148A, issue a notice to the assessee, along with a copy of the order passed under sub-section (3) of section 148A, requiring him to furnish, within such period as may be specified in the notice, not exceeding three months from the end of the month in which such notice is issued, a return of his income or income of any other person in respect of whom he is assessable under this Act during the previous year corresponding to the relevant assessment year:*

*Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year:*

*Provided further that where the Assessing Officer has received information under the scheme notified under section 135A, no notice under this section shall be issued without prior approval of the specified authority.*

*(2) The return of income required under sub-section (1) shall be furnished in such form and verified in such manner and setting forth such other particulars, as may be prescribed, and the provisions of this Act shall, apply accordingly as if such return were a return required to be furnished under section 139:*

*Provided that any return of income required under sub-section (1), furnished after the expiry of the period specified in the notice under the said sub-section, shall not be deemed to be a*

*return under section 139.*

*(3) For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—*

*(i) any information in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; or*

*(ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or*

*(iii) any information received under*

*an agreement referred to in section 90 or section 90A of the Act; or*

*(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or*

*(v) any information which requires action in consequence of the order of a Tribunal or a Court; or*

*(vi) any information in the case of the assessee emanating from survey conducted under section 133A, other than under sub-section (2A) of the said section, on or after the 1st day of September, 2024.*

**148A. Procedure before issuance of notice under section 148:** (1) *Where the Assessing Officer has information which suggests that income chargeable to tax*

*has escaped assessment in the case of an assessee for the relevant assessment year, he shall, before issuing any notice under section 148 provide an opportunity of being heard to such assessee by serving upon him a notice to show cause as to why a notice under section 148 should not be issued in his case and such notice to show cause shall be accompanied by the information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.*

*(2) On receipt of the notice under sub-section (1), the assessee may furnish his reply within such period, as may be specified in the notice.*

*(3) The Assessing Officer shall, on the basis of material available on record and taking into account the reply of the*

*assessee furnished under sub-section (2), it any, pass an order with the prior approval of the specified authority determining whether or not it is a fit case to issue notice under section 148.*

*(4) The provisions of this section shall not apply to income chargeable to tax escaping assessment for any assessment year in the case of an assessee where the Assessing Officer has received information under the scheme notified under section 135A.*

*Explanation.-For the purposes of this section and section 148, "specified authority" means the specified authority referred to in section 151.*

**148B. Prior approval for assessment, reassessment or recomputation in certain cases:** *No order of assessment or*

*reassessment or recomputation under this Act shall be passed by an Assessing Officer below the rank of Joint Commissioner, in respect of an assessment year to which clause 2) or clause (2) or clause (ir) or clause (iv) of Explanation 2 to section 148 apply except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director."*

27. On perusal of Section 148 of the Act, it is clear that the same is subject to the provisions of Section 148A of the Act except certain eventualities enumerated therein. In the regular course, when an information is made available as per the Explanation 1 of Section 148 of the Act through Risk Management Strategy formulated by the Board, the case is



required to be allocated through automated allocation as defined under the Scheme, 2022. We are concerned with Clause (b) of the Scope of the Scheme as the assessment and reassessment are already taken care of by the provisions of Section 144B of the Act in itself.

28. So far as the issuance of notice under Section 148 of the Act is concerned, after the information is collected through Risk Management Strategy formulated by the Board as referred to under Section 148 of the Act for issuance of notice, the case is allocated through automated allocation to the Assessing Officer. Therefore, the question arises as to who the Assessing Officer should be, whether

the Jurisdictional Assessing Officer or the Assessing Officer of an assessment unit as per Section 144B of the Act. If we peruse Section 144B of the Act, there is no Assessing Officer as such, but it also only refers to the "assessment unit" which comprises of various Assessing Officers. If we peruse clause (i) of Sub-section (1) of Section 144B of the Act, it stipulates that the National Faceless Assessment Centre shall assign the case selected for the purpose of faceless assessment under Section 144B of the Act to a specific "assessment unit" through automated allocation system prior to selection of the case to be allocated to the specific assessment unit through automated allocation

system and Section 144B of the Act has no role to play for the purpose of faceless assessment.

29. Therefore, if we read paragraph No.(3) of the Scheme, 2022, which refers to the issuance of the notice through automated allocation in accordance with the Risk Management Strategy formulated by the Board only. The contention on behalf of the petitioners that the issuance of notice also should be in a faceless manner is also required to be considered from the subsequent prefix after the words "and in faceless manner" which is further qualified by the words "to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or

loss of assessee". If we further analyse the provisions of Section 144B of the Act, it provides that National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down in Section 144B of the Act. Both the clauses (i) and (ii) of section 144B of the Act which have come into operation with effect from 01.04.2022 only refer to assessment proceedings and thereafter, from clause (iii) onwards, the proceedings prescribed for assessment starts by referring to the issuance of notice under Sections 142(1) and 143(2) of the Act. Therefore, the procedure prescribed under Section 144B of the Act only refers to

the faceless assessment and it nowhere provides for the notice to be issued under Section 148 of the Act in a faceless manner. Therefore, the words "and in faceless manner" as appears in the Scheme, 2022 is further qualified "to the extent provided in Section 144B of the Act with reference to making assessment or reassessment of total income or loss of the assessee". A submission is also made that to the extent in Section 144B of the Act with reference to making assessment or reassessment would also include that the procedure which is prescribed for assessment or reassessment should also be applicable for issuance of the notice under Section 148 of the Act. Taking such contentions to its

logical conclusion, it appears that if the procedure prescribed under Section 144B of the Act for assessment is to be applied also for the notice to be issued under Section 148 of the Act, then it would also lead that the provisions of Section 148A of the Act which provide for inquiry by the Assessing Officer and passing of order by the Assessing Officer to come to a prima-facie conclusion that whether it is a fit case to reopen is not available in the Scheme, 2022. If we read the Scheme literally as canvassed before us by learned advocates for both the sides, as it is unambiguous and plain in language, no further interpretation is required to be made by reading the provisions of Section 148A of Act

in the Scheme, 2022. If the Scheme is also applied to the procedure prescribed under Section 148A of the Act, the same shall be altered by adding the procedure of discarding which is not intended by the legislature. Therefore, we are of the opinion that the decision of the Bombay High Court in case of ***Kairos Properties (P.) Ltd. (Supra)*** wherein, the Scheme, 2022 is also extended to the procedure prescribed in Section 148A of the Act, would amount to alter the Scheme, 2022 itself.

30. The Hon'ble Bombay High Court while considering the provisions of Section 148A of the Act has held that the scope of scheme as defined in paragraph No.3 by excluding the

applicability of Section 148A of Act from the scope of the scheme would lead to an absolute absurdity and would amount to alter the Scheme. In such circumstances, we are with due respect not in agreement with the Bombay High Court to insert the provisions of Section 148A of the Act to be read in the scope of the scheme. Therefore, the logical conclusion which comes that if Section 148A of the Act is not part of the Scheme, 2022, then issuance of notice under Section 148 of the Act by the Faceless Assessing Officer would be an empty formality because issuance of notice under Section 148 of Act is consequence of the order which is passed under Section 148A(d) of the Act. As held by the this Court in case of



***Talati and Talati LLP (Supra)***, the notice issued under Section 148 of the Act by the Jurisdictional Assessing Officer in search cases is held to be a valid notice and would also justify our view that the notice under Section 148 of the Act has to be issued by the Assessing Officer who has passed the order under Section 148A(d) of the Act. If the notice is issued by the Faceless Assessing Officer under Section 148 of the Act on the basis of the order which has been passed by the Jurisdictional Assessing Officer under Section 148A(d) of the Act, the same would result into absurdity.

31. Therefore, the logical conclusion which can be deduced from reading of the provisions

of the Act together with the intention of the legislature and the Scheme, 2022, we are of the opinion that so far as issuance of notice under Section 148 of the Act is concerned, the contention raised on behalf of the Revenue based upon the Office Memorandum of the Central Board of Direct Taxes dated 20th February, 2023 which is even considered by the Hon'ble Bombay High Court would be in line of the legislative intent so as to operate the two aspects separately, one by issuance of notice under Section 148 of the Act by automated allocation and other by conducting assessment or reassessment proceedings under Section 147 of the Act in a faceless manner to the extent as provided under Section 144B of

the Act.

32. In view of the above opinion, we are not analysing the judgments rendered by the various High Courts as the line of reasoning adopted by us is totally different than what is adopted by the various High Courts by interpreting the scope, intent and impact of Section 144B of the Act which has been come into statute book with effect from 01.04.2022.

33. In view of the foregoing reasons, so far as the issue, with regard to the challenge to the assumption of jurisdiction to issue the notice under Section 148 of the Act by the Jurisdictional Assessing Officer, fails and the notices issued by the Jurisdictional

Assessing Officer under Section 148 of the Act after 01.04.2022 are held to be valid and legal.

34. So far as the issues on merits are concerned, each matter shall be considered on merits separately. Hence, Registry to list the matters in due course separately, so as to decide the same on merits as per the challenge on merits made in each matter.

**(BHARGAV D. KARIA, J)**

**(PRANAV TRIVEDI, J)**

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