



## DIRECT TAX ALERT

09<sup>th</sup> January 2025

### Hon'ble Madras High Court holds that JAO has exclusive jurisdiction to issue notice u/s 148

#### BACKGROUND

- Sec. 151A of the Income Tax Act, 1961 ("Act") as inserted by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('TOLA') w.e.f. 01-11-2020 empowers the Central Government to notify schemes for Faceless Assessment of Income Escaping Assessment which includes issuance of notice u/s 148, conducting enquiry u/s 148A and grant of sanction u/s 151.
- In exercise of aforesaid powers u/s 151A(1) & 151A(2), **Notification dated 29-03-2022**<sup>1</sup> has been issued which states that for the purpose of this scheme,
  - (a) assessment, reassessment or recomputation u/s 147 of the Act,
  - (b) issuance of notice u/s 148 of the Act,

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Sec. 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in Sec.

<sup>1</sup> Notification No. 18/2022/F. No. 370142/16/2022 TPL(Part I)] dated 29-03-2022



144B of the Act with reference to making assessment or reassessment of total income or loss of assessee.

Further Para 1 of Notification states that it shall come into force from the date of publication in official gazette i.e. 29-03-2022.

- In view of the above notified scheme, issue arose whether proceedings u/s 148A for the purpose of issuance of notice u/s 148 shall be done in a faceless manner or only the reassessment proceedings shall be done in a faceless manner in accordance with procedure specified u/s 144B. In case, the notice was to be issued in a faceless manner, then Jurisdictional Assessing Officer (JAO) would have no authority to initiate the proceedings for issuance of notice u/s 148.
- The issue was first decided by Hon'ble Telangana High Court<sup>2</sup> wherein it was held that proceedings to be drawn u/s 148A, have to be done in a faceless manner and allocation should be made through the automated allocation system in accordance with the risk management strategy formulated by the Board u/s 148 of the Act. Hence, initiation of proceedings u/s 148A along with the consequential notices u/s 148 issued by JAO and not in the prescribed

faceless manner is legally unsustainable.

- The above decision of Telangana High Court has been followed by the Hon'ble Bombay High Court<sup>3</sup> wherein the Hon'ble High Court has held that Guideline dated 01-08-2022 issued by the CBDT and relied upon by the Revenue is not applicable because these guidelines are internal guidelines and are not issued u/s 119 of the Act. There is no question of concurrent jurisdiction of the JAO and the Faceless Assessing Officer (FAO) for issuance of notice u/s 148 of the Act or even for passing assessment or reassessment order. The Scheme dated 29-03-2022 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. It means that the case can be allocated randomly to any officer who would then have jurisdiction to issue the notice u/s 148 of the Act. Scheme framed by the CBDT, covers both the aspect of "assessment, reassessment or recomputation u/s 147" as well as for "issuance of notice u/s 148".
- The above decisions were followed by in various other decisions<sup>4</sup>. However,

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<sup>2</sup> Kankanala Ravindra Reddy -vs.- ITO (2023) 156 taxmann.com 178 (Telangana HC)

<sup>3</sup> Hexaware Technologies Ltd. -vs.- ACIT [TS-298-HC-2024 (Bom)](dated 03-05-2024)]

<sup>4</sup> Jatinder Singh Bhangu -vs- Union of India and others [2024] 165 taxmann.com 115 (Punjab &

Haryana) [CWP- 15745 OF 2024] dated 19-07-2024;

Ram Narayan Sah. -vs.- Union of India, (2024) 163 taxmann.com 478 (Gauhati);

Paras Mahendra Shah -vs.- UOI & Ors [WP No. 3148 of 2024, Bom HC dated 16-07-2024],



contrary view has been taken in some decisions<sup>5</sup>.

- The present case<sup>6</sup> also revolves around the authority of JAO, in view of the faceless scheme notified by the CBDT u/s 151A, vide Notification dated 29-03-2022.

## FACTS OF THE CASE

- The present case addressed a batch of writ petitions challenging the legality of reassessment notices issued by JAOs u/s 148 of the Act. The assessee challenged the validity of notices issued u/s 148 and 148A(d), claiming that the notices were issued by the JAO instead of the National Faceless Assessment Centre (NFAC) as required by the Scheme. Further, mentioning the officer's name in the notice was in violation of the scheme. The JAO lacked jurisdiction as the FAO was the designated authority under the Scheme introduced u/s 144B and 151A. This scheme was intended to eliminate any direct interaction between tax officials and taxpayers by automating and randomizing the reassessment process to the NFAC. The petitioners asserted that notices u/s 148/148A must be issued exclusively by NFAC per the Scheme and not by JAO and further contended that

mentioning the officer's name constituted a jurisdictional defect.

- The revenue defended its emphasized compliance with the automated allocation system, adhering to risk management strategies. Further, mentioning of the officer's name was a procedural error which was curable and did not invalidate the notice issued.

## ISSUES BEFORE THE HON'BLE HIGH COURT

- Whether the JAO is the appropriate authority to issue Notice u/s 148 of Act after the introduction of the Scheme dated 29-03-2022 and Faceless Jurisdiction of Income-tax Authorities Scheme, 2022, dated 28-03-2022?

## RULING OF THE HON'BLE HIGH COURT

- On perusal of provisions of Section 144B of the IT Act, it is clear that NaFAC alone has to send notice under Section 142(1) and Section 143(2) of the IT Act, in respect of the cases, to the extent provided under Sub-Section (2) of Section 144B of Act.
- Sub-clause (ii) of Clause (4) of Guidelines<sup>7</sup> provides that the

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Kairos Properties Private Limited vs. ACIT and Others 2024 SCC OnLine Bom 2571 etc.

<sup>5</sup> T.K.S. Builders Pvt. Ltd.-vs.- ITO [TS-797-HC-2024(DEL)];

Dhiraj Lakhotia vs. UOI W.P.(A).No.1458 of 2024 (Cal HC).

<sup>6</sup> Mark Studio India Pvt. Ltd. -vs.- ITO [W.P.Nos.25223 & 25227 of 2024].

<sup>7</sup> Guidelines for compulsory selection of returns for complete scrutiny for the financial year 2023-24 dated 24-05-2023



Jurisdictional Assessment Officer (JAO) shall upload underlying documents, on the basis on which the notice under Section 148 was issued, on ITBA, for access by NaFAC. Thereafter, Directorate of Income Tax (Systems) shall forward these cases to NaFAC, which will issue notice under Section 143(2) or 142(1) on the respective Assessee. The aforesaid guidelines has been issued by CBDT by virtue of the power available u/s 144B(2) whereby the area of JAO and FAO, has been clarified for the purpose of issuance of 148/148A notice and thereafter, the assessment, re-assessment or re-computation shall be carried out by virtue of FAO in terms of the provisions of Section 144B of Act.

- In absence of any Scheme for issuance of Section 148A notice and with the limited scope of the Scheme for issuance of Section 148 notice, the cases pertaining to issuance of Section 148 or 148A notice, has been allotted by the Directorate of Income Tax (Systems) to the Jurisdictional Assessing Officer based on the PAN jurisdiction by virtue of Automated Allocation System, whereas, the jurisdiction for issuance notice under Section 142(1) or 143(2) has been allotted to the NaFAC based on the automated allocation system to the extent as provided in Sec. 144B.
- Clause (iii) of Sub-Section (1) of Section 144B of the IT Act empowers the NaFAC to assume its jurisdiction in Section 148 cases from the stage of issuance of notice under Section 143(2) or 142(1) of

the IT Act, thus, it will not enable them to issue any notice under Section 148A.

- The above scrutiny guidelines<sup>7</sup> issued within the scope of sub-section (2) of 144B will not amount to issuance of any direction by Central Government to make modifications, exemption or adaptation in the above two notification dated 28-03-2022<sup>8</sup> and 29-03-2022<sup>1</sup>.
- So far, no Scheme for conducting inquiry or issuing SCN u/s 148A or for obtaining sanction u/s 151 was brought in by the Central Government as specified u/s 151A. The NaFAC will have no role to play in issuance of Section 148 notice and to get prior approval from higher Authorities in terms of Section 151.
- As per the provisions of E-Assessment Scheme, 2022, while issuing notice under Section 148 of the IT Act, the following three mandatory requirements have to be complied with: The notice under Section 148 shall be issued
  - (a) through automated allocation;
  - (b) in accordance with the risk management strategy formulated by the Board as referred to in Section 148 of the Act;
  - (c) in the faceless manner to the extent mentioned in Section 144B of the IT Act.
- **(a) Automated allocation:** the Directorate of Income Tax (Systems) will select cases randomly from ITBA portal based on the PAN card jurisdiction and allocate through the automated



allocation system as defined in the Scheme to the concerned JAO. Thus, the JAO will have no role to play in allocation and selection of cases.

- **(b) Risk Management Strategy:** Income Tax Department developed an integrated platform, i.e. Income Tax Business Application (ITBA), wherein all the information gets uploaded based on the risk management strategy formulated by the Board from time to time from various sources and thereafter, the system will classify, select and allot, based on the PAN card jurisdiction, after classification based on the software through automated allocation system. Cases are selected based on data analytics and Artificial Intelligence (AI) advance algorithm by taking data from various sources viz. AIS, TDS returns, GST returns, Bank transactions, RBI etc. Hence, selection is in accordance with RMS and will not come within purview of person who send notice u/s 148.
- **c) Faceless Manner:** Drawing analogy from definition of faceless assessment u/s 2(i)(k) of Sec. 144B of IT Act, HC held that the faceless manner means, sending notice electronically by way of “e-proceedings” to the assessee’s registered account through ITBA portal itself. In the present case, the notice was sent to the Assessee electronically from the web portal of ITBA. Except for above procedure, no other provision enables any of the Income Tax Officers to send

notice in any other mode in faceless manner.

- Hence, so, all the requirements of the Scheme dated 2022 are duly complied with. In the absence of specific provision empowering the Faceless Assessment Officer in terms of Section 144B, the power and the Jurisdiction of the JAO cannot be taken away.
- Further procedural errors, like naming the JAO in the notice, were curable and did not vitiate the entire initiation of proceedings and will not affect jurisdiction.
- Further in terms of clause 3(b) of scheme issued u/s 130<sup>8</sup>, the Faceless Assessment Officer’s jurisdiction under Section 124 of the Act has been provided only to make faceless assessment in terms of Section 144B to the extent provided therein. Thus, they have no power to issue notice under Section 148 of the Act.
- The Telangana<sup>2</sup>, Bombay<sup>3</sup> and Gujarat<sup>9</sup> High Courts have no occasion deal with the aforesaid aspect as discussed in this case that how Section 148 notice was send in faceless manner in due compliance of the provisions of the Scheme, since the same was not brought before them. Rather we agree with the decision of Delhi<sup>5</sup> High Court.
- As far as the assessment, re-assessment or re-computation is

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<sup>8</sup> Faceless Jurisdiction of Income Tax Authorities Scheme, 2022 dated 28-03-2022

<sup>9</sup> Talati and Talati LLP -vs. ACIT 2024: GUJHC: 54567-DB;





- concerned, JAOs and FAOs have concurrent jurisdiction.
- Clause (i) of Explanation (1) to Sec. 148 deals information of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by CBDT. Except, clause (i), the Scheme has not mentioned anything about the faceless assessment of the categories mentioned at Clause (ii) to (v) of Explanation (1). Hence all the other categories mentioned in Clause (ii) to (v) of Explanation (1) of Section 148 of the IT Act shall not be made in accordance with the scheme.

## KEY TAKEAWAYS

- The dispute of jurisdiction i.e. faceless vs jurisdictional AO has been ongoing and has been raised in almost all reassessment proceedings post favorable decision of Bombay High Court. In almost all decisions, issue has been decided in favour of the assessee with the result that proceedings u/s 148A

have been quashed. Revenue has challenged this issue before Hon'ble Supreme Court which is pending for disposal in batch of SLPs<sup>10</sup>.

- However, recently some High Courts including the present one has taken a contrary view from that rendered by other High Courts after distinguishing them and seeks to revive the reassessment proceedings initiated by JAO. This decision has been given after considering the practical reality and the legislative intent and will have wider ramifications.
- Taking precedent from this decision, it seems that subsequently High Courts may decide the issue in favour of the Revenue in other cases. Till the issue is decided by Supreme Court, dispute on this issue will remain.
- The High Court in present case has directed the Income Tax Department to ensure that future notices do not disclose the names of individual officers, aligning fully with the faceless intent of the scheme.

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<sup>10</sup> SLP(C) No. 021188 - / 2024 registered on 11-09-2024



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