



DIRECT TAX ALERT

03rd December 2024

Hon'ble Delhi High Court holds that jurisdictional AO can initiate reassessment; declines to follow ruling of Hon'ble Bombay HC in Hexaware.

BACKGROUND

- Sec. 151A of the IT Act as inserted by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('TOLA') w.e.f. 01-11-2020 empowers CG 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 29th March, 2022¹** has been issued which states that 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. Further Para 1 of notification states that it shall come

¹ Notification No. 18/2022/F. No. 370142/16/2022-

TPL(Part1)] dated 29th March, 2022



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 needs to be done in a faceless manner or only reassessment proceedings should be done in faceless manner in accordance with procedure specified u/s 144B. In case notice is to be issued in faceless manner, then JAO would have no authority to initiate proceedings for issuance of notice u/s 148.
- The issue was first decided by Hon'ble Telangana High Court² wherein it was held that proceedings to be drawn under 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 in recent decision of the Hon'ble Bombay High Court³ wherein the

Hon'ble High Court has held that Guideline dated 1st August 2022 issued by the CBDT and relied upon by the Revenue is not applicable because these guidelines are internal guidelines and are not issued under Section 119 of the Act. 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. 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. 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. Scheme framed by the CBDT, covers both the aspect of "assessment, reassessment or recomputation under Section 147" as well as for "issuance of notice under Section 148".

- The above decisions were followed by in various other decisions⁴.
- The present case⁵ also revolves around the authority of Jurisdictional Assessing Officer (JAOs), in view of

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

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

⁴ 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],

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

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



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. It is argued that such notices violated the mandates of the Faceless Assessment 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 National Faceless Assessment Centre (NFAC). According to the petitioners, notices issued by JAOs in violation of this faceless process were procedurally invalid and should be annulled. Reliance was placed on various recent decisions as referred above.
- The Revenue defended the notices through a detailed affidavit, wherein they argued the following:
 - The Directorate of Systems randomly selects a number of cases based on the criteria of the Risk Management Strategy and flags it to the JAO. The JAO has no role to play in such selection.
 - Initiation of proceedings under Section 148A is based on risk assessment strategy and randomness and automated allocation.
- Consequent to the issuance of notice under Section 148 of the Act, cases are again randomly allocated to the Assessment Units as per Sec. 144B(1)(i).
- Under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction.
- Since, Section 144B of the Act does not provide for issuance of notice under Section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under Section 148 of the Act.
- Notification dated 29 March 2022 bifurcates the reassessment action into two levels, with one being up to the stage where the JAO goes through the procedure prescribed u/s 148A and which may culminate in a final decision to initiate reassessment being made and a notice under Section 148 being issued. The second stage, is of actual assessment made by the NFAC.
- The aforesaid procedure as adopted ensures equitable distribution of workload amongst officers and has been so designed so as to be compatible with the technological abilities available in the hands of the Revenue as on date



ISSUES BEFORE THE HON'BLE HIGH COURT

Whether the reassessment notices issued by JAOs u/s 148 are valid or whether they contravene the Faceless Reassessment Scheme, which petitioners interpreted as delegating sole responsibility for reassessment to NFAC and limiting JAO's involvement?

RULING OF THE HON'BLE HIGH COURT

- Hon'ble Delhi High Court examined the legislative measures adopted from time to time, the evolution of faceless assessment over the years as well as the various instructions, circulars and clarifications issued by the respondents to aid and guide faceless assessment. It also examined various faceless schemes as introduced under the Act particularly Sec, 135A for faceless collection of information. It also examined the provisions of Sec. 144B and 151A of the Income Tax Act, clauses of scheme dated 29-03-2022, CBDT notifications and orders under faceless assessment scheme and instructions issued by Directorate of Systems on RMS.
- Thereafter, it observed that entire schema of assessment, reassessment and recomputation of income is thus based on the information so collected. Despite the expressed intent to altogether eliminate the interface between the AO and the assessee, both the Notifications of 12 September 2019 as well as of 13 August 2020 had

not excluded the involvement of the JAO completely and in the course of the faceless assessment process. The retention of the JAO in certain phases of the assessment process reflects a balanced approach, aiming to preserve transparency and efficiency while ensuring that complex issues receive appropriate attention from a qualified and experienced assessing officer.

- The reference to RMS in the 2022 scheme was clearly intended to align with the concept of information which was spoken of in Explanations 1 and 2 of Section 148. The The Insight **Instruction No. 71 dated 16 November 2023** issued by Directorate of Income Tax Systems discloses that the data so collected was made visible to the JAOs on the verification module of the Insight Portal. This enabled the JAO to test the completeness of disclosures made by an individual assessee against material aggregated by the system. This feature allows JAOs to verify if a taxpayer's information is complete and consistent with the data gathered by the system, making it easier to catch any missing links or inaccurate information.
- The Directorate of Income Tax (Systems) is accorded the ability to randomly select cases which are then forwarded to the concerned JAO. Further the Act enables the JAO itself to select cases which may merit further inquiry or investigation on the basis of information as defined. The Act permits reassessment not only on RMS data but also on a variety of other specified



- inputs as contained in Explanation 1 and 2 of Sec. 148 (i.e. information made available u/s 135A, search, survey etc.) made available to JAO, ensuring a broader foundation for initiating reassessment.
- Notwithstanding distribution of cases and territories u/s 120, Section 127 enables the authorities prescribed therein to transfer any case for the purposes of centralized assessment. Further Section 144B itself confers a power upon the Principal Chief Commissioner or the Principal Director General to transfer cases to the JAO.
- The deletion of erstwhile Sec. 144B(9) which contained provision for treating assessment as void if it is not made in accordance with the procedure u/s 144B aims to maintain a delicate balance between procedural adherence and practical efficiency.
- Sec. 144B is conspicuously silent with respect to commencement of action under Section 147 and does not incorporate any machinery provisions which may be read as intended to regulate the pre-issuance stages of a notice under Section 148.
- All the contingencies and situations which are spoken of in Explanations 1 and 2 are not founded on the material or the data which may be available with NFAC. The statute thus clearly conceives of various scenarios where the case of an individual assessee may

be selected for examination and scrutiny on the basis of information and material that falls into the hands of the JAO directly or is otherwise made available with or without the aid of the RMS. Hence, It would, therefore, be erroneous to view Section 144B as constituting the solitary basis for initiation of reassessment. Section 144B is primarily procedural and is principally concerned with prescribing the manner in which a faceless assessment may be conducted as opposed to constituting a source of power to assess or reassess in itself.

- The use of the expression **“concurrently”** while conferring jurisdiction upon authorities for the purposes of faceless assessment itself would mean contemporaneous or in conjunction with as opposed to a complete ouster of the authority otherwise conferred upon an authority under the Act.
- High Court relied on recent decision⁶ wherein it was concluded that faceless system does not completely replace or nullify the JAO’s role. This adaptability affirms that faceless and jurisdictional assessments are not mutually exclusive; instead, they are interwoven aspects of the Act’s broader design, intended to operate in tandem to achieve fairness and procedural integrity. The notifications issued under e-assessment and faceless assessment scheme contains provision for transfer of pending

⁶ Sanjay Gandhi Memorial Trust vs. CIT (Exemption) 2023 SCC OnLine Del 3161



assessments to JAO who exercises concurrent jurisdiction.

- If it is accepted that JAO is denuded to initiate reassessment then various provisions by which JAO is entitled to access various information for analysis would be a dead letter and the information so gathered becoming worthless and incapable of being acted upon as these information are provided to JAO who is statutorily obliged to assess and evaluate the same in the first instance. Hence, JAO's retained jurisdiction is vital for ensuring continuity and accountability, acting as a complementary element to the faceless assessment framework.
- The decisions of various High Courts which have erroneously taken a contrary view as they do not appear to have had the benefit of reviewing the copious material placed by the Respondents such as notifications of CBDT authorising concurrent jurisdiction on faceless officers, various sources of information which assist JAO in forming opinion for reassessment etc.
- Similar conclusions were taken recently by Gujarat High Court in recent decision⁷ wherein it was held that method of automated allocation, i.e. for random allocation of cases through algorithm, or by using suitable technological tools, including artificial intelligence and machine learning, in accordance with risk management

strategy formulated by the Board, as referred to in Explanation 1 clause (i) to Section 148 of the Act, for issuance of notice under Section 148 in a faceless manner, as per the scheme framed vide notification dated 29.03.2022, cannot be applied to the case of Search and Seizure under Section 132, where the Jurisdictional Assessing Officer (JAO) is required to record his satisfaction on the basis of the material for affirmation of opinion in an honest and bona fide manner. Hence, challenge to the notice under Section 148 on the sole premise that the said notice could have been issued only through automated allocation in faceless manner and not by Jurisdictional Assessing Officer (JAO), cannot be sustained.

- The usage of the punctuation at various places in clause 3 of the scheme dated 29-03-2022 shows the clear legislative intent to separate and segregate the phases of initiation of action in accordance with RMS, the formation of opinion whether circumstances warrant action under Section 148 of the Act being undertaken by issuance of notice and the actual undertaking of assessment itself.
- When material comes to be placed in the hands of the JAO by the RMS, it would consequently be entitled to initiate the process of reassessment by following the procedure prescribed under Section 148A. If after consideration of the objections that

⁷ JD Printers Pvt. Ltd. –vs.- The ITO [WP No. 12187 of 2024,

Bom HC dated 10-09-2024]



are preferred, it stands firm in its opinion that income was likely to have escaped assessment, it would transmit the relevant record to the NFAC. It is at that stage and on receipt of the said material by NFAC that the concepts of automated allocation and faceless distribution would come into play.

- The above conclusion ensures harmonious balance between the evaluation of information made available to an AO, the preliminary consideration of information for the purposes of formation of opinion and its ultimate assessment in a faceless manner and is guided by the principles of beneficial construction and thus avoiding an interpretation that would render portions of the Act or the Faceless Assessment Scheme superfluous.
- Hence, the contention that the impugned notices are liable be quashed merely on the ground of the same having been issued by the JAO is thus negated.

KEY TAKEAWAYS

- The dispute of jurisdiction i.e. faceless vs jurisdictional AO is very common 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.

- Recently in another decision⁸, Bombay HC decides to 'deviate' from its earlier approach in similar cases and decides to grant only interim relief, i.e. stay of notice and proceedings and liberty to parties to apply to HC after matter is decided by Supreme Court.
- In the interim, the above decision of Delhi High Court has taken a contrary view from other High Courts in various cases 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 Court 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.



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