



**Usha Rani Vs. Income Tax Officer, Ward-Parwanoo and others.**

**CWP No. 7577 of 2024**

**01.08.2024 Present:-**

Mr. Praveen Sharma, Advocate, for the petitioner.

Mr. Neeraj Sharma and Mr. Ishaan Kashyap, Advocates, for respondents no. 1 to 3.

**CWP No. 7577 of 2024 and CMP No. 12899 of 2024**

Notice to respondents No.1 to 3. Mr. Ishaan Kashyap, Advocate, accepts notice for respondents no. 1 to 3. 2. Prima-facie, we are of the view that the impugned notice, Annexure P-2 issued under Section 148 of the Income Tax Act, 1961 by the 1st respondent, who is the Jurisdictional Officer, is wholly without jurisdiction having regard to Section 151-A, introduced in the Income Tax Act, 1961 w.e.f. 01.11.2020 and the notification issued on 28.03.2022 thereunder, which specifically contemplates that there would be automated allocation system in accordance with risk management strategy formulated by the CBDT and it is not the case of the revenue that the 1st respondent is an Officer who has been so randomly allocated as per the Scheme. 3. Similar view has been taken by the Telangana High Court in a judgment dt.14.09.2023, rendered in CWP No. 25903 of 2023 and other connected matters, titled as ***Kankanala Ravindra Reddy Vs. Income Tax Officer and two others*** in paras 25 to 27 & 31, which read as under:-

*“25. A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated 28.03.2022 and 29.03.2022, it would clearly indicate that the Central Board of Direct Taxes was very clear in its mind when it framed the aforesaid two schemes with respect to the proceedings to be drawn under Section 148A, that is to have it in a faceless manner.*

There were two mandatory conditions which were required to be adhered to by the Department, firstly, the allocation being made through the automated allocation system in accordance with the risk management strategy formulated by the Board under Section 148 of the Act. Secondly, the reassessing 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 29.04.2022, i.e., after the "Faceless Jurisdiction of the Income Tax Authorities Scheme, 2022." and the "eAssessment of Income Escaping Assessment Scheme, 2022 were introduced.

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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.”*

4. The Bombay High Court in a judgment dt.03.05.2024, rendered in Writ Petition No. 1778 of 2023, titled as Hexaware Technologies Ltd. Vs. Assistant Commissioner of Income Tax & others, has also taken a similar view in paras 35 & 39, which read as under:

*“35.....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 to 38.....*

*39. With reference to the decision of the Hon’ble Calcutta High Court in Triton Overseas Private Limited (Supra), the Hon’ble Calcutta High Court has passed the order without considering the Scheme dated 29th March 2022 as the said Scheme is not referred to in the order. Therefore, the said judgment cannot be treated as a precedent or relied upon to decide the jurisdiction of the Assessing Officer to issue notice under Section 148 of the Act. The Hon’ble Calcutta High Court has referred to an Office Memorandum dated 20th February*

2023 being F No. 370153/7/2023 TPL which has been dealt with above. Therefore, no reliance can be placed on the said Office Memorandum to justify that the JAO has jurisdiction to issue notice under Section 148 of the Act. Further the Hon'ble Telangana High Court in the case of Kankanala Ravindra Reddy vs. Income Tax Officer has held that in view of the provisions of Section 151A of the Act read with the Scheme dated 29th March, 2022 the notices issued by the JAOs are invalid and bad in law. We are also of the same view.”

5. Therefore, there shall be interim stay of all further proceedings pursuant to Annexure P-2, notice issued to the petitioner, till the next date of hearing.

6. List on 23<sup>rd</sup> September, 2024. Reply, if any, be filed in the meanwhile.

( M. S. Ramachandra Rao )  
Chief Justice

( Satyen Vaidya )  
Judge

August 01, 2024.  
(Gourav)