

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 160/Asr/2024
Assessment Year: 2016-17

Swarn Singh
Deeiny, Nowshera Rajouri
Jammu & Kashmir-185151
[PAN: CQQPS 9353C]
(Appellant)

Vs. Income Tax Officer,
Katra
(Respondent)

Appellant by : Sh. Rohit Kapoor, C.A. &
Sh. V. S. Aggarwal, ITP
Respondent by : Smt. Priyanka Patel, Sr. DR
Date of Hearing : 07.05.2024
Date of Pronouncement : 06.06.2024

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 30.01.2024 passed ex-parte qua the assessee is un-admitted in violation of section 249(4) of the Act which is arising out of the Assessment

Order dated 29.12.2023 passed u/s 147 r.w.s. 144/144 of the Act by the NFAC (Delhi) in respect of the Assessment Year: 2016-17.

2. The Id. counsel for the assessee has taken additional grounds of appeal vide its application dated 06.05.2024:

“12. That the CT(A) has erred in confirming the addition made by the AO without appreciating the fact that the assessment framed u/s 147 is bad in law as the notice u/s 148 was issued by the jurisdictional AO and not by NFAC. That the assumption of jurisdiction by the Ld. AO u/s 148 is in violation of mandatory jurisdictional conditions as stipulated in Notification No 18/2022 dated 29th March, 2022.

13. That the CIT(A) has erred in not appreciating that the Notice u/s 148A(b) is illegal in view of the fact that the escapement of income taking into consideration the profit element on cash deposits falls below the statutory Limit of 50L as embedded in section 149(1)(b).”

3. At the time of hearing, the Id. counsel has submitted that the additional grounds raised by the appellant is legal ground with regard to the facts that the assessment framed u/s 147 is invalid since the appellant had not received any of the notices issued by the department on the registered e-mail id and further the notice u/s 148 was issued by the jurisdictional AO which is against the provisions of the Income Tax Act, 1961. He contended that since this is a legal ground of appeal and no new facts are required to be envisaged, the same may be admitted in view of the judgment of M/s National Thermal Plant Co. Ltd. v. CIT as reported in 229 ITR 383.

4. Having heard both the parties and no objection of the Id. AR, additional grounds raised by the assessee being legal grounds, are admitted for adjudication.

5. The Ld. Counsel firstly challenged the legal issue that the CT(A) has erred in confirming the addition made by the AO without appreciating the fact that the assessment framed u/s 147 is bad in law as the notice u/s 148 was issued by the jurisdictional AO and not by NFAC. Thus, the assumption of jurisdiction by the Ld. AO u/s 148 was in violation of mandatory jurisdictional conditions as stipulated in Notification No 18/2022 dated 29th March 2022. The Ld. AR contended that the order u/s 148A(d) was passed on 16.03.2023 and subsequently the notice was issued u/s 148 dated 16.03.2023 by Jurisdictional AO is bad in law. In support, the Ld. AR has file a written synopsis with citation placed on record, In support of the notification No 18/2022 dated 29.03.2022 (APB, Pg. 19) on scope of new Scheme he submits as under: -

3. Scope of the Scheme.—For the purpose of this Scheme,—

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

(b) issuance of notice under section 148 of the Act,

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

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

10.3 The relevant provisions of section 151A are summarised hereunder: -

Section 151A of the Act gives the power to the Central Board of Direct Taxes ("CBDT") to notify the Scheme for :

(i) the purpose of assessment, reassessment or recomputation under Section 147; or

(ii) issuance of notice under Section 148; or

(iii) conducting of inquiry or issuance of show cause notice or passing of order under Section 148A; or

(iv) sanction for issuance of notice under Section 151;

so as to impart greater efficiency, transparency and accountability by inter alia eliminating the interface between the Income Tax Authorities and assessee. Sub-section 3 of Section 151A of the Act also provides that every notification issued under sub-section (1) and (2) of Section 151A of the Act shall be laid before each House of Parliament.

6. The Ld. DR failed to rebut the contention of the Ld. AR but submitted compilation on faceless scheme of assessment for consideration..

7. We have heard both the sides, perused the record, impugned order and case law cited before us. It is an undisputed fact that in the present case, the notice was issued by jurisdictional AO i.e. ITO Ward, Katra and the order was passed u/s 148A(d) of the Act, on 16.03.2023 by the Jurisdiction AO . On perusal of the copy of notice issued u/s 148, it is noted that the notice was issued by jurisdictional AO i.e. ITO Ward, Katra and not by NFAC. The snapshot of the notice is produced for reference hereunder:

		GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER ITO WARD, KATRA/	
To, SWARN SINGH DEEINY, NOWSHERA RAJOURI JAMMU 185151, Jammu and Kashmir India			
PAN: CQQPS9353C	A.Y: 2016-17	Dated: 16/03/2023	DIN & Notice No: ITBA/AST/S/148_1/2022- 23/1050817099(1)
Notice under section 148 of the Income-tax Act, 1961			
Sir/Madam/ M/s.			
1. I have the following information in your case or in the case of the person in respect of which you are assessable under the Income tax Act, 1961 (here in after referred to as "the Act") for Assessment Year 2016-17			
• information in accordance with the risk management strategy formulated in this regard			
suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order under sub-section (d) of section 148A of the Act has been passed in such case vide DIN ITBA/AST/F/148A/2022-23/1050817096(1) dated 16/03/2023 and annexed herewith for reference.			
2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2016-17 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2016-17 .			
PARVESH KHAJURIA ITO WARD, KATRA/			
<small>(In case the document is digitally signed please refer Digital Signature at the bottom of the page)</small>			
<small>Note: If digitally signed, the date of digital signature may be taken as date of document. JAYKAR BHAWAN, RAIL HEAD COMPLEX, PANAMA CHOWK, JAMMU, Jammu and Kashmir, 180012 Email: KATRA.ITO@INCOMETAX.GOV.IN</small>			
<small>Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in. * DIN-Documents Identification No.</small>			

8. From the above, it is evident that the notice u/s 148 issued by the jurisdictional AO and the order passed u/s 148A(d) by the jurisdictional AO are bad in law as the same are in violation of notification No 18/2022 issued by CBDT dated 29th March 2022 and against the provisions of section 151A.

9. In exercise of the powers conferred by sub-sections (1) and (2) of Section 151A of the Act, CBDT issued a notification dated 29th March, 2022 [Notification No.18/2022/F. No.370142/16/2022-TPL and formulated a Scheme. **The copy of the notification No 18/2022 dated 29.03.2022 is placed at page no 19 of the PB.** The Scheme provides that –

(a) the assessment, reassessment or re-computation under Section 147 of the Act,

*(b) and the 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. **The impugned notice u/s 148 dated 16.03.2023 has been issued by JAO and not by the NFAC which is not in accordance with the scheme. The copy of notice u/s 148 along with order u/s 148A(d) is enclosed with written submission as Annexure 1 and Annexure 2.***

10. Thus, there is no question of concurrent jurisdiction of the Jurisdiction Assessing Officer (In short “the JAO”) and the Faceless Assessing Officer (In short “the FAO”) for issuance of notice under Section 148 of the Act or even for passing assessment or reassessment order. In these facts and circumstances, when specific jurisdiction has been assigned to either the JAO or the FAO in the Scheme dated 29th March 2022, then it is the specific jurisdiction to exclusion of the other and taking any other view in

the matter, would not only result in chaos but also render the whole faceless proceedings redundant. In our view, **when notices are issued by the FAO, it would be open to an assessee to make submission before the JAO and vice versa, is clearly not contemplated in the Act.** Therefore, there is no question of concurrent jurisdiction of both FAO and the JAO with respect to the issuance of notice under Section 148 of the Act.

11. That 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. Meaning thereby 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 was not the case where the jurisdictional AO was the random officer who had been allocated jurisdiction.

12. The Section 151A of the Act itself contemplates formulation of Scheme for both assessment, reassessment or re-computation 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.

13. That the clause no 3(b) deals with the issue of notice u/s 148 in a faceless manner. Moreover, 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.

14. The Hon’ble Telangana High Court in the case of Kankanala Ravindra Reddy vs. Income Tax Officer 14 has held that in view of the provisions of Section 151A of the Act 14 (2023) 156 taxmann.com 178 (Telangana) read with the Scheme dated 29th March 2022 the notices issued by the JAOs are invalid and bad in law.

15. In the above view, we hold that the assessment framed u/s 147 based on the notice issued u/s 148 by the JAO is bad in law and the same is quashed as void ab initio.

16. The appellant gets relief on the legal issue of validity of assessment u/s 147 of the Act and Therefore, other grounds are not adjudicated.

17. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 06.06.2024

**Sd/-
(Udayan Dasgupta)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy
By Order