Government of India
Ministry of Finance: Department of Revenue
CENTRAL BOARD OF DIRECT TAXES
OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX (ITAT), Raipur (C.G.)

F.No. JCIT (ITAT)/RPR/Clarification /2024-25/Raipur, Date 30.05.2024

To

Hon'ble Member,
BENCH (ITAT), Raipur.

Sirs

Subject: Submission of report of AO received in the case of M/S Varda Energy & Engineering Pvt. Ltd., ITA 10/RPR/2024 & CO 2/RPR/2024 PAN : AACCV7196F AY- 2016-17 - reg-

Kindly refer to the above.

2. As per the directions, I am submitting herewith the report of AO in the above mention case appeal raised by the assesse

Submitted for kind consideration.

Yours sincerely,

(S.P. Sharma)
Joint Commissioner of Income Tax,
ITAT, Raipur

Encl: as above.

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
OFFICE OF THE INCOME TAX OFFICER – 1(1)
AAYKAR BHAWAN, CIVIL LINES, RAIPUR - 492001

F.No. ITO-1(1)/RPR/ITAT/VEEPL/2024-25 Dated: 24.05.2024

To

The Joint Commissioner of Income Tax (ITAT),
B & C Wing, 5th Floor, Central Secretariat Building,
Sector-24, Atal Nagar, Naya Raipur
Raipur

Sir,

Sub:-Submission of report in the case of M/s Varda Energy & Engineering Pvt. Ltd, PAN: AACCV7196F for A.Y. 2016-17 -reg.-

Kindly refer to your letter F. No. JCIT-ITAT/VEEPL/2023-24 dated 16.05.2024 on the subject above.

2. In this regard, it is submitted that on the basis of information received from DCIT(Central)-2, Raipur, the case of the assessee was selected for re-assessment proceedings u/s 147 of the Act for which the limitation to issue notice u/s 148 of the Act was upto 31.03.2021. However, due to the spread of COVID-19 pandemic, the limitation was extended by the Board till 30.06.2021 and accordingly the notice u/s 148 of the Act for A.Y. 2016-17 was issued on 30.06.2021 with the prior approval of the Addl. CIT-1, Raipur (who was the specified authority u/s 151 of the Act as the period was within four years from the end of the relevant assessment year). In the meantime, the judgment in the Civil Appeal No. 3005/2022 in the case of UOI and other Vs Shri Ashish Agrawal & others was given by the Hon'ble Supreme Court on 04.05.2022. In compliance of the said verdict of the Apex Court, the information/material available on record which suggested for income escaping assessment within the meaning of the provisions of section 147 of the Act were provided to the assessee on 24.05.2022 seeking reply as to why order u/s 148A(d) of the Act should not be passed in the case of the assessee. In response, the assessee filed its reply and after considering the reply of the assessee and making a detail discussion, the order u/s 148A(d) of the Act was passed on 26.07.2022 and notice u/s 148 of the Act was issued on 27.07.2022 with the prior approval of the specified authority i.e. Pr. CIT-1, Raipur. As in the case of the assessee, the order u/s 148A(d) was passed after the direction issued by the Hon'ble Apex Court and the proceeding for reopening of the case of the assessee was initiated well within the time as allowed as per the Act, therefore, the Specified Authority to grant approval u/s 148A(d) is the Pr. CIT-1, Raipur.

In view of the said facts, the contention of the assessee that approval granted u/s 151 of the Act by the Pr. CIT-1, Raipur is invalid is not maintainable and deserves to be rejected.

3. Further, the assessee has raised contention that order u/s 148A(d) dated 26.07.2022 is invalid as it is passed by ITO-1(1), Raipur i.e. jurisdictional AO while it ought to have been passed by Faceless AO after CBDT Notification no. 18 dated 29.03.2022 and therefore, notice u/s 148 of the Act dated 27.07.2022 issued by ITO-1(1) is in violation to the CBDT notification dated 29.03.2022 would also be invalid. In this regard, it is submitted that as per section 151A of the Act, both the Jurisdictional AO (JAO) and Faceless AO (FAO) have concurrent jurisdiction to assess an assessee. However, assessment is to be done by only one to the exclusion of the other i.e., only one can exercise power to assess and pass an order to the exclusion of other and both cannot do it simultaneously. This has been recognized under the Act and the faceless scheme and the instructions issued there under. This fact is undisputed.

3.1 Furthermore, the Office Memorandum dated 20th February, 2023 being F. No. 370153/7/2023-TPL issued by the CBDT throws light on the issue of concurrent jurisdiction of the Faceless Assessment Units and the original jurisdiction of the Jurisdictional Assessing Officer (JAO) in Para 4 in the following manner: "4. It is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed. So, section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to be meaning that the JAO is bereft of the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act. 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."

3.2 The aforesaid OM has been relied upon by the Hon'ble High Court of Calcutta while disposing of writ petition WPO/1549/2023 in the case of Sanghi Steel Udyog Private Ltd Vs Union of India and Ors in its order dated 13th September, 2023 [TS-5831-HC-2023(CALCUTTA)-O]. The Hon'ble Court has dismissed the writ petition filed by the petitioner challenging the issue of notice u/s 148 of the Act by the jurisdictional Assessing Officer and not by the National Faceless Assessment Centre as required by section 151A of the Act. The Hon'ble Court has upheld that the jurisdictional Assessing Officer retains the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act (copy enclosed for kind reference).

3.3 Further, it is also submitted that in a similar case, the Jurisdictional High Court of Chhattisgarh in the case of Raj Bachani Vs Union of India & others in the W.P. 127 of 2023 has dismissed the petition of the assessee wherein it was contended by the assessee that issuance of notice under Section 148A(b) of the Income Tax Act, 1961 by the JAO is contrary to the scheme formulated by Central Government notified on 29.03.2022 under the faceless assessment notice ought not to have been issued by the authority showing designation and the place of his posting (copy enclosed for kind reference).

4. Therefore, in view of the facts noted above, the cross objection raised by the assessee on the issue of jurisdiction and sanction granted by the Competent Authority is not maintainable and liable to be rejected.

Submitted.

Yours faithfully,

Encl: As above.

(Manoj Kumar Pandey)
Income Tax Officer- 1(1),
Raipur

Copy for kind information to The Addl. Commissioner of Income Tax, Range-1, Raipur

Income Tax Officer- 1(1),
Raipur

F. No. 370153/7/2023-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)
*****

147B-II, North Block, New Delhi
Dated the 20 February, 2023

OFFICE MEMORANDUM

Subject:- Seeking inputs/comments on the issue of challenge of Jurisdiction of JAO – reg.

Kind reference is invited to your email dated 07.02.2023 seeking comments of TPL Division with respect to the writ petitions filed before the High Court of Rajasthan challenging the jurisdiction of JAO in issuing notice under section 148 for reassessment.

2. In this regard, I have been directed to communicate the comments of TPL Division as contained in **Annexure** to this O.M.

This issues with the approval of Member (L&S), CBDT.

P. Amrutha

(P. Amrutha Varshini)
Under Secretary (TPL)-IV

To

The JCIT(OSD)(ITJ)
CBDT

Copy for information to: JCIT A/C DCIT(Tech.), O/o Pr. CCIT, Jaipur

P. Amrutha

Under Secretary (TPL)-IV

ANNEXURE

The instant petitions have challenged the validity of the notice issued under section 148 of the Income-tax Act, 1961 ("the Act") by challenging the jurisdiction of the Assessing Officer issuing such notice stating that the said notice was issued without jurisdiction it was not issued by National Faceless Assessment Centre, which is a requirement under the Faceless Reassessment Scheme, 2022 notified under section 151A of the Act vide notification 18/2022 dated 29.03.2022.

2. *Vide* the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, section 151A was inserted in the Act w.e.f 01.11.2020. The provisions of the relevant section are as under:

> *"**Faceless assessment of income escaping assessment.***
>
> ***151A.** (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;*
>
> *(c) 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."*

Subsequently, in pursuance of the powers conferred by sub-sections (1) and (2) of section 151A of the Act, vide notification no. S.O. 1466(E) dated 29.03.2022 the **e-Assessment of Income Escaping Assessment Scheme, 2022** was notified. The contents of the said scheme are as under:-

> *"S.O. 1466(E).—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:-*

*1. Short title and commencement.—(1) This Scheme may be called the **e-Assessment of Income Escaping Assessment Scheme, 2022**.....*

.

.

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."

3. The aforesaid notification provides that the scope of the said scheme is 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. Therefore, the said notification covers the following two procedures under the Act:-

a) Issuance of notice under section 148 of the Act.
b) Assessment/ Reassessment/ Recomputation proceedings under section 147 of the Act.

The scheme clearly lays down that the issuance of notice under section 148 of the Act has to be through automation in accordance with the risk management strategy referred to in section 148 of the Act. It further lays down that the assessment/ reassessment has to be in a faceless manner as provided in section 144B of the Act. The starting point of process under section 148 of the Act is information made available to the Assessing Officer. To this end, as provided in the section 148 of the Act, the Directorate of Systems randomly selects a number of cases based on the criteria of the Risk Management Strategy. The Assessing Officer has no role to play in such selection. Consequent to such selection, the information is made available to the Assessing Officer who, with the prior approval of specified authority, determines which of these cases are fit for proceedings under the section 147 of the Act as per the procedure provided in section 148A of the Act. This involves conducting enquiry, if needed and giving the assessee an opportunity of hearing. Thereafter, leaving aside the cases covered by exceptions given in section 148A of the Act, an order is passed by the Assessing Officer, after due approval by specified approval, determining whether proceedings under section 147 of the Act may be determined in that case. If it has been concluded in the order under section 148A of the Act that it is a fit case for re-assessment proceedings, the Assessing Officer may issue a notice under section 148 of the Act to commence proceedings under section 147 of the Act. Therefore, as provided in the scheme the notice under section 148 of the Act is issued on automatic allocation of cases to the Assessing Officer based on the risk management criteria. Therefore, notices are clearly complying with the scheme. Further, it is only logical and legal that the authority that has passed the order under section 148A of the Act determining fitness of the case for reassessment proceedings should be the one issuing notice to commence proceedings under section 147 of the Act. The fact that no further approval is required to issue notice at this stage by the Assessing Officer also lends support to this argument.

It is reiterated that the procedure outlined under section 148A of the Act is a mandatory process (for cases other than search cases) and initiation of proceedings under section 148A is based on risk assessment strategy and randomness. The notice under section 148A issued thereafter is naturally based on risk management strategy and automated allocation.

3.1 It may also be noted that the scheme provides for randomized allocation of cases. The intent behind is to ensure fair and reasonableness in the selection of cases. In the procedure for issuance of notice under section 148 of the Act this is ensured as cases selected prior to issuance of the said notice are decided on the basis of an algorithm as per the Risk Management Strategy and are, therefore, randomly selected. These cases are flagged to the JAO by the Directorate of Systems and the JAO does not have any control over the process. The cases are selected on the basis of risk management strategy in a random manner, and the JAO has no way of predicting or determining beforehand whether a case will be flagged by the Systems. Further, the selection of cases for issuance of notice under section 148 of the Act is determined after taking into account a number of factors like workload, convenience of taxpayers, technological feasibility to conduct the procedure, nature and amount of information, nature of enquiries that might be required to be conducted under section 148A of the Act as well as the period of limitation for issuance of such notices. Therefore, whether JAO or NFAC should issue such notice is decided by administration keeping in mind the end result of natural justice to the assessees as well as completion of required procedures in a reasonable time. This is also totally as envisaged in the scheme dated 29.03.2022.

3.2 Further, consequent to the issuance of notice under section 148 of the Act as per the procedure discussed above are again randomly allocated to the Assessment Units by the National Faceless Assessment Centre as per clause (i) of sub-section (1) of section 144B of the Act. Thereafter the assessment is conducted as per the procedure provided in section 144B of the Act in a faceless manner, as is also stated in the scheme. From the above, it is quite clear that the procedure for issuance of notices under section 148 of the Act as well as the consequent assessment proceedings are following the scheme notified under section 151A of the Act.

3.3 The petitioner in the instant writ petition has challenged the jurisdiction of the Assessing Officer issuing notice under section 148 of the Act in its case in light of the notification S.O. 1466(E) dated 29.03.2022. Here it is pertinent to note that the said notification does not state whether the notice is to be issued by the NFAC or the Jurisidictional Assessing Officer ("JAO"). The said notification only speaks of the scope of the scheme with regards to the procedures covered by it and lays down the legal contours of how such procedures are to be carried out. It states that the issuance of notice under section 148 of the Act shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in a faceless manner to the extent provided in section 144B of the Act. From the above, it is apparent that in the procedure for reassessment, as it exists as on date, both these are being followed. Therefore, it will be incorrect to state that the issuance of notice by the JAO is without jurisdiction.

4. It is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed. So, section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to be meaning that the JAO is bereft of the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act. 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.

5. Without prejudice to the above, it is also important to refer to the parent section, that is section 151A of the Act, as the power to notify the scheme originates in that section. In the sub-section (1) of the said section it has been provided that the Central Government may notify a scheme for conduct of procedures mentioned therein 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;

(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

Therefore, the parent section takes in to account that procedures may be modified under the Act or laid down taking into account their technological feasibility at the time. Further, instead of laying down specifics of the procedure, the section clarifies that the scheme so notified should make optimal utilisation of resources through economies of scale and functional specialisation. Reading it in tandem with the scheme as given in notification S.O. 1466(E) dated 29.03.2022, it is quite clear that neither the section nor the scheme speak about the detailed specifics of the procedure to be followed therein. They lay down the general principles that should be followed so as to impart greater efficiency, transparency and accountability to the procedures contained therein. The said scheme lays down that **the issuance of notice under section 148 of the Act**

shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in a faceless manner to the extent provided in section 144B of the Act.

5.1 The specifics of the various parts of the procedure will evolve with time as the technology evolves and the structures in the Income-tax Department change. The section and the scheme have left it to the administration to devise and modify procedures with time while remaining confined to the principles laid down in the said section and scheme. By conducting the procedures under the e-Assessment of Income Escaping Assessment Scheme, 2022 at two levels, one with the JAO and other with NFAC, an attempt has been made to introduce checks and balances within the system that the assessee can submit evidences and can avail opportunity of hearing prior to commencement of any proceedings under the Act. This ensures convenience of the assessee, equitable distribution of workload among the officers and is also compatible with the technological abilities in the Department as on date to ensure a procedure which is seamless, reasonable and fair for the assessee.

6. In the instant petitions, challenging the notice under section 148 of the Act on account of issuance by JAO is the result of incorrect reading of the section 151A as well as the e-Assessment of Income Escaping Assessment Scheme, 2022.

15. Based on aforesaid submission, it was the prayer by Ld. Sr. DR that the approval is rightly granted by Ld. Pr. CIT, therefore, the additional ground raised by the Ld. AR on behalf of the assessee under Rule 27 of the ITAT Rules, 1963, raising the issue of validity of jurisdiction and sanction granted by the competent authority are not maintainable and liable to be rejected.

16. We have considered the rival submissions, perused the material available on record and the judicial pronouncements placed before us in support of the contentions. As per facts of the present case, the first notice u/s 148 (under old