

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 3954/Mum/2024
Assessment Year: 2018-19

Chemox Exports Imports Pvt. Ltd. 6 th Floor, Chemox House 7 th Barrack Road Bombay Hospital Lane Mumbai - 400020 [PAN: AAACC4120G]	Vs	Income Tax Department, Assessment Unit [ITO, Ward -1(1)(1)- Mumbai]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Ms. Jigna Jain, A/R	
Revenue by :	Shri Krishna Kumar, Sr. D/R	

सुनवाई की तारीख/Date of Hearing : 15/10/2024
घोषणा की तारीख /Date of Pronouncement: 17/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 21/06/2024 passed by NFAC, Delhi, pertaining to AY 2018-19.

2. The grievance of the assessee reads as under:-

"1. The Ld. CIT(A) has erred in law and in facts in passing order u/s.250 of the Act and partly confirming the addition made by Ld. A.O.

2. The Ld. CIT(A) has erred in law and in facts in appreciating that the reopening the assessment proceedings by issue of notice u/s. 148 of the Act was invalid and void.

3. The Ld. CIT(A) has erred in law and in facts in confirming the rental income of the appellant at Rs. 56,76,770/- instead of Rs. 51,16,011/-.

4. The Ld. CIT(A) has erred in law and in facts in confirming the addition of Rs. 8,00,000/- on account of undisclosed sales.

5. The Ld. CIT(A) has erred in law and in facts in confirming the addition on account of service charges of Rs. 29,70,941/- as undisclosed income of the appellant.

6. The Ld. CIT(A) has erred in law and in facts in confirming the disallowance made by Ld. A.O. on account of business expenditure of Rs. 30,027/-."


3. Vide Ground No. 2, the assessee has challenged the reopening of assessment proceedings by issue of notice u/s 148 of the Act claiming that it is invalid and void.

4. Representatives of both the sides were heard at length, case records carefully perused and the relevant documentary evidence duly considered in the light of Rule 18(6) of ITAT Rules, 1963.

5. Explaining the facts of the case, the Id. Counsel for the assessee strongly relied upon the decision of the Hon'ble Bombay High Court in the case of *Hexaware Technologies Ltd. vs. ACIT & Ors.* [2024] 464 ITR 430 (Bom.) and read the operative part pointing out that the impugned notices under consideration are not only invalid but also bad in law.

The Id. D/R could not bring any distinguishing decision in favour of the revenue.

6. We have given a thoughtful consideration to the orders of the authorities below. The impugned notices under challenge are as under:-

 <p>GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 1(1)(1), MUMBAI</p>			
<p>To, CHEMOX EXPORTS IMPORTS PVT LTD 6TH FLOOR CHEMOX HOUSE, 7TH BARACK ROAD BOMBAY HOSPITAL LANE MUMBAI 400020, Maharashtra India</p>			
PAN: AAACC4120G	A.Y: 2018-19	Dated: 30/03/2022	DIN & Notice No: ITBA/AST/S/148_1/2021- 22/1042183619(1)
Notice under section 148 of the Income-tax Act, 1961			
Sir/Madam/ M/s.			
<ul style="list-style-type: none"> • 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 2018-19 <ul style="list-style-type: none"> • Information flagged by 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/2021-22/1042134900(1) dated 30/03/2022 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 2018-19 and I, hereby, require you to furnish, within 30 days from service of this notice, a return in the prescribed form of the Assessment Year 2018-19. 3. This notice is being issued after obtaining the prior approval of the PCIT, Mumbai-1 accorded on date 30/03/2022 vide Reference No. 100000029251720. 			
<p>MRITUNJAI KUMAR WARD 1(1)(1), MUMBAI</p>			



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX
OFFICER
WARD 1(1)(1), MUMBAI

To,
CHEMOX EXPORTS IMPORTS PVT LTD
6TH FLOOR CHEMOX HOUSE , 7TH
BARRACK ROAD BOMBAY HOSPITAL
LANE
MUMBAI 400020 , Maharashtra
India

PAN: AAACC4120G A.Y: 2018-19 Dated: 14/03/2022 DIN & Notice No: ITBA/AST/F/148A(SCN)/2021-22/1040721057(1)

Notice under clause(b) of section 148A of the Income-tax Act,1961

Sir/Madam/M/s

Whereas I have information which suggests that income chargeable to tax for the Assessment Year 2018-19 has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961. The details of the information and enquiry, if conducted, are enclosed with this notice in Annexure A.

- You are required to show-cause as to why, in view of the details contained in Annexure A, a notice section 148 of the Income tax Act, 1961 should not be issued.
- You may, to the extent technologically feasible, submit your response with supporting documents (if any) on the above mentioned issues electronically in 'e-proceeding' facility through your account in e-filing portal at your convenience on or before 21/03/2022.
- This notice is being issued after obtaining the prior approval of the PCIT, Mumbai-1 accorded on date 14/03/2022 vide Reference No. 100000029251720.

MRITUNJAI KUMAR
WARD 1(1)(1), MUMBAI

ANNEXURE

Show Cause Notice u/s 148A(b) of the Income Tax Act,1961 in the case of CHEMOX EXPORTS IMPORTS PVT LTD(PAN: AAACC4120G) for A.Y. 2018-19

Undersigned has received credible information on the Insight Portal in your case for A.Y.2018-19. The details of the information are as under:

Information Code	Information Description	Source	Amount Description	Amount (Rs.)
TDS-194(B)	TDS Statement - Rent (Section TDS-194)	Gtl Infrastructure Ltd	Amount paid or credited	1,77,500
TDS-194(B)	TDS Statement - Rent (Section TDS-194)	Chennai Network Infrastructure Limited	Amount paid or credited	9,34,710
TDS-194(B)	TDS Statement - Rent (Section TDS-194)	Vodafone India Limited	Amount paid or credited	9,20,000
TDS-194(B)	TDS Statement - Rent (Section TDS-194)	Indus Towers Limited	Amount paid or credited	21,13,901
EXC-002	Turnover from services reported in service tax return	CBIC	Gross taxable amount	29,70,941
SFT-012 (S)	Sale by any person of immovable property	Shailendra Arjun Satam	Transaction amount related to the person	3,10,00,000
TDS-194IA (R)	TDS Statement - Sales consideration on sale of immovable property (Section 194IA)	Pravina Pushpasen Rajput	Amount paid or credited	3,10,00,000
TDS-194H	TDS Statement - Commission or brokerage (Section 194H)	Blue star air travel services (India) private Limited	Amount paid or credited	40
GSTR1-R	Total sales reported under GSTR-1	Chennai Network Infrastructure Limited (800000

		AADCC8088Q)		
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2.1 Further assessee has also made following expenses and deducted TDS on it:

Information Code	Information Description	Party PAN	Party Name	Amount Paid/Credited(Rs.)	TDS/TCS(Rs.)
TDS-194H	TDS Statement - Commission or brokerage (Section 194H)	ABXPA5596K	SUSHIL AGARWAL	800000.00	40000.00
TDS-194H		AASFP5902G	PAGODA WOODS LLP	800000.00	40000.00
TDS-194H		AAGPA7378B	SUNITA AGARWAL	800000.00	40000.00
TDS-194J	TDS Statement - Fees for professional or technical services (Section 194J)	AAACR4969G	RAJESH SHAH ENGINEERS AND CONSULTANTS PVT LTD	30000.00	3000.00
TDS-194J		ACIPC3477H	P M CHANDAN	25000.00	2500.00

3. On verification of the ITBA System, it is seen that the assessee has not filed any return of income for A.Y.2018-19 under the provisions of Sec. 139 of IT Act, though as per information available (Copy enclosed) on Insight Portal that the assessee has sold immovable properties worth Rs.3,10,00,000/- and also received Rent of Rs.41,46,111/- and also received Rs.29,70,941/- from providing services(as per service tax return) during the year under consideration. Assessee has further made expenses and also deducted TDS on them. Assessee has made purchases or Rs.8,00,000/- from M/s. Chennai Network Infra Ltd. Hence, the above income of the assessee as well as expenses has escaped assessment and needs to be taxed as per the provisions of Income Tax Act.

4. In view of the above, you are hereby show caused u/s 148A(b) of the Income Tax Act, 1961 as to why a notice under section 148 of the Act should not be issued on the basis of above information which suggests that the above mentioned income chargeable to tax has escaped assessment in your case for A.Y.2018-19.

5. You are requested to furnish your reply to above show cause by 21.03.2022. If you fail to furnish your reply to above show cause within the given time, it is presumed that you have nothing to say in this matter and order u/s 148A(d) of the Act will be passed on the basis of material available on the record without giving any further opportunity.



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 1(1)(1), MUMBAI

To, CHEMOX EXPORTS IMPORTS PVT LTD 6TH FLOOR CHEMOX HOUSE , 7TH BARRACK ROAD BOMBAY HOSPITAL LANE MUMBAI 400020 , Maharashtra India	
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PAN: AAACC4120G	A.Y: 2018-19	Dated: 30/03/2022	DIN & Notice No: ITBA/AST/F/148A/2021-22/1042134900(1)
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Name of the assessee	CHEMOX EXPORTS IMPORTS PVT LTD
Address of the assessee	6TH FLOOR CHEMOX HOUSE , 7TH BARRACK ROAD BOMBAY HOSPITAL LANE MUMBAI 400020 , Maharashtra India
Resident/ Not Ordinarily Resident/ Non-Resident	
Date of order	30/03/2022
Specified authority approval	Name PCIT, Mumbai-1 Reference No. 100000029251720 Date 30/03/2022

Order under clause (d) of section 148A of the Income-tax Act,1961

In this case, following information has been received in this office under the non filer module of INSIGHT PORTAL of the Income Tax Department:

Information Code	Information Description	Source	Amount Description	Amount (Rs.)
TDS-194I(B)	TDS Statement - Rent (Section TDS-194I)	Gtl Infrastructure Ltd	Amount paid or credited	1,77,500
TDS-194I(B)	TDS Statement - Rent (Section TDS-194I)	Chennai Network Infrastructure Limited	Amount paid or credited	9,34,710
TDS-194I(B)	TDS Statement - Rent	Vodafone India	Amount paid or credited	9,20,000

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:534,5th Floor, AAYAKAR BHAVAN, MAHARISHI KARVE ROAD, MUMBAI, Maharashtra, 400020
Email: MUMBAI.ITO1.1.1@INCOMETAX.GOV.IN, Office Phone:02222075527

	(Section TDS-194I)	Limited		
TDS-194I(B)	TDS Statement - Rent (Section TDS-194I)	Indus Towers Limited	Amount paid or credited	21,13,901
EXC-002	Turnover from services reported in service tax return	CBIC	Gross taxable amount	29,70,941
SFT-012 (S)	Sale by any person of immovable property	Shailendra Arjun Satam	Transaction amount related to the person	3,10,00,000
TDS-194IA (R)	TDS Statement - Sales consideration on sale of immovable property (Section 194IA)	Pravina Pushpasen Rajput	Amount paid or credited	3,10,00,000
TDS-194H	TDS Statement - Commission or brokerage (Section 194H)	Blue star air travel services (India) private Limited	Amount paid or credited	40
GSTR1-R	Total sales reported under GSTR-1	Chennai Network Infrastructure Limited (- AADCC8088Q)		800000

Further assessee company has also made following expenses and deducted TDS on it:

Information Code	Information Description	Party PAN	Party Name	Amount Paid/Credited(Rs.)	TDS/TCS(Rs.)
TDS-194H		ABXPA5596K	SUSHIL AGARWAL	800000.00	40000.00
TDS-194H	TDS Statement - Commission or brokerage (Section 194H)	AASFP5902G	PAGODA WOODS LLP	800000.00	40000.00
TDS-194H		AAGPA7378B	SUNITA AGARWAL	800000.00	40000.00
TDS-194J	TDS Statement - Fees for professional or technical services (Section 194J)	AAACR4969G	RAJESH SHAH ENGINEERS AND CONSULTANTS PVT LTD	30000.00	3000.00
TDS-194J		ACIPC3477H	P M CHANDAN	25000.00	2500.00

2. However, on verification of the ITBA/E-filing portal, it is seen that assessee company has not filed any return of income for A.Y. 2018-19 under the provisions of Sec. 139 of IT Act, though assessee company has sold immovable properties worth Rs.3,10,00,000/- and also received Rent of Rs.41,46,111/- and also received Rs.29,70,941/- from providing services (as per service tax return) during the year under consideration. Assessee has further made expenses and also deducted TDS on them. Assessee has made purchases of Rs.8,00,000/- from M/s. Chennai Network Infra Ltd.

3. As the assessee company has not filed any RoI u/s 139 of IT Act, the source of above mentioned income/transaction of the assessee has prima-facie remained unexplained and has escaped assessment. Hence, the assessee's case needs to be re-opened u/s 147 of the Act as a remedial measure.

4. Accordingly, an opportunity of being heard has been provided to assessee by issue of Show Cause Notice u/s 148A(b) of the Act dated 14.03.2022, with prior approval of Pr.CIT-1, Mumbai requiring the assessee to show cause as to why a notice u/s 148 of the Income Tax Act, 1961 should not be issued in the case of assessee company on the basis of above information. The date of compliance has been fixed on 21.03.2022. As per records of this office, the above notice was duly served on the assessee electronically.

5. However, no reply/explanation of the assessee has been received so far. Hence, assessee's case is being decided on merit on the basis of material available on record.

6. As per information, assessee has sold immovable properties worth Rs.3,10,00,000/- and also received Rent of Rs.41,46,111/- and also received Rs.29,70,941/- from providing services (as per service tax return) during the year under consideration. Assessee has further made expenses and also deducted TDS on them. Assessee has made purchases of Rs.8,00,000/- from M/s. Chennai Network Infra Ltd. However, assessee had not filed any Return of Income u/s 139 of Income Tax Act for A.Y. 2018-19. Hence, the source of above mentioned income/transaction has prima-facie remained unexplained. Further, opportunity of being heard has also been provided to assessee vide this office show cause notice u/s 148A(b) of I.T. Act dated 14.03.2022. However, assessee has not complied even the said notice issued u/s 148A(b) of the Act.

7. In view of the above facts, this is a fit case to issue a Notice u/s 148 of IT Act in the case of above assessee for A.Y.2018-19.

8. Prior Approval has been accorded by the Specified Authority i.e. Pr.CIT-1, Mumbai u/s 148A(d) read with Section 151 of Income Tax Act, 1961 for passing this Order u/s 148A(d) of Income Tax Act, 1961.

MRITUNJAI KUMAR
WARD 1(1)(1), MUMBAI

7. The aforementioned notices have to be considered in light of the provisions of Section 151A of the Act, which reads as under :-

“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](#)⁸¹[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.]”

8. Pursuant to the provisions of Section 151A of the Act mentioned hereinabove, the Central Government made the following scheme:-

“e-Assessment of Income Escaping Assessment Scheme, 2022

Notification No. S. O. 1466(E), dated 29th March 2022

In exercise of the powers conferred by sub-sections (.) 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***.

(2) It shall come into force with effect from the date of its publication in the Official Gazette.

2. Definitions.—(1) In this Scheme, unless the context otherwise requires, –

- (a) "Act" means the Income-tax Act, 1961 (43 of 1961) ;
- (b) "automated allocation" means 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.

(2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

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.

[Notification No. 18/2022, No. 370142/16/2022-TPL(Part1)]

9. The aforementioned scheme was thoroughly examined by the Hon'ble Jurisdictional High Court of Bombay in the case of *Hexaware Technologies (supra)*, wherein the Hon'ble High Court *interalia* considered the following issue:-

"Whether the impugned notice dated 27th August 2022 is invalid and bad in law being issued by the Jurisdictional Assessing Officer as the same was not in accordance with Section 151A of the Act?"

9.1. And the Hon'ble Jurisdictional High Court, answered the aforementioned issue as under :-

"32. As regards issue no. 4, Section 151A reads as under :

151A. Faceless assessment of income escaping assessment. – (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or recomputation 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, recomputation 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.

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.

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 Scheme provides that -

(a) the assessment, reassessment or recomputation 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 dated 27th August, 2022 has been issued by respondent no. 1 (JAO) and not by the NFAC, which is not in accordance with the aforesaid Scheme.

33. The guideline dated 1st August 2022 relied upon by the Revenue is not applicable because these guidelines are internal guidelines as is clear from the endorsement on the first page of the guideline - "Confidential For Departmental Circulation Only". The said guidelines are not issued under section 119 of the Act. Any such guideline issued by the CBDT is not binding on petitioner. Further the said guideline is also not binding on respondent no. 1 as they are contrary to the provisions of the Act and the Scheme framed under section 151A of the Act. The effect of a guideline came up for discussion in *Sofitel Realty LLP v. ITO (TDS)* [2023] 153 taxmann.com 496/294 *Taxman* 766/457 ITR 18 (Bom.) wherein this Court has held that the guidelines which are contrary to the provisions of the Act cannot be relied upon by the Revenue to reject an application for compounding filed by an assessee. The Court held that guidelines are subordinate to the principal Act or Rules, it cannot restrict or override the application of specific provisions enacted by legislature. The guidelines cannot travel beyond the scope of the powers conferred by the Act or the Rules.

The guidelines do not deal with or even refer to the Scheme dated 29th March 2022 framed by the Government under section 151A of the Act. Section 151A(3) of the Act provides that the Scheme so framed is required to be laid before each House of the Parliament. Therefore, the Scheme dated 29th March 2022 under section 151A of the Act, which has also been laid before the Parliament, would be binding on the Revenue and the guideline dated 1st August 2022 cannot supersede the Scheme and if it provides anything to the contrary to the said Scheme, then the same is required to be treated as invalid and bad in law.

34. As regards ITBA step-by-step Document No. 2 regarding issuance of notice under section 148 of the Act, relied upon by Revenue, an internal document cannot depart from the explicit statutory provisions of, or supersede the Scheme framed by the Government under section 151A of the Act which Scheme is also placed before both the Houses of Parliament as per Section 151A(3) of the Act. This is specially the case when the document does not even consider or even refer to the Scheme. Further the said document is clearly intended to be a manual/guide as to how to use the Income-tax Department's portal, and does not even claim to be a statement of the Revenue's position/stand on the issue in question. Our observations with respect to the guidelines dated 1st August 2022 relied upon by the Revenue will equally be applicable here.

35. Further, in our view, 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. When specific jurisdiction has been assigned to either the JAO or the FAO in the Scheme dated 29th March, 2022, then it is to the exclusion of the other. To take any other view in the matter, would not only result in chaos but also render the whole faceless proceedings redundant. If the argument of Revenue is to be accepted, then even when notices are issued by the FAO, it would be open to an assessee to make submission before the JAO and vice versa, which is clearly not contemplated in the Act. Therefore, there is no question of concurrent jurisdiction of both FAO or the JAO with respect to the issuance of notice under section 148 of the Act. 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. With respect to the arguments of the Revenue, i.e., the notification dated 29th March 2022 provides that the Scheme so framed is applicable only 'to the extent' provided in Section 144B of the Act and Section 144B of the Act does not refer to issuance of notice under section 148 of the Act and hence, the notice cannot be issued by the FAO as per the said Scheme, we express our view as follows:-

Section 151A of the Act itself contemplates formulation of Scheme for both assessment, reassessment or recomputation 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. The argument advanced by respondent would render clause 3(b) of the Scheme otiose and to be ignored or contravened, as according to respondent, even though the Scheme specifically provides for issuance of notice under section 148 of the Act in a faceless manner, no notice is required to be issued under section 148 of the Act in a faceless manner. In such a situation, not only clause 3(b) but also the first two lines below clause 3(b) would be otiose, as it deals with the aspect of issuance of notice under section 148 of the Act. Respondents, being an authority subordinate to the CBDT, cannot argue that the Scheme framed by the CBDT, and which has been laid before both House of Parliament is partly otiose and inapplicable. The argument advanced by respondent expressly makes clause 3(b) otiose and impliedly makes the whole Scheme otiose. If clause 3(b) of the Scheme is not applicable, then only clause 3(a) of the Scheme remains. What is covered in clause 3(a) of the Scheme is already provided in Section 144B(1) of the Act, which Section provides for faceless assessment, and covers assessment, reassessment or recomputation under section 147 of the Act. Therefore, if Revenue's arguments are to be accepted, there is no purpose of framing a Scheme only for clause 3(a) which is in any event already covered under faceless assessment regime in Section 144B of the Act. The argument of respondent, therefore, renders the whole Scheme redundant. An argument which renders the whole Scheme otiose cannot be accepted as correct interpretation of the Scheme. The phrase "to the extent provided in Section 144B of the Act" in the Scheme is with reference to only making assessment or reassessment or total income or loss of assessee. Therefore, 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.

37. When an authority acts contrary to law, the said act of the Authority is required to be quashed and set aside as invalid and bad in law and the person seeking to quash such an action is not required to establish prejudice from the said Act. An act which is done by an authority contrary to the provisions of the statute, itself causes prejudice to assessee. All assesseees are entitled to be assessed as per law and by following the procedure prescribed by law. Therefore, when the Income-tax Authority proposes to take action against an assessee without following the due process of law, the said action itself results in a prejudice to assessee. Therefore, there is no question of

petitioner having to prove further prejudice before arguing the invalidity of the notice.

38. With respect to the Office Memorandum dated 20th February 2023, the said Office Memorandum merely contains the comments of the Revenue issued with the approval of Member (L&S) CBDT and the said Office Memorandum is not in the nature of a guideline or instruction issued under section 119 of the Act so as to have any binding effect on the Revenue. Moreover, the arguments advanced by the Revenue on the said Office Memorandum dated 20th February 2023 is clearly contrary to the provisions of the Act as well as the Scheme dated 29th March 2022 and the same are dealt with as under -

- (i) It is erroneously stated in paragraph 3 of the Office Memorandum that "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." The issuance of notice is not through automation but through "automated allocation". The term "automated allocation" is defined in clause 2(1)(b) of the said Scheme to mean random allocation of cases to Assessing Officers. Therefore, it is clear that the Assessing Officer are randomly selected to handle a case and it is not merely a case where notice is sought to be issued through automation.*
- (ii) It is further erroneously stated in paragraph 3 of the Office Memorandum that "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 Risk Management Strategy." The term 'randomly' is further used at numerous other places in the Office Memorandum with respect to selection of cases for consideration/issuance of notice under section 148 of the Act. Respondent is clearly incorrect in its understanding of the said Scheme as the reference to random in the said Scheme is reference to selection of Assessing Officer at random and not selection of Section 148 cases as random. If the cases for issuance of notice under section 148 of the Act are selected based on criteria of the risk management strategy, then, obviously, the same are not randomly selected. The term 'randomly' by definition mean something which is chosen by chance rather than according to a plan. Therefore, if the cases are chosen based on risk management strategy, they certainly cannot be said to be random. The Computer/System cannot select cases on random but selection can be based on certain well-defined criteria. Hence, the argument of respondents is clearly unsustainable. If the case of respondent is that the applicability of Section 148 of the Act is on random basis, then the provision of Section 148 itself would become contrary to Article 14 of the Constitution of India as being arbitrary and unreasonable. Randomly selecting cases for reopening without there being any basis or criteria would mean that the section is applied by the Revenue in an arbitrary and unreasonable manner. The word 'random' is used in clause 2(1)(b) of the said Scheme in the definition of "automated allocation". "Automated allocation" is defined in the said clause to mean "an algorithm for randomised allocation of cases.....". The term 'random', in our view, has been used in the context of assigning*

the case to a random Assessing Officer, i.e., an Assessing Officer would be randomly chosen by the system to handle a particular case. The term 'random' is not used for selection of case for issuance of notice under section 148 as has been alleged by the Revenue in the Office Memorandum. Further, in paragraph 3.2 of the Office Memorandum, with respect to the reassessment proceedings, the reference to 'random allocation' has correctly been made as random allocation of cases to the Assessment Units by the National Faceless Assessment Centre. When random allocation is with reference to officer for reassessment then the same would equally apply for issuance of notice under section 148 of the Act.

- (iii) *The conclusion at the bottom of page 2 in paragraph 3 of the Office Memorandum that "Therefore, as provided in the scheme the notice under section 148 of the Act is issued on automated allocation of cases to the Assessing Officer based on the risk management criteria" is also factually incorrect and on the basis of incorrect interpretation of the Scheme. Clause 2(1)(b) of the Scheme defined 'automated allocation' 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'. The said definition does not provide that the automated allocation of case to the Assessing Officer is based on the risk management criteria. The reference to risk management criteria in clause 3 of the Scheme is to the effect that the notice under section 148 of the Act should be in accordance with the risk management strategy formulated by the board which is in accordance with Explanation 1 to Section 148 of the Act. In our view, the Revenue is misinterpreting the Scheme, perhaps to cover its deficiency of not following the Scheme for issuing notice under section 148 of the Act.*
- (iv) *In paragraph 3.1 of the Office Memorandum, it is stated that the case is selected prior to issuance of notice are decided on the basis of an algorithm as per risk management strategy and are, therefore, randomly selected. It is further stated that these cases are 'flagged' to the JAO by the Directorate of Systems and the JAO does not have any control over the process. It is further stated that the JAO has no way of predicting or determining beforehand whether the case will be 'flagged' by the system. The contention of the Revenue is that only cases which are 'flagged' by the system as per the risk management strategy formulated by CBDT can be considered by the Assessing Officer for reopening, however, in clause (i) in the Explanation 1 to Section 148 of the Act, the term "flagged" has been deleted by the Finance Act, 2022, with effect from 1st April 2022. In any case, whether only cases which are flagged can be reopened or not is not relevant to decide the scope of the Scheme framed under section 151A of the Act, which required the notice under section 148 of the Act to be issued on the basis of random allocation and in a faceless manner.*
- (v) *The Revenue has wrongly contended in paragraph 3.1 of the Office Memorandum that "Therefore, whether JAO or NFAC should issue such notice is decided by administration keeping in mind the end result of natural*

justice to the assesseees as well as completion of required procedure in a reasonable time." In our opinion, there is no such power given to the administration under either Section 151A of the Act or under the said Scheme. The Scheme is clear and categorical that notice under section 148 of the Act shall be issued through automated allocation and in a faceless manner. Therefore, the argument of the Revenue is clearly contrary to the provisions of the Scheme.

- (vi) In paragraph 3.3 of the Office Memorandum, it is again erroneously stated that "Here it is pertinent to note that the said notification does not state whether the notices to be issued by the NFAC or the Jurisdictional Assessing Officer ("JAO").....It states that 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 faceless manner to the extent provided in section 144B of the Act." The Scheme is categorical as stated aforesaid that the notice under section 148 of the Act shall be issued through automated allocation and in a faceless manner. The Scheme clearly provides that the notice under section 148 of the Act is required to be issued by NFAC and not the JAO. Further, unlike as canvassed by Revenue that only the assessment shall be in faceless manner, the Scheme is very clear that both the issuance of notice and assessment shall be in faceless manner.
- (vii) In paragraph 5 of the Office Memorandum, a completely unsustainable and illogical submission has been made that Section 151A of the Act takes into account that procedures may be modified under the Act or laid out taking into account the technological feasibility at the time. Reading the said Scheme along with Section 151A of the Act makes it clear that neither the Section or the Scheme speak about the detailed specifics of the procedure to be followed therein. This argument of the Revenue is clearly contrary to the Scheme as the Scheme is very specific to provide, inter alia, that the issuance of notice under section 148 of the Act shall be through automated location and in a faceless manner. Therefore, the Scheme is mandatory and provides the specification as to how the notice has to be issued. Further the argument of the Revenue that Section 151A of the Act takes into account that the procedure may be modified under the Act is without appreciating that if the procedure is required to be modified then the same would require modification of the notified Scheme. It is not open to the Revenue to refuse to follow the Scheme as the Scheme is clearly mandatory and is required to be followed by all Assessing Officers.
- (viii) The argument of the Revenue in paragraph 5.1 of the Office Memorandum that the Section and Scheme have left it to the administration to device and modify procedures with time while remaining confined to the principles laid down in the said Section and Scheme, is without appreciating that one of the main principles laid down in the Scheme is that the notice under section 148 of the Act is required to be issued through automated allocation and in a faceless manner. There is no leeway given on the said aspect and, therefore, there is no question of the administration to device and modify procedures with respect to the issuance of notice.

39. With reference to the decision of the Hon'ble Calcutta High Court in Triton Overseas (P.) Ltd. (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 v. ITO [2023] 156 taxmann.com 178/295 Taxman 652 (Telangana) 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."

10. It can be seen from the above that Hon'ble Jurisdictional High Court followed the view taken by the Hon'ble Telangana High Court in the case of Kankanala Ravindra Reddy v. ITO [2023] 156 taxmann.com 178 (Telangana) and it would be pertinent to refer to the relevant context of the judgment of the Hon'ble Telangana High Court, for the sake of completeness:-

"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 29-4-2022, i.e., after the "Faceless Jurisdiction of the Income-tax Authorities Scheme, 2022" and the "e-Assessment of Income Escaping Assessment Scheme, 2022" were introduced.

28. From the afore given factual matrix, firstly the statutory provisions enumerated in the preceding paragraphs and secondly, the subsequent direction given by the Hon'ble Supreme Court in the case of Ashish Agarwal, supra, what is clearly reflected is the fact that when the Hon'ble Supreme Court had partly allowed the petitions which were filed by the Union of India challenging the judgements of various High Courts whereby the notice under section 148 of the unamended Act were set aside by the High Courts, the Hon'ble Supreme Court has only permitted the Union of India to proceed further with the reassessment proceedings under the amended provision of law, more particularly, as amended by the Finance Act, 2021.

It never intended the authorities concerned to continue with the proceedings from the stage of the issuance of notices under section 148, nor is the directions to that effect. And there cannot be any confusion, ambiguity or mis-conception for the respondent-Department to have in this regard.

29. The Hon'ble Supreme Court has in paragraph No. 7 specifically held that the High Courts have rightly held that the benefit of new provisions shall be made available in respect of the proceedings relating to past assessment years. Further, the Hon'ble Supreme Court again in paragraph No. 8 very emphatically had said that the proceedings ought not to have been issued under the unamended Act. Rather ought to had been issued under the substituted provisions as per the Finance Act, 2021. Further, in the same paragraph clearly directed the Income-tax Department to proceed further as per the Finance Act, 2021, subject to compliance of all the procedural requirements and defences available to the assessee under the substituted provisions under the Finance Act, 2021. The fact that the Hon'ble Supreme Court allowed the notice earlier issued under section 148 be treated as notice one under section 148A and further it was also be treated as the show cause notice issued under section 148A(b) by itself establishes the fact the directions given by the Hon'ble Supreme Court for the respondent-Department was to proceed further in accordance with the substituted provisions which stood introduced by the Finance Act, 2021.

30. In the instant case, undisputedly the respondent-Department has not proceeded against the petitioner under the substituted provisions of the Finance Act, 2021. Rather, it proceeded with the unamended provisions of law. This in other words takes the position back to the stage as it stood when the initial notices under section 148 under the unamended provisions of law were issued. This in other words also takes us to a position or a stage prior to the large number of writ petitions being allowed across the country, approximately 9,000 in number and confirmed by the Hon'ble Supreme Court also vide the judgement of Ashish Agarwal, supra.

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.

32. The Hon'ble Supreme Court in the case of Chandra Kishore Jha v. Mahaveer Prasad [1999] 8 SCC 266 in paragraph No. 17 laying down the aforesaid principle held as under "it is well settled solitary principle that if statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. The said principle of law was further reiterated in the case of Cherrukuri Mani v. Chief Secretary Government of Andhra Pradesh [2015] 13 SCC 722, wherein, again in paragraph No. 14, the aforesaid principle has been reinforced by the Hon'ble Supreme Court holding that "where law prescribe a thing to be done in a particular manner following a particular procedure, it shall have to be done in the same manner following the provisions of law without deviating from the prescribed procedure. The said principle has again recently been reiterated and followed in the case of Municipal Corporation Greater Mumbai (MCGM) v. Abhilash Lal [2019] 111 taxmann.com 405/[2020] 157 SCL 477 (SC)/[2020] 13 SCC 234, and in the case of Opto Circuit India Ltd. v. Axis Bank [2021] 127 taxmann.com 290/165 SCL 703 (SC)/[2021] 6 SCC 707 and again in the case of Union of India v. Mahendra Singh [CAP No. 4807 of 2022, dated 25-7-2022]. In the case of Tata Chemicals Ltd. v. Commissioner of Customs (preventive) Jam Nager [2015] 58

[taxmann.com 126/\[2015\] 11 SCC 628](#), wherein it has been held that there can be no stopple against the law. If the law requires something to be done in a particular manner, then it must be done in that manner, if it is not done in that manner then it would have no existence in the eye of law. In paragraph 18 of the said judgment, the Hon'ble Supreme Court held as under:

"The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person."

33. If we look into the principle of law laid down by the Hon'ble Supreme Court as enumerated in the preceding paragraphs and when we look into the facts of the present case, it would clearly reflect that the Parliament had by virtue of the Finance Act 2021, brought certain amendments to the provisions of the Income-tax Act, more particularly, in respect of the manner in which the reassessment and the procedure to be adopted by the Income-tax Department. The amendment was brought with an intention to make the law more transparent and effective. The Hon'ble Supreme Court also while deciding the case of Ashish Agarwal, supra, as is discussed with in the preceding paragraph had specifically directed the Union of India to proceed further in terms of the substituted provisions brought in by way of Finance Act 2021.

34. What is also relevant to take note of the fact that the Hon'ble Supreme Court while exercising its power under Article 142 of the Constitution of India has also not relaxed the applicability of the Finance Act 2021. Rather, the Hon'ble Supreme Court in very clear and unambiguous terms had held that the notices issued under the un-amended provisions, which were struck down by the High Court, shall be treated as a notice under new amended provisions and the Union of India was directed to proceed further from that stage in terms of the amended provisions of law. In spite of such specific clear directions by the Hon'ble Supreme Court, the Union of India for reasons best known again proceeded with the procedure as it stood prior to the amended provisions which came into force from 1-4-2021.

35. In view of the aforesaid discussions, it is by now very clear that the procedure to be followed by the respondent-Department upon treating the notices issued for reassessment being under section 148A, the subsequent proceedings was mandatorily required to be undertaken under the substituted provisions as laid down under the Finance Act, 2021. In the absence of which, we are constrained to hold that

the procedure adopted by the respondent-Department is in contravention to the statute i.e. the Finance Act, 2021, at the first instance. Secondly, it is also in direct contravention to the directives issued by the Hon'ble Supreme Court in the case of Ashish Agarwal, supra.

36. For all the aforesaid reasons, the impugned notices issued and the proceedings drawn by the respondent-Department is neither tenable, nor sustainable. The notices so issued and the procedure adopted being per se illegal, deserves to be and are accordingly set aside/quashed. As a consequence, all the impugned orders getting quashed, the consequential orders passed by the respondent-Department pursuant to the notices issued under section 147 and 148 would also get quashed and it is ordered accordingly. The reason we are quashing the consequential order is on the principles that when the initiation of the proceedings itself was procedurally wrong, the subsequent orders also gets nullified automatically.

37. The preliminary objection raised by the petitioner is sustained and all these writ petitions stands allowed on this very jurisdictional issue. Since the impugned notices and orders are getting quashed on the point of jurisdiction, we are not inclined to proceed further and decide the other issues raised by the petitioner which stands reserved to be raised and contended in an appropriate proceedings."

11. Considering the notices mentioned elsewhere, in light of the decisions of the Hon'ble Jurisdictional High Court and Hon'ble Telangana High Court, we have no hesitation to hold that the notices so issued and the procedure adopted being *per se* illegal and the impugned notices deserve to be set aside/quashed thereby quashing the resultant assessment order. Since we have set aside the impugned notices, we do not find it necessary to delve into the merits of the case.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 17th October, 2024 at Mumbai.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 17/10/2024

RC S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai