आयकर अपीलीय अधिकरण, **'सी'** न्यायपीठ**,** चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'C' BENCH: CHENNAI** **श्री एबी टी. वर्की, न्यायिक सदस्य एवं** श्री **अमिताभ शुक्ला,** लेखा सदस्य **के समक्ष** **BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND** **SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**		
आयकर अपील सं./**ITA No.1177/Chny/2025** निर्धारण वर्ष**/Assessment Year: 2016-17**		
Furshana Garments, No.23, II Narayanan Street, Seven Wells, Chennai-600 001.	**v.**	The ITO, Non-Corporate Ward-11(3), Chennai.
[**PAN: AAAFF 7033 N**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr.N. Arjun Raj, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms. Anitha, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	09.07.2025
घोषणाकीतारीख /Date of Pronouncement	:	25.08.2025

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as 'Ld.CIT(A)'), Delhi, dated 31.03.2025 for the Assessment Year (hereinafter referred to as 'AY') 2016-17.

2. At the outset, the Ld.AR of the assessee drawing our attention to the legal issue raised by the assessee submitted that the entire re-assessment order is vitiated since the notice u/s.148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') conveying the desire of the

AO to re-open the assessment is bad in law because it was issued by the Jurisdictional Assessing Officer (JAO), Smt. N. Santhi, Non-Corporate Ward-11(3), Chennai, dated 28.03.2023 u/s.148 of the Act. According to the Ld.AR, on or after 29.03.2022, only Faceless Assessing Officer (FAO) had the jurisdiction to issue notice u/s.148 of the Act. And since, the reopening notice in this case was issued by the JAO, consequent actions culminating in framing of re-assessment order dated 27.02.2024 u/s.147 r.w.s.144 r.w.s.144B of the Act is bad in law and for such a proposition, he relied on the binding decision of the Hon'ble Madras High Court (DB) order in Mark Studio India (P) Ltd. v. ITO [W.A.No.781 of 2025 dated 24.06.2025 concurring with the ratio laid down by the Hon'ble Bombay High Court in the case of Hexaware Technologies Ltd. v. ACIT reported in 464 ITR 430 (Bombay) (HC) wherein their Lordships has dealt with this legal issue and held in favour of the assessee by observing as under:

> 32 As regards issue no.4, Section 151A reads as under:
>
> > (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 Gauri Gaekwad 63/87 904.WP-1778-2023.doc

(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 vs. Income Tax Officer (TDS)13 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 1 st 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 statue, itself causes prejudice to assessee. All assessees 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 31.03.2022, 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 randomized 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 1 st 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 assessees 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 categoric 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 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 Officer14 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. We are also of the same view.

3. Thus, it can be noted that the Hon’ble Bombay High Court in the case of Hexaware Technologies Ltd., (supra) has even dealt with the decision rendered by the Hon’ble Calcutta High Court in favour of the Revenue, but concurred with the view of the Hon’ble Telangana High Court in the case of Sri Venkataramana Reddy Patloola v. DCIT reported

in [2023] 156 taxmann.com 178 (Telangana) and held that in view of the provisions of Sec.151A of the Act read with Faceless Scheme dated 29.03.2022, notices issued by the JAO u/s.148A(d)/148 of the Act was invalid and bad in law. We further note that aforesaid decision of the Hon'ble Telangana High Court has been followed not only by the Hon'ble Bombay High Court, but also by the Hon'ble Gauhati High Court in the case of Ram Narayan Sah v. Union of India reported in 163 taxmann.com 478, and the Hon'ble Punjab & Haryana High Court in the case of Jatinder Singh Bhangu v. Union of India reported in 165 taxmann.com 115.

4. In the light of the aforesaid discussion, we find that since the JAO has issued notice u/s.148A(b) of the Act dated 17.03.2023 followed by order u/s.148A(d) of the Act dated 28.03.2023 and followed by notice u/s.148 dated 28.03.2023 which impugned notices have been issued despite Faceless Scheme was notified by Central Government on 29.03.2022 pursuant to section 151A of the Act, making it mandatory for the issuance of notice u/s.148A(b), 148A(d) as well as 148 of the Act by the Faceless Mechanism, the impugned notices especially issued u/s.148 dated 28.03.2023 is found to be invalid and bad in law, since it has been issued contrary to law and is against the 'Rule of Law'; which vitiates the impugned notice dated 28.03.2023 u/s.148 of the Act, so is held to be illegal and bad in law and therefore, the consequent assessment order

dated 27.02.2024 is also null in eyes of law; and the assessee succeeds, and the legal issue is held in favour of the assessee and therefore, we are inclined not to go into the merits of the addition made by the AO.

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

Order pronounced on the 25th day of August, 2025, in Chennai.

Sd/-	**Sd/-**
(अमिताभ शुक्ला)	**(एबी टी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 25th August, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**
1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF