

[2024] 167 taxmann.com 371 (Gujarat)/[2024] 301 Taxman 321 (Gujarat)/[2024] 469 ITR 643 (Gujarat)[01-10-2024]

INCOME TAX : Method of automated allocation, for issuance of notice under section 148 in a faceless manner, as per scheme framed vide notification dated 29-3-2022, cannot be applied to case of search and seizure under section 132, where JAO is required to record his satisfaction on basis of material for affirmation of opinion in an honest and bonafide manner

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[2024] 167 taxmann.com 371 (Gujarat)

HIGH COURT OF GUJARAT

Talati and Talati LLP

v.

Assistant Commissioner of Income-tax*

**MRS. SUNITA AGARWAL, CJ
AND PRANAV TRIVEDI, J.**

**R/SPECIAL CIVIL APPLICATION NOS. 13198 AND 13225 OF 2024
OCTOBER 1, 2024**

Section 148, read with sections 132 and 151A, of the Income-tax Act, 1961 - Income Escaping Assessment - Issue of notice for (Explanation 1 and 2) - Assessment year 2021-22 - Jurisdictional Assessing Officer (JAO) had issued reopening notice to assessee in physical mode - Assessee challenged impugned reopening notice on ground that said notice had been issued in violation of section 151A, which provides for faceless assessment of income escaping assessment - It was noted that satisfaction notes were supplied to assessee for relevant assessment year - Whether as per Explanation 1 and Explanation 2 to section 148, method of automated allocation, for issuance of notice under section 148 in a faceless manner, as per scheme framed vide notification dated 29-3-2022, cannot be applied to case of search and seizure under section 132, where JAO is required to record his satisfaction on basis of material for affirmation of opinion in an honest and bonafide manner - Held, yes - Whether thus, challenge to notice under section 148 on sole premise that said notice could have been issued only through automated allocation in faceless manner and not by Jurisdictional Assessing Officer, could not be sustained - Held, yes [Paras 25, 28 and 32] [In favour of revenue]

Circular and Notification : Notification No. 18/2022/F. No. 370142/16/2022-TPL, dated 29-3-2022

FACTS

- The assessee was a limited liability partnership and was running professional services/consultancy/advisory in the field of Chartered Accountancy. It had filed original return of income under section 139.
- The Jurisdictional Assessing Officer (JAO) had issued reopening notice to assessee in physical mode.
- In instant writ, the assessee had challenged the impugned reopening notice on ground that the said notice had been issued in violation of section 151A, as has been inserted by the Taxation and Other Laws

(Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 1-11-2022, which provides for faceless assessment of income escaping assessment.

HELD

- Section 148 is a procedure provided for issuance of notice in all cases of assessment, re-assessment or re-computation under section 147, which empowers the Assessing Officer to assess and reassess where any income chargeable to tax, in the case of an assessee, who has escaped assessment for any assessment year, subject to the provisions of sections 148 to 153. It may also be useful to note that section 148A inserted by the Finance Act, 2021 with effect from 1-4-2021 provides for inquiry, opportunity of hearing to the assessee before issuance of notice under section 148. [Para 20]
- A reading of the proviso to section 148A shows that the requirements to conduct an inquiry with the prior approval of the specified authority; provide opportunity of hearing to the assessee; consider reply of the assessee furnished in response to the show-cause notice; and decide on the basis of the material available on record including reply to the assessee, whether or not the case is fit to issue a notice under section 148, by passing an order, is not applicable in a case of search and seizure under section 132. The proviso will be attracted in a case where the Assessing Officer on the information received by him as a result of search under section 132, or requisitioned under section 132A, is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion etc., or any books of account/documents etc. seized in a search under section 132 or requisitioned under section 132A; in case of any other person on or after 1-4-2021, belongs to, pertain(s) to; or any information contained therein, relate to, the assessee. [Para 21]
- From a further reading of Explanation 1 and Explanation 2 attached to section 148, it is clear that the provisions under section 148 for issuance of notice before making assessment, re-assessment or re-computation under section 147 operate in two different ways. [Para 22]
- The provisions contained in Explanation 1 shows that the information with the Assessing Officer for the purpose of section 148, which suggests that the income chargeable to tax has escaped assessment under the Explanation would mean: (i) any information in the case of the assessee, for the relevant assessment year, in accordance with the risk management strategy formulated by the Board from time to time; or (ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or (iii) any information received under an agreement referred to in section 90 or section 90A; or (iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or (v) any information which requires action in consequence of the order of a Tribunal or a Court. On the contrary, Explanation 2 which deals with the information received during search and seizure operations under section 132 requires fulfilment of pre-requisites conditions, noted hereinbefore, in the submission of the revenue. [Para 23]
- The concept of Risk Management Strategy formulated by the Board is incorporated in Clause (i) of Explanation 1, as also specified in Clause 3 of the notification dated 29-3-2022 issued by the Central Government in accordance with the provisions of Explanation 1 clause (i) to section 148, which is not applicable in the case of information received during the course of search and seizure under section 132. [Para 24]
- From the language employed in the Explanation 1 and Explanation 2 to section 148, it is opined that the method of automated allocation, *i.e.* for random allocation of cases through algorithm, or by using suitable technological tools, including artificial intelligence and machine learning, in accordance with risk management strategy formulated by the Board, as referred to in Explanation 1 clause (i) to section 148, for issuance of notice under section 148 in a faceless manner, as per the scheme framed *vide* notification dated 29-3-2022, cannot be applied to the case of search and seizure under section 132, where the Jurisdictional Assessing Officer (JAO) is required to record his satisfaction on the basis of the material for affirmation of opinion in an honest and *bona fide* manner. [Para 25]
- There is substance in the submission of the revenue that recording of satisfaction by the Assessing Officer on a perusal of the information received by him as a result of search and seizure operation under section 132, requires application of human mind, inasmuch as, reasons affirmed on the part of the Satisfaction Note may also become subject matter of scrutiny by the Court in a case of challenge, where the Court in

exercise of power of judicial review may examine as to whether they are actuated by mala fides or passed on extraneous or irrelevant considerations. [Para 26]

- From the above, by reading all the relevant provisions of the Act as also the notification dated 29-3-2022 issued by the Central Government framing scheme for "E-Assessment of Income Escaping Assessment" under sub-sections (1) and (2) of section 151A, it is concluded that the challenge to the notice under section 148 dated 22-3-2024 for assessment year 2021-22 on the sole premise that the said notice could have been issued only through automated allocation in faceless manner and not by Jurisdictional Assessing Officer (JAO), cannot be sustained. [Para 28]
- The submission of the assessee that the Jurisdictional Assessing Officer (JAO) was not competent to issue the impugned notice under section 148 in a case of search and seizure under section 132, are not convincing. [Para 29]
- Moreover, section 151A contemplates framing of the scheme by the Central Government by notification in the official Gazette, even for the purpose of issuance of notice under section 148 in the case of re-assessment or sanction for issue of such notice under section 151, with the aim to impart greater efficiency, transparency and accountability by eliminating the interface between the income tax authority and the assessee or any other person to the extent technologically feasible. [Para 30]
- The feasibility of implying technology for the process, therefore, would be relevant. There may be a situation, where a scheme may be framed by the Central Government for issuance of the notice under section 148 even in the case of Search and Seizure under section 132, so as to meet out the expectations of the legislature under section 151A, to impart greater efficiency, transparency and accountability by applying artificial intelligence, technological innovations, etc., but as of now, from a careful reading of the notification dated 29-3-2022, along with the statutory provisions, it is found that the aforesaid notification does not cover a case where notice under section 148 is issued by the Jurisdictional Assessing Officer (JAO) the information received by him in the matter of search and seizure under section 132, or requisitioned under section 132A. [Para 31]
- The challenge to the impugned notice on the ground of lack of jurisdiction of the Jurisdictional Assessing Authority is, accordingly, turned down. [Para 32]
- However, it is further noted that two Satisfaction Notes for assessment years 2021-22 and 2022-23 dated 22-3-2024 and 7-3-2024 have been supplied to the assessee in the compilation submitted on behalf of the revenue. It was also placed by the revenue that after issuance of the impugned notice under section 148, the instant case has proceeded to the stage of issuance of the notice under section 142(1). The said notice has been issued by the Verification Unit of the Faceless Assessment Centre. [Para 33]
- Therefore, it is found fit and proper to dispose of the present petitions with the observation that the assessees may pursue his remedy matters before the Competent Authority and may ask for virtual hearing, if the need be, to participate in the proceedings, which have to be brought to their logical end, strictly in accordance with law. [Para 34]

CASES REFERRED TO

Hexaware Technologies Ltd. v. Asstt. CIT [2024] 162 taxmann.com 225/464 ITR 430 (Bombay) (para 8), *Union of India v. Suryalakshmi Cotton Mills* [Special Leave to Appeal (C) No. 27736 of 2023] (para 9) and *Principal DIT (Investigation) v. Laljibhai Kanjibhai Mandalia* [2022] 140 taxmann.com 282/288 Taxman 361/446 ITR 18 (SC) (para 13).

Sudhir M. Mehta and Ms. Shailee S. Mehta for the Petitioner. Nikunt K. Raval and Mrs. Kalpana K Raval for the Respondent.

ORDER

Sunita Agarwal, CJ. - The only question for consideration before us in the above noted two petitions is about the legal validity of the Show-cause Notice issued under Section 148 of the Income Tax Act' 1961 (for short, "the Act' 1961") dated 22.03.2024 for the Assessment year 2021 - 2022. There is no factual dispute with the

consent of the learned counsels for the parties, the matter has been heard at the admission stage without calling for the affidavits, and is being decided as under.

2. For convenience, reference to the facts of the Special Civil Application No.13198 of 2024 would suffice. The petitioner herein is a Limited Liability Partnership registered under the Limited Liability Partnership Act' 2008 and is running professional services / consultancy / advisory in the field of Chartered Accountancy. It is stated in the writ petition that the petitioner had filed original Return of income under Section 139 of the Act' 1961 on 14.03.2022 and further Return of income was filed on 30.05.2024 for the A.Y. 2021 - 2022, declaring its income in response to the notice under Section 148 of the Act' 1961. The copy of the acknowledgment of Return of income and Computation of income for A.Y. 2021 - 2022 is appended as Annexure - B to the writ petition.

3. The sole ground to challenge the impugned notice under Section 148 of the Act' 1961 is that the said notice has been issued by the Jurisdictional Assessing Officer (JAO) in violation of Section 151A of the Act' 1961, as has been inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act' 2020 with effect from 01.11.2022, which provides for faceless assessment of income escaping assessment. The Central Government has been empowered under Section 151A of the Act' 1961 to formulate a scheme aimed at improving efficiency, transparency and accountability in assessment, re-assessment and re-computation processes of Income tax under Sections 147, 148 and 151 of the Act' 1961.

4. The Central Government has, accordingly, introduced a scheme through the notification dated 29.03.2022 published in the official Gazette with regard to "E-Assessment of Income Escaping Assessment" with effect from the date of issuance of the notification and has provided for issuance of notice under Section 148 of the Act through automated allocation in faceless manner.

5. The contention is that with the said scheme dated 29.03.2022 framed by the Central Government, it is mandatory for the revenue to issue notice under Section 148 through automated allocation. The said notification does not leave any discretion to the department to choose any other method as the same is mandatory. In the instant case, the notice under challenge has been issued by the Jurisdictional Assessing Officer (JAO) in physical mode and not through automated allocation in faceless manner, the same is, therefore, liable to be quashed.

6. In addition to the above, it is stated in the writ petition that the revenue has not provided reasons / satisfaction note for re-opening of the case for reassessment nor any document / material or sanction, required under Section 151 of the Act has been supplied by the respondents. There is no whisper of escapement of income in the notice issued under Section 148, impugned herein.

7. Elaborating his submissions, learned counsel for the petitioner has placed before us the notification dated 29.03.2022 notifying the scheme for "E-Assessment of Income Escaping Assessment 2022", issued in exercise of powers conferred by Sub-sections (1) and (2) of Section 151 A of the Act' 1961, which reads as under:-

"NOTIFICATION S.O. 1466(E) [NO. 18/2022/F. NO. 370142/16/2022- TPL(PART1)]

E-ASSESSMENT OF INCOME ESCAPING ASSESSMENT SCHEME, 2022

NOTIFICATION S.O. 1466(E) [NO. 18/2022/F. NO. 370142/16/2022-TPL(PART1)], DATED 29-3-2022

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:-

Short title and commencement

1. (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.

Definitions

2. (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.

Scope of the Scheme

3. 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.

SHEFALI SINGH, Under Secy."

8. It is further brought before us that a Division Bench of the High Court of Bombay in *Hexaware Technologies Ltd. v. Asstt. CIT* [2024] 162 taxmann.com 225/464 ITR 430 (Bombay) has decided the issue about the authority of the JAO (Jurisdictional Assessing Officer) issuing notice contrary to the Notification dated 29.03.2022. It was noted by the Division Bench that the Central Government has framed the scheme under Section 151A of the Act¹ 1961, which was laid before both the Houses of the Parliament as per Section 151A (3) of the Act¹ 1961 and that the said notification has to be scrupulously followed. Any deviation from the scheme based on subsequent guidelines issued by the CBDT being internal guidelines, having no statutory force, having not been issued under Section 109 of the Act¹ 1961 will not be permissible as it will not override the provisions of Section 151A, which provides for framing of the scheme by the Central Government for faceless assessment of income escaping scheme.

9. It was urged that the law laid down by the Division Bench has been followed by various high Courts including Bombay High Court, Punjab and Haryana High Court and Himachal Pradesh High Court. Further, in the case of *Union of India v. Suryalakshmi Cotton Mills* [Special Leave to Appeal (C) No. 27736 of 2023], the issue is engaging attention of the Apex Court.

10. Mr. Nikunt Raval, learned advocate appearing for the Respondent - Revenue has referred the Office Memorandum dated 12.01.2024 issued by the CBDT addressed to all Principal Commissioners of Income Tax, Director Generals of Income Tax (Inv.) and Chief Commissioners of Income Tax (Central) on the subject "Uploading of information on the CRIU / VRU Functionality for the implementation of Risk Management Strategy (RMS)" (the portal), with reference to a previous Circular dated 11.01.2023.

11. It was submitted that as per the direction contained therein the information is to be uploaded on the portal for the purpose of Risk Management Strategy so that sufficient time may be available to the field officer for taking timely action as per the Act.

12. It is stated therein that as per Paragraph 3(iii) of the F.No. 225 / 135 / 2021 / ITA - II (Part - I) dated 11.01.2023 "information arising out of search or survey action" was to be uploaded on CRIU / VRU. However information, which is arising out of Search and Survey cases, is not required to be uploaded on the portal (CRIU / VRU) since it does not require Risk Management Strategy and in such cases, information should not be uploaded on the portal, but it should be sent directly to the JAO for taking action under the Act. Explanation 2 of Section 148 reproduced therein is relevant to be noted hereinunder for ready reference:

"Explanation 2.—For the purposes of this section, where,—

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under sub-section (2A) [***] of that section, on or after the 1st day of April, 2021, in the case of the assessee; or (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee [where] the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person."

13. It is further submitted by the learned advocate appearing for the Revenue that the Apex Court in the case of *Principal DIT (Investigation) v. Laljibhai Kanjibhai Mandalia* [2022] 140 taxmann.com 282/288 Taxman 361/446 ITR 18 (SC) has elaborated the principles in exercise of writ jurisdiction in the matter of search and seizure under Section 132 of the Act. In the said case, the High Court had quashed the Warrant of Authorization dated 07.08.2018 issued by the department under Section 132 of the Income Tax Act' 1961 rendering all actions pursuant to the Warrant of Authorization as invalid. The Apex Court, upturning the order of the High Court, has laid down the principles as follows:-

"33 . We would like to restate and elaborate the principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 of the Act as follows:

- (i) The formation of opinion and the reasons to believe recorded is not a judicial or quasi-judicial function but administrative in character.
- (ii) The information must be in possession of the authorised official on the basis of the material and that the formation of opinion must be honest and bona fide. It cannot be merely pretence. Consideration of any extraneous or irrelevant material would vitiate the belief/satisfaction.
- (iii) The authority must have information in its possession on the basis of which a reasonable belief can be founded that the person concerned has omitted or failed to produce books of accounts or other documents for production of which summons or notice had been issued, or such person will not produce such books of accounts or other documents even if summons or notice is issued to him.
- (iv) Such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed.
- (v) Such reasons may have to be placed before the High Court in the event of a challenge to formation of the belief of the competent authority in which event the Court would be entitled to examine the reasons for the formation of the belief, though not the sufficiency or adequacy thereof. In other words, the Court will examine whether the reasons recorded are actuated by mala fides or on a mere pretence and that no extraneous or irrelevant material has been considered.
- (vi) Such reasons forming part of the satisfaction note are to satisfy the judicial consciousness of the Court and any part of such satisfaction note is not to be made part of the order.
- (vii) The question as to whether such reasons are adequate or not is not a matter for the Court to review in a writ petition. The sufficiency of the grounds which induced the competent authority to act is not a justiciable issue.
- (vii) (i) The relevance of the reasons for the formation of the belief is to be tested by the judicial restraint as in administrative action as the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. The Court shall not examine the sufficiency or adequacy thereof.
- (ix) In terms of the Explanation inserted by the Finance Act, 2017 with retrospective effect from 1-4-1962, such reasons to believe as recorded by the Income Tax Authorities are not required to be disclosed to any person or any authority or the Appellate Tribunal."

14. The contention of the learned counsel for the revenue is that the concept of automated allocation, i.e. application of algorithm for randomized allocation of cases by using suitable technological tools including Artificial Intelligence and Machine Learning, as defined in Clause 2(1)(b) of the Scheme dated 29.03.2022, cannot be applied in a case of Search and Seizure under Section 132, inasmuch as, issuance of notice under

Section 148 of the Income Tax Act' 1961, in such cases, is governed by explanation to Section 148, extracted hereinbefore.

15. The issuance of notice under Section 148 in the case of Search and Seizure under Section 132 requires fulfillment of the pre-requisites, namely the recording of satisfaction by the Assessing Officer with the prior to approval of the Principal Commissioner or Commissioner; that

- (i) any money, bullion, jewellery or other valuable article or thing, assessed or requisitioned under Section 132 or Section 132A, in case of any other person on or after 01.04.2021, belongs to the assessee;
- (ii) or any books of accounts or documents, seized or requisitioned under Section 132 or Section 132A, in case of any other person on or after 01.04.2021, pertain(s) to, or any information contained therein, relate to, the assessee.

16. The submission is that recording of satisfaction by the Jurisdictional Assessing Officer, as a mandatory pre-requisite, would require that such officer must have formed an honest and *bona fide* opinion on the basis of the material / information received by him. The affirmation of opinion and the reasons to believe recorded though is a function which is administrative in character, but in the event of a challenge to the affirmation of the belief of the competent authority, the Court would be entitled to examine the reasons for affirmation of the belief, that whether the reasons recorded are actuated by mala fides or on a mere pretence or that no extraneous or irrelevant material has been considered. Though, such reasons affirming part of the Satisfaction Note are not to satisfy the judicial consciousness of the Court.

17. The said inquiry, within the jurisdiction of the Court, is necessary to arrive at the conclusion that the Jurisdictional Assessing Officer is not guided by any extraneous or irrelevant consideration and his action is honest and bona fide.

18. The submission is that pre-requisite conditions before issuance of notice under Section 148, as provided in Explanation 2 of Section 148 would require human application of mind and cannot be fulfilled by algorithm. Moreover, the concept of automated allocation in accordance with the Risk Management Strategy formulated by the Board, as referred to in Explanation 1 to Section 148 of the Act' 1961 for issuance of notice in a faceless manner, is not applicable in a case of reassessment as a result of Search and Seizure under Section 132 of the Act' 1961.

19. It was urged that *Hexaware Technologies Ltd. (supra)*, relied upon by the learned counsel for the petitioner is not in a case of Search and Seizure under Section 132 and would not cover the requirement of Explanation 2 of Section 148.

20. Considering the said submissions, we may record that Section 148 of the IT Act' 1961, is a procedure provided for issuance of notice in all cases of assessment, re-assessment or re-computation under Section 147, which empowers the Assessing Officer to assess and reassess where any income chargeable to tax, in the case of an assessee, who has escaped assessment for any assessment year, subject to the provisions of Sections 148 to 153. It may also be useful to note that Section 148A inserted by the Finance Act' 2021 with effect from 01.04.2021 provides for inquiry, opportunity of hearing to the assessee before issuance of notice under Section 148. Section 148A reads as under:

"148A. The Assessing Officer shall, before issuing any notice under section 148,—

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, [***] by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, [relate to, the assessee; or
- (d) the Assessing Officer has received any information under the scheme notified under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.]

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.

21. A reading of the proviso to Section 148A shows that the requirements to conduct an inquiry with the prior approval of the specified authority; provide opportunity of hearing to the assessee; consider reply of the assessee furnished in response to the show-cause notice; and decide on the basis of the material available on record including reply to the assessee, whether or not the case is fit to issue a notice under Section 148, by passing an order, is not applicable in a case of Search and Seizure under Section 132. The proviso will be attracted in a case where the Assessing Officer on the information received by him as a result of search under Section 132, or requisitioned under Section 132A, is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion etc., or any books of accounts / documents etc. seized in a search under Section 132 or requisitioned under Section 132A; in case of any other person on or after 01.04.2021, belongs to, pertain(s) to; or any information contained therein, relate to, the assessee.

22. From a further reading of Explanation 1 and Explanation 2 attached to Section 148, it is clear that the provisions under Section 148 for issuance of notice before making assessment, re-assessment or re-computation under Section 147 operate in two different ways. For the purpose of Section 148, where Section 148A is applicable, Explanation 1 provides:

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information [***] in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; or
- (ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act;
- or
- (iii) any information received under an agreement referred to in section 90 or section 90A of the Act; or

(iv) any information made available to the Assessing Officer under the scheme notified under section 135A; or

(v) any information which requires action in consequence of the order of a Tribunal or a Court.]

23. The provisions contained in Explanation 1 shows that the information with the Assessing Officer for the purpose of Section 148, which suggests that the income chargeable to tax has escaped assessment under the Explanation would mean:

- (i) any information in the case of the assessee, for the relevant assessment year, in accordance with the risk management strategy formulated by the Board from time to time; or
- (ii) any audit objection to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- (iii) any information received under an agreement referred to in Section 90 or Section 90A of the Act; or
- (iv) any information made available to the Assessing Officer under the scheme notified under Section 135A; or
- (v) any information which requires action in consequence of the order of a Tribunal or a Court.

On the contrary, Explanation 2 which deals with the information received during search and seizure operations under Section 132 requires fulfillment of pre-requisites conditions, noted hereinbefore, in the submission of the learned counsel appearing for the Revenue.

24. The concept of Risk Management Strategy formulated by the Board is incorporated in Clause (i) of Explanation 1, as also specified in Clause 3 of the notification dated 29.03.2022 issued by the Central Government in accordance with the provisions of Explanation 1 clause (i) to Section 148, which is not applicable in the case of information received during the course of search and seizure under Section 132.

25. From the language employed in the Explanation 1 and Explanation 2 to Section 148 of the Act' 1961, we reach at an opinion that the method of automated allocation, *i.e.* for random allocation of cases through algorithm, or by using suitable technological tools, including artificial intelligence and machine learning, in accordance with risk management strategy formulated by the Board, as referred to in Explanation 1 clause (i) to Section 148 of the Act, for issuance of notice under Section 148 in a faceless manner, as per the scheme framed *vide* notification dated 29.03.2022, cannot be applied to the case of Search and Seizure under Section 132, where the Jurisdictional Assessing Officer (JAO) is required to record his satisfaction on the basis of the material for affirmation of opinion in an honest and *bona fide* manner.

26. We find substance in the submission of the learned counsel for the Revenue that recording of satisfaction by the Assessing Officer on a perusal of the information received by him as a result of search and seizure operation under Section 132 of the Income Tax Act' 1961, requires application of human mind, inasmuch as, reasons affirmed on the part of the Satisfaction Note may also become subject matter of scrutiny by the Court in a case of challenge, where the Court in exercise of power of judicial review may examine as to whether they are actuated by mala fides or passed on extraneous or irrelevant considerations.

27. The decision of the Division Bench of the Bombay High Court in the case of *Hexaware Technologies Ltd. (supra)* has been rendered in a case, which falls within the arena of Explanation 1 to Section 148 and not where Explanation 2 to Section 148 of the Income Tax Act' 1961, would be attracted.

28. From the above, by reading all the relevant provisions of the Income Tax Act' 1961 as also the notification dated 29.03.2022 issued by the Central Government framing scheme for "E-Assessment of Income Escaping Assessment" under sub-sections (1) and (2) of Section 151 A of the Act' 1961, we reach at an irresistible conclusion that the challenge to the notice under Section 148 dated 22.03.2024 for A.Y. 2021 - 2022 on the sole premise that the said notice could have been issued only through automated allocation in faceless manner and not by Jurisdictional Assessing Officer (JAO), cannot be sustained.

29. The submission of the learned counsel for the petitioner that the Jurisdictional Assessing Officer (JAO) was not competent to issue the impugned notice under Section 148 in a case of Search and Seizure under Section 132 of the Act' 1961, are not convincing.

30. Moreover, Section 151A contemplates framing of the scheme by the Central Government by notification in the official Gazette, even for the purpose of issuance of notice under Section 148 in the case of re-assessment or sanction for issue of such notice under Section 151, with the aim to impart greater efficiency, transparency and accountability by eliminating the interface between the income tax authority and the assessee or any other person to the extent technologically feasible.

31. The feasibility of implying technology for the process, therefore, would be relevant. There may be a situation, where a scheme may be framed by the Central Government for issuance of the notice under Section 148 even in the case of Search and Seizure under Section 132 of the Act¹ 1961, so as to meet out the expectations of the legislature under Section 151A, to impart greater efficiency, transparency and accountability by applying artificial intelligence, technological innovations, etc., but as of now, from a careful reading of the notification dated 29.03.2022, along with the statutory provisions, we find that the aforesaid notification does not cover a case where notice under Section 148 is issued by the Jurisdictional Assessing Officer (JAO) the information received by him in the matter of Search and Seizure under Section 132 of the Act¹ 1961, or requisitioned under Section 132A.

32. The challenge to the impugned notice dated 22.03.2024 on the ground of lack of jurisdiction of the Jurisdictional Assessing Authority is, accordingly, turned down.

33. However, we may further note that two Satisfaction Notes for A.Y. 2021 - 2022 and A.Y. 2022 -2023 dated 22.03.2024 and 07.03.2024 have been supplied to the learned counsel for the petitioner in the compilation submitted on behalf of the revenue. It was also placed before us by the learned counsel for the revenue that after issuance of the impugned notice dated 22.03.2024 under Section 148 of the Act¹ 1961, the instant case has proceeded to the stage of issuance of the notice under Section 142 (1) dated 12.08.2024. The said notice is also part of the record at Page '41' of the Paperbook, and has been issued by the Verification Unit of the Faceless Assessment Centre.

34. We, therefore, find it fit and proper to dispose of the present petitions with the observation that the petitioners may pursue his remedy matters before the Competent Authority and may ask for virtual hearing, if the need be, to participate in the proceedings, which have to be brought to their logical end, strictly in accordance with law.

35. With the above, both the writ petitions stand disposed of. No order as to costs.

SANIYA

*In favour of revenue.