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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20th April, 2022
% ***Date of Decision: 1st June, 2022***

\+ W.P.(C) 4845/2022, CM APPL. 14449/2022, CM APPL. 14450/2022, CM APPL. 14451/2022, CM APPL. 16190/2022, CM APPL. 16191/2022

S K SRIVASTAVA ..... Petitioner

Through: Ms. Shubhi Srivasatava, Adv. with Mr. Privee Rawal with Petitioner in person.

versus

CENTRAL BOARD OF DIRECT TAXES AND OTHERS ..... Respondents

Through: Mr. Puneet Rai, Adv. with Mr. Karan Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

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Preface

1. The present writ petition under Article 226/227 has been filed by Sh. S. K. Srivastava (retired) seeking the following reliefs:

   (i) To set aside and quash the Notice dated 27.03.2021 alleged to have been issued to Writ Petitioner under Section 148 of Income Tax Act, 1961 (hereinafter referred as 'Act') for assessment year (A.Y.) 2016-17 for reassessment of alleged Salary Income of A.Y. 2016-17;

   (ii) To quash and set aside Notices under Section 142(1) for reassessment of A.Y. 2016-17, Orders dated 09.02.2022 and Notices dated 04.03.2022 under Section 142 (1) and under Section 144 of the Act for (A.Y.) 2016-17 of the National Faceless Assessment Centre (hereinafter referred as NFAC) for A.Y. 2016-17 for *ex-parte* assessment of writ petitioner.

Factual Background:-

2. The petitioner has invoked the writ jurisdiction of this Court to quash and set aside the notice dated 27.03.2021 issued under Section 148 of the Act for A.Y. 2016-17 and further notice issued under Section 142(1) of the Act for A.Y. 2016-17 and the order dated 09.02.2022 disposing of objections of National Faceless Assessment Centre. The petitioner has also challenged the notice dated 04.03.2022 issued under Section 144 of NFAC for framing an *ex-parte* assessment of Writ petitioner for A.Y. 2016-17. The petitioner has submitted that the petitioner did not have any income, as defined under Section 4 and therefore was not obliged to file return under

Section 139 (1). It has been further submitted that the Principle (CIT) (Delhi) had no jurisdiction over the address at Faridabad which is in the State of Haryana, on which notice under Section 148 was issued.

3. The petitioner has also challenged the notice issued under Section 148 as the same was not served within the prescribed time. It is further submitted that NFAC is only an administrative formation and not an Income Tax Authority as defined under Section 116 of the Act and nor is it included in the definition of the Assessing Officer (A.O.) as defined under Section 2(7A) to exercise the powers of framing an assessment. The petitioner has submitted that the action of the respondents is in violation of Article 265 of the Constitution of India.

4. The petitioner has also challenged the action of the respondents on the ground that he has not been given a physical hearing which is in violation of Section 136 of the Act as has been made mandatory by the law laid down in *"**Sabh Infrastructure Pvt. Ltd. Vs. ACIT**" and **Tata Capital Financial Ltd. Vs. ACIT, Circle 1 (3)(1) &Ors**.".*

Submissions made on behalf of the Petitioner:-

5. The plea of the petitioner is that notice dated 27.03.2021 was issued on an address at Faridabad, with which the petitioner has no concern and the notice was neither sent through e-mail nor by text message. The petitioner came to know of the notice for the first time on 24.12.2021 when the text message was sent by the A.O. to the wife of the petitioner, which she then forwarded to the petitioner.

6. The petitioner has stated that notice under Section 148 was bad

in law for want of territorial jurisdiction. Therefore, he moved representation under Section 124 (2) of the Income Tax Act dated 05.01.2022 for adjudication of issue by Central Board of Direct Taxes (CBDT). However, the representation has yet not been decided and is pending consideration before the CBDT.

7. The petitioner stated that A.O. ignoring the basic principle that every "receipt" is not "income" nor every "income" is a "receipt", assessed the salary income of the petitioner in the relevant assessment year as Rs. 53,21,021/-. The issue of territorial jurisdiction was also not addressed in violation of the CBDT Circular of 2014. The plea of the petitioner is that in fact in the relevant year, he was not paid any pay and allowances by the authorities. Aggrieved by this, the petitioner filed an O.A. No. 2094 of 2014 which was allowed by the Central Administrative Tribunal (CAT) by an order dated 29.04.2015 directing the respondents to pay the payments and allowances of the petitioner including the arrears thereof with interest at the rate of 12%. The department challenged this order before this Court by filing W.P.(C) No. 6768 of 2015. This Court directed release of the amount due to the petitioner. However, the respondents offered only half of the amount due. This Court vide order dated 12.10.2015, directed that in case amount offered was accepted by the petitioner that would be without prejudice to the rights and contentions of both the parties. The petitioner stated that the amount of Rs.53,21,021/-is a disputed amount and remains so during the pendency of the aforesaid W.P.(C) No.6768 of 2015. The petitioner accepted this amount as an "advance" that would have to be returned to the respondents by the

petitioner in case this Court decides the case against the petitioner. Therefore, this amount cannot be assessed as "income" and would remain as an Advance & is a liability in the hands of the petitioner.

8. The petitioner stated that the action of the respondent Nos. 4 and 5 are motivated on account of various litigations pending before Special Judge, CBI, Ghaziabad, High Court of Allahabad and Supreme Court.

9. The petitioner has stated that notice under Section 144 of the Act was issued on 04.03.2022 for *ex parte* assessment wherein respondent nos. 4 & 5 falsely stated that the petitioner was heard by the A.O. whereas, no such hearing had taken place. The petitioner stated that merely posting of a notice under Section 148 of the Act dated 27.03.2021 on the Income Tax portal would not amount to service upon the petitioner in view of Section 282 of the Act.

10. The petitioner has further stated that the notice under Section 148 was also time barred as for the A.Y. 2016-17, the notice should have been served only up to 31.03.2021, as the limitation date is within 4 years from the end of the assessment year from which notice was issued. As per the petitioner, since the notice was served on 24.12.2021 therefore, it is an invalid notice and is liable to be quashed.

11. The petitioner stated that as income tax authority is deemed to be a Civil Court under Section 136 of the Act therefore, the petitioner should have been given an opportunity of leading oral evidence to support/substantiate its case.

12. The petitioner argued in person and submitted that the

respondents have acted illegally and *malafidely* in violation of Constitution of India and the various provisions of the Act. The petitioner stated that in fact notice dated 27.03.2021 was never sent to him and he was informed of the said notice only on 24.12.2021 through a SMS to his wife. The petitioner stated that immediately after receipt of such information, the petitioner sent a communication dated 27.12.2021 to Sh. Rajat Bansal, IRS, Principal CCIT, Income Tax Department, Delhi objecting to the notice and mode of its service. The petitioner has also taken objection that the A.O. of Circle – 67 (1), Delhi did not have jurisdiction to issue the subject notice as the Principal, CCIT, Delhi did not have jurisdiction over Haryana. The petitioner stated that the said notice being illegal and invalid should be withdrawn.

13. The petitioner stated that as per the details in PAN Card No. ACXPS3661A his residence address was 6453, Pocket -6, Basant Kunj, Delhi and office address was Assistant Commissioner of Income Tax, CGO Complex, NH IV, Faridabad, Haryana -121001. He stated that the date of allotment of his PAN Card was 23.12.1998 and at that time, he was posted in Faridabad. However, thereafter, he was transferred to Rohtak and subsequently, to Delhi. The petitioner stated that at the relevant time i.e. 27.03.2021, he was not posted at Faridabad and thus had no concern with the address given in the notice under Section 148 of the Act. The petitioner further stated that he had given an application for change of address and on his application, the address on the PAN Card must have been changed.

14. The petitioner also invited our attention to the communication

dated 10.02.2022. He stated that as per this document, his objections were dismissed vide order dated 09.02.2022. It is stated that forgery has been committed by the department as an order cannot be of two dates i.e. of 09.02.2022 and 10.02.2022. The attention was also invited to Para- 5 of the said order whereby the date of the notice under Section 148 has been written as 27.01.2021 and stated that in fact this entire order is a forged and fabricated document. The petitioner also stated that in the assessment order dated 25.03.2022, it has falsely been stated that notice under Section 148 of the Act issued on 27.03.2021 was duly served upon him through Speed Post ED525117940IN dated 31.03.2022. The petitioner stated that he had received the information through RTI that no such consignment details were available.

15. The petitioner invited our attention to Article 265 of the Constitution of India which provides that no tax can be levied or collected except by authority of law. The petitioner stated that NFAC has no authority of law to collect tax therein. The petitioner has further invited our attention to Section 4 of the Act which provides that income tax can be charged only in respect of income of the previous year of every person. Further attention has been invited to definition of "income" as given in Section 5 of the Act which provides that income shall include that income which is either "receipt" or has "accrued" or "arisen". It has been submitted that in the relevant assessment year, there was no income which has accrued, arisen or received. The petitioner has also invited our attention to Sections 120 and 124 of the Act which defines jurisdiction of income

tax authorities and jurisdiction of Assessing Officers. The petitioner stated that as notice under Section 148 was issued without any jurisdiction, he had moved a representation under Section 124 (2) before the competent authority which has yet not been decided. The petitioner also relied upon Section 139 (1) to state that he had no obligations to file the return as there was no income liable to be assessed in the relevant year. The petitioner has invited our attention to the notification dated 28.12.2021, issued by Ministry of Finance, Central Board of Direct Taxes. It has been submitted that in this notification, power of AO has not been conferred. It has been stated that merely in Clause 2 (XVII) of Notification dated 28.12.2021, NFAC has been stated to have been set up and notified under Section 144 B of the Act. The petitioner stated that the act and conduct of the respondents issuing notice dated 27.03.2021 under Section 148are illegal and, thus, the notice and all further actions be quashed and set aside.

16. The petitioner in the compilation filed by him has relied upon following judgments:-

- ***Tata Capital Finance Services Ltd. vs Assistant Commissioner of Income Tax, Circle 1 (3) &Ors***. *W.P.(C) No.546/2022*
- ***Sabh Infrastructure Ltd. vs. Assistant Commissioner of Income Tax,*** W.P.(C)1357/2016
- ***Omkar Nath vs National Faceless Centre, Delhi & Another***; WP (C) No. 6158/2021
- ***Daujee Abhushan Bhandar Pvt. Ltd. vs Union of India & 2 Others***, WRIT TAX No. 78/2022

- ***Ghaziabad vs Globus Construction Pvt. Ltd***. ITA No. 1185/Del./2020
- ***CIT, Shimla vs. M/s Green World Corporation***, (2009) 314 ITR 81
- ***Commissioner of Income Tax & Others. vs Chhabil Das Agarwal*** (2014) 1 SCC 603
- ***Assistant Commissioner of Income Tax & Another vs M/S Hotel Blue Moon*** (2011) 32, ITR 362 SC
- ***SK Srivastava, IRS vs Union of India and Others***; WP (C) NO 6691/2014
- ***Income Tax Officer, Ward 2(3), Noida vs Neeraj Goel***, ITA NO 6290/Del/2017
- ***Income Tax Officer, Ward 2(3), Noida vs Neeraj Goel***, ITA NO 6290/Del/2017
- ***SK Srivastava, IRS vs Union of India & Others***. O.A No.2094/2014
- ***Union of India &Ors. vs SK Srivastava & Ors.*** WP(C) 6768/2015
- ***Union of India &Ors. vs SK Srivastava &Ors.*** WP(C) 6768/2015

17. The petitioner stated that in ***Tata Capital Finance Services*** (supra), the High Court of Bombay *inter alia* held that the personal hearing shall be given and minimum seven working days advance notice of such personal hearing be granted. The petitioner stated that the A.O. has not followed the judicial dictum and failed to afford

personal hearing to the petitioner.

18. In ***Sabh Infrastructure v. Assistant Commissioner of Income Tax***, the guidelines laid down by the Court, in the matter of re-opening of assessments, are as follows;

(i) While communicating the reasons for reopening the assessment, the copy of the standard form used by the A.O., for obtaining the approval of the Superior Officer should itself be provided to the Assessee. This would contain the comment or endorsement of the Superior officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the A.O. to the Assessee is to be avoided;

(ii) The reasons to believe ought to spell out all the reasons and grounds available with the A.O. for re-opening the assessment – especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the A.O. on the same and if so, the conclusions thereof;

(iii) Where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed along with the reasons;

(iv) The exercise of considering the Assessee's objections to the reopening of assessment is not a mechanical ritual. It

is a quasi-judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add the reasons for reopening of the assessment beyond what has already been disclosed.

19. The petitioner stated that in the present case the department failed to follow the above guidelines.

20. The petitioner submitted that in ***Omkar Nath Vs. National Faceless Assessment Centre, Delhi & Another***; **WP (C) NO 6158/2021,** this Court allowed the prayer of the assessee and set aside the impugned assessment order as well as consequential notices, demand notice issued under Section 156 and notice initiating penalty proceedings u/s 270A of the Act on the grounds that assessee was not granted an opportunity of personal hearing as prescribed under Section 144B (7)(vii) of the Act and further granted liberty to AO to proceed further as per law, if so desired. The petitioner submitted that he was also not provided an opportunity of personal hearing.

21. The petitioner has further relied upon ***Dauji Aabhushan Bhandar*** (Supra) wherein, it was *inter-alia* held that the point of time when a digitally signed notice in the form of electronic record is entered into computer resources outside the control of the originator i.e., the Assessing Authority that shall be the date and time of issuance of notice under Section 148 with read with Section 149 of the Act. The petitioner stated that in the present case, there is no material on the record showing that the notice after having been

digitally signed entered into computer resources outside the control of the originator i.e., the Assessing Authority on or before 31.03.2021.

22. The petitioner has further relied upon ***Commission of Income Tax v. Chhabildass Aggarwal*** (supra). The petitioner stated that the Hon'ble Supreme Court in this case has held that a writ may not be entertained if the remedy provided under the Statute is substantial and not a mere formality. The petitioner stated that in the present set of facts the remedy provided under the statute is a mere formality.

23. The petitioner has further relied upon ***Assistant Commissioner of Tax & Anr. v. Hotel Blue Moon***, (Supra) whereby the Supreme Court opined that there is no reason to restrict the scope and meaning of the expression "so far as may be apply" as mentioned in Section 158 BC (b) and held that where the Assessing officer in repudiation of the return filed under Section 158BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of Section 142, sub section (2) and (3) of Section 143

24. The petitioner has also filed written submissions. The petitioner stated that while this Court was seized of the matter, respondents issued orders stated to be Assessment Order and its consequential orders. It was further submitted that relief is sought mainly because there was no "subject matter jurisdiction" with CBDT itself as bar of Article 265 of the Constitution was not lifted.

25. The petitioner further submitted that the NFAC is neither an Income Tax Authority under Section 116 of the Act nor A.O. under Section 2(7A). NFAC has also not been assigned powers of A.O. under Section 135 nor is competent to conduct income tax proceeding

under Section 136 nor is authorized under Rule 12 E to exercise Statutory functions. It was submitted that orders passed by NFAC are nullity ex-facie. In every Notification relied upon by respondents words used are "to serve" and not "to issue". The jurisdiction under Income Tax Act, 1961 is conferred and can be conferred by CBDT only on Income Tax Authority.

26. The petitioner further submitted that the Finance Act, 2020 inserted Section 144B w.e.f. 01.04.2021 and that overrides all Notifications of CBDT. The petitioner submitted that it also does not lay down the mechanism for establishing NFAC.

27. The petitioner further stated that the only reference to constitution of NFAC is in notification dated 28.12.2021. Petitioner submitted that NFAC cannot be the statutory authority under the Act, and a Statutory order passed by NFAC is to be void ab-initio.

Submissions made on behalf of the Respondents/Revenue:-

28. Sh. Puneet Rai, learned counsel for the Revenue stated that the writ petition filed by the petitioner is not maintainable as there is an alternate efficacious remedy provided under the law. Sh. Rai stated that the arguments raised by the petitioner are beyond pleadings and therefore may not be taken into consideration. It has further been stated that the petitioner did not ask for any opportunity to appear through Video Conferencing. It was stated that the petitioner can file an appeal if he is aggrieved by the assessment order. Sh. Rai invited our attention to the notification dated 31.03.2021, issued by the Director, Central Board of Direct Taxes. In the said notification in

exercise of powers conferred by sub Sections (1), (2) and (5) of Section 120 of the Act, the income tax authorities of NAFAC mentioned in the notification were authorized to exercise the powers and functions of the A.O. to facilitate the conduct of the faceless assessment proceedings under Section 144 B of the said act.

29. Mr. Rai further submitted that the contention of the petitioner that the A.O. lacks the territorial jurisdiction in issuing the notice under Section 148 of the Income Tax Act is completely baseless. The Petitioner has been filing his ITR before the same J.A.O. i.e Circle 67(1) who has issued the Notice under Section 148 dated 27.03.2021 to the petitioner. That the petitioner has filed his ITR for A.Y. 2020-21 also under Delhi Jurisdiction, Circle 67(1) and it is admitted position by the petitioner that his PAN is also at Circle 67(1), Delhi.

30. Mr. Rai submitted that no prejudice is caused to the petitioner as the Respondent No. 2 issued the SCN on 04.03.2022 to the petitioner which is also mentioned in the Index of the writ petition filed by the assessee and also mentioned in the Final Assessment order dated 25.03.2022. The respondent was issued another show cause notice to the assessee on 22.03.2022 for which the final reply was sought till 23:59pm of 24.03.2022. The respondent also requested him to join for personal hearing through VC on 24.03.2022. However the assessee neither replied to the SCN nor attended the VC. Therefore there is no prejudice whatsoever caused to the Petitioner.

31. It has further been stated that the petitioner filed a reply on 25.03.2022, i.e. after the time which was granted to the him to file reply. However the FAO while passing the Final Assessment order

passed on 25.03.2022 considered the reply of the petitioner. The present petition ought to be dismissed in view of the alternative remedy of appeal under Section 246A of the Act which is available with the petitioner. Reliance is placed upon Apex Court decision in the case ***CIT Vs Chhabil Dass Agarwal (supra)***.

32. Sh. Rai further submitted that it is settled proposition as per the decision of the Supreme Court in case of ***R. K. Upadhyaya v. Shanabhai P. Patel (1987) 3 SCC 1996*** that for the purposes of Section 148, issuance of notice is a pre-requisite and not its service. Admittedly, the Petitioner has been served and he was aware of assessment proceedings and therefore no prejudice whatsoever is caused to the Petitioner.

33. It has been further submitted that petitioner without any basis has stated that the National Faceless Assessment Centre (NAFAC) is not defined under the Act and NAFAC is not an Income Tax Authority. It is pertinent to submit here that Section 120(5) of the Income Tax Act r/w Sec 120(1) & 120(2) empowers the CBDT to issue directions and orders, wherever it is considered necessary or appropriate for the proper management of the work, require to or more Assessing Officers to exercise and perform, concurrently, the power and functions in respect of any area or persons, or class of persons or incomes or classed of income or cases or classes of cases. The relevant provisions of the Act which empowers Revenue to make the Assessment and relevant notifications issued with regard to E Assessment Scheme and Faceless Assessment Scheme are as under:

a) Section 120 of the Act specifies the Jurisdiction of the Income Tax Authorities.

b) Section 143(3A) of the Act empowering the Government to make an Assessment scheme and notify the same in the Official Gazette.

c) Section 143(3B) of the Act for giving effect to the scheme made u/s 143(3A).

d) Section 144B of the Act specifies the complete procedure of Faceless Assessment wherein sub section (3) empowers the Board to set up Centres and units, namely National Faceless Assessment Centre, Regional Faceless Assessment Centre, Assessment Units, Verification units, technical units and review units. Sub section (4) specifies that the Assessment unit, verification unit, technical unit and review unit shall have the Income Tax Authorities. Therefore , the submission of the Petitioner that NAFAC is not an Income Tax Authority is without any merit as the Income Tax Authorities as defined u/s 116 of the Act are part of the Units as defined u/s 144B(4), hence the functions of assessment are performed by an Income Tax Authority.

34. Sh. Rai stated that the allegations of the petitioner that the personal hearing was not granted is also denied as the Assessment order dated 25.03.2022 clearly states that the Personal hearing through VC was granted to the Petitioner which he did not avail of.

35. Sh. Rai stated that Section 119 of the Act, 1961 provides that the CBDT may issue orders, instructions and directions to other

income tax authorities as it may deem fit for proper administration of this Act. However the proviso to Section 119, clearly states that no such orders, instructions, or directions shall be issued, so as to require any income tax authority to make a particular assessment or to dispose of a particular case in a particular manner. It has been stated that the petitioner instead of following the procedure laid down by Hon'ble Supreme Court in ***GKN Driveshafts (supra)*** case approached the CBDT. In regard to the issue raised by the petitioner that there was no income in the relevant year, the department stated that these contentions may be raised by him before the Appellate Authority.

36. The department has also relied upon the following notifications:-

(i) **Notification no. 61/2019 dated 12.09.2019S.O. 3264(E)**

(ii) **Notification no. 62/2019 dated 12.09.2019S.O. 3265(E)**

(iii) **Notification no. 72/2019 dated 23.09.2019S.O. 3435 (E)**

(iv) **Notification no. 60/2020 dated 13.08.2020S.O. 2745(E)**

(v) **Notification no. 61/2020 dated 13.08.2020S.O. 2746(E)**

(vi) **Notification no. 62/2020 dated 13.08.2020S.O. 2754 (E)**

(vii) **Notification no. 64/2020 dated 13.08.2020S.O. 2756(E)**

(viii) **Notification no. 65/2020 dated 13.08.2020S.O. 2757(E)**

(ix) **Notification no. 6/2021 dated 17.02.2021S.O. 741(E)**

(x) **Notification no. 22/2021 dated 31.3.2021S.O. 1434(E)**

(xi) **Notification no. 23/2021 dated 31.3.2021S.O. 1435 (E)**

(xii) **Notification no. 24/2021 dated 31.3.2021S.O. 1436(E)**

Rebuttal submissions of petitioner

37. In rebuttal, the petitioner stated that all notifications mentioned by the standing counsel are prior to Section 144B. Section 144B has been brought to the statute vide the Finance Act, 2021 wef– 01.04.2022. The petitioner stated that as the notice under Section 148 has been served on 24.12.2021, therefore, in view of the judgment of this Court in the case of ***Mon Mohan Kohli vs. Assistant Commissioner of Income Tax & Anr., W.P.(C) No.6176/2021,*** the proceedings are liable to quashed

38. The petitioner stated that the alleged notice dated 27.03.2021 issued under Section 148 of the Act has not been signed. Our attention is also invited to Instructions No. 8/2017 issued by the department of CBDT dated 29.09.2017 whereby in Rule 5.2, it has been provided that all department orders/communications/notices being issued to the assessee through the "e-proceeding facility" are to be signed digitally by the assessee. The petitioner has reiterated that the notice under Section 148 of the Act and all subsequent actions taken by the revenue are liable to be quashed.

Analysis & Findings

39. We have considered the submission and perused the record. This Court is of the view that the A.O. has exercised his jurisdiction in accordance with the law and therefore there is no ground to set aside the same.

40. In order to render a finding on the plea raised by the petitioner it is necessary to understand the Faceless Assessment's Scheme. The Central Government in the Union Budget in 2019 introduced the

scheme of faceless assessment. The objective of the Scheme was to eliminate the human interface between the taxpayers and the Income Tax Department. The Scheme merely lays down the procedure, to carry out a faceless assessment through electronic mode. In the Faceless Assessment Scheme, the purpose is to complete all the assessments/cases in a faceless way, in a faceless environment except for certain categories namely cases assigned to international tax charges and those assigned to central circle which are not included in this Scheme.

41. The main objective behind the scheme is to bring reform, to make the processes easier and to introduce simplicity of acceptance concerning the assessee. National E-assessment Centre, now renamed as National Faceless Assessment Centre is only a governing authority for the Faceless IT Assessment System. Besides, having their central office in Delhi, it has regional centres in Mumbai, Kolkata, Hyderabad, Pune, Ahmedabad, Chennai and Bangalore.

42. It is also pertinent to mention here that by virtue of this Scheme, the assessee will not have to visit the department's office and can in fact access the department from the comfort of their home/office any time they want. The Department is accessible through registered email id. The time has come when there is a need to gradually phase out the human interface to the extent possible and to introduce state of the Art Digital Technology. The role of artificial intelligence and machine learning is to be developed to ensure that there is minimum human intervention. The purpose is to bring more transparency and efficiency to the system.

43. A bare perusal of Section 144B would indicate that the assessment, re-assessment and re-computation under sub-Section 3 of Section 143 or under Section 144 or under Section 147 shall be made in a faceless manner as per the procedure provided in Section 144B. The provision further elaborates each step to be taken in the faceless assessment. It may be noted that Faceless Assessment Scheme does not provide any deviation from the principles of assessment as provided under various provisions of the Act. The Faceless Assessment Scheme merely provides the procedure to be followed for the purpose of faceless assessment. The contention of the petitioner that NAFAC does not fall within the authority of law as provided under Article 265 of the Constitution of India, does not hold any force. The authority as prescribed under the Income Tax Act remains the same. The legislature has brought a Scheme only to make the procedure faceless. The principles of law and other parameters as provided under the law for the purpose of assessment remains the same. In order to keep pace with dynamics of the changed environment, we have to march step by step towards making the systems efficient and transparent.

44. Vide notification dated 12.09.2019 the Central Government in exercise of the powers conferred by Sub-Sections (3A & 3B) of Section 143 of the Act, 1961(43 of 1961) issued the E-Assessment Cheme. The notification provided that the provisions of Clause (7A) of Section 2, Section 92CA, Section 120, Section 124, Section 127, Section 129, Section 131, Section 133, Section 133A, Section 133C, Section 134, Section 142, Section 142A, Section 143, Section 144 A,

Section 144 BA, Section144 C and chapter XXI of the Act shall apply to the assessments made in accordance with the Scheme subject to certain exceptions, modifications and adaptation as provided in the notification. By way of notification dated 30.08.2020 the word "E-Assessment" is substituted by "Faceless Assessment". The notification dated 31.03.2021, authorizes the Principal Commissioner of Income Tax, Principal Commissioner of Income Tax (Verification Unit), Additional Commissioner of Income Tax, Joint Commissioner of Income Tax and the Deputy Commissioner of the Income Tax (Regional Faceless Assessment Centre) (Verification Unit) and confers them jurisdiction in respect of all cases of persons in respect of all incomes within the limits of all states and Union Territories of India with respect to whom there is any information in the possession of Directorate of Income–Tax (Systems), Central Board of Direct Taxes.

45. The petitioner has neither challenged the validity of the E-Assessment Scheme nor the validity of Section 144B of the Act. It is a settled proposition that a relief not prayed for cannot be granted. In ***Bharat Amritlal Kothari V. Dosukhan Samadkhan Sindhi &Ors.2010 1 SCC 234*** wherein it has been held inter alia that it is incumbent for the petitioner to claim all reliefs in the petition**. T**hough court has very wide discretion in granting relief, the court, however, cannot, ignore and keep aside the norms and principles governing grant of relief.

46. A perusal of the prayer in the writ petition would indicate that though the petitioner has challenged the notice dated 27.03.2021, and

further notice issued under Section 142 (1) for reassessment of A.Y. 2016-17, orders dated 09.02.2022 that is also dated 10.02.2022 and Notices dated 04.03.2022 under Section 142 (1) and under Section 144 of the Act for A.Y. 2016-17 as well as the ex-parte assessment framed by the NAFAC. However, the validity of the National Faceless Assessment Centre has not been challenged by the petitioner.

47. The National Faceless Scheme is a piece of welfare legislation with the purpose of optimizing utilization of the resources through the economies of scales and functional specialization. The procedure of NAFAC has been introduced with a view to impart greater efficiency, transparency and accountability. The object is to eliminate the human interface between the Income Tax Authority and assessee to the extent technologically feasible.

48. It is also to be borne in mind that with the increasing economy the number of income tax assesses are also bound to increase manifold. We will have to take a visionary view to ensure that this increasing volume is handled in a better and efficient manner. There has to be a paradigm shift in handling of the work by the Income tax Authorities. If the contention of the petitioner is accepted, it will be a retrograde step. This court thinks that there is no illegality in the National Faceless Assessment Scheme as provided in the statute under Section 144B. The disposal of the objections and framing of the assessment has actually been done by the Assessing Officer. The only difference is that unlike earlier, the orders have been conveyed by NAFAC instead of A.O. directly.

49. We consider that the contention raised by the petitioner that National Faceless Assessment Centre as provided under Section 144B has no authority to frame the assessment is without any basis.

50. Before embarking upon other issues raised by the petitioner, it is necessary to examine the jurisdiction of the writ Court under Article 226 of the Constitution of India. Exercise of jurisdiction by High Court under Article 226 of Constitution of India is discretionary and not obligatory without being exhaustive. When a statutory forum is created by law for redressal of grievances, a Writ Petition should not be entertained ignoring the statutory dispensation. The Income Tax Act, 1961 provides complete machinery for the assessment/ reassessment of tax, imposition of penalty and for obtaining relief with respect to an improper order. One ought to not abandon this machinery and invoke the jurisdiction of the High Court u/A 226 of the Constitution when adequate remedy is available to him by way of appeal as has been held in ***CIT vs Chhabil Dass Agarwal*** **(2013) 357 ITR 357 (SC).**

51. Further in ***Asst. Collector, Central Excise v. Dunlop India Ltd and Ors,*** **[1985(19) E.L.T.22 (SC)]**– it has been held that Article 226 is not meant to short circuit or circumvent statutory provisions and the High Court must entertain the writ petition only when statutory remedies are entirely ill-suited to meet the demands of extraordinary situations and where interference is necessary to prevent public injury and vindication of public justice.

52. In ***M/s Radha Krishan Industries vs State of Himachal Pradesh*** **- Civil App No 1155/2021,** whereby the Hon'ble Apex court

while allowing the appeal, set aside the order of High Court dismissing the writ petition on grounds of non-maintainability *inter-alia* laid down as under:-

"27. The principles of law which emerge are that:

i. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

ii. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

iii. Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

iv. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

v. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

vi. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

53. We consider that in the writ jurisdiction this Court cannot enter into the arena of examination of factual-matrix. The Court can interfere in the writ jurisdiction only if there is a violation of principle of natural justice or the action of the respondent is *ex-facie* illegal and suffers from perversity.

54. Section 149 (1) provides the time period for issuance of notice under Section 148 of the Act. The inter play of Section 148 and Section 149 has come up for discussion before Hon'ble Supreme Court in ***R.K. Upadhaya vs. Shanabhai P. Patel 1987 166 ITR 163 (SC)*** . In this case, it was inter alia held as under;

> "*The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in s. 34 of the 1922 Act has been spread out into three sections, being sections. 147, 148 and 149 of the 1961 Act. A clear distinction has been made out between "issue of notice" and "service of notice" under the 1961 Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitations, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income-tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment*."

55. This court also followed ***R. K. Upadhyaya*** (supra) in ***Commissioner of Income Tax v. Sudev Industries Ltd. [2018] 94 taxmann. Com 373 (Delhi***).

56. The petitioner has neither filed his ITR for AY 2016-17 under Section 139(1) of the Act nor filed his ITR under Section 148 of the Act. As per Section 139(1) of the Act, it is mandatory to file the ITR for an individual if his total income during the previous year exceeds maximum amount which is not chargeable to income tax. Therefore, as per Explanation 2(a) of Section 147 of the Act, there is a deemed escapement of Income by the Petitioner.

57. In the present case, the petitioner did not file his ITR under Section 148, thus in view of the principles laid down by the Apex Court in the case of ***GKN Driveshafts (India) Ltd. v. Income Tax Officer & Ors.*** **(2003) 259 ITR 19(SC),** the petitioner is not even entitled to raise objections to the notice issued under the Act. It is pertinent to mention that despite the petitioner not following the mandate enunciated in **GKN Driveshafts (Supra),** the revenue responded to the objections filed by the petitioner and disposed of the same vide order dated 09.02.2022 supplied to the petitioner vide letter dated 10.02.2022

58. The impugned notice in the present case is dated 27.03.2021. The notice has also been digitally signed on the same day. Thus, the contention of the petitioner that the notice under Section 148 is beyond limitation does not hold any force and is rejected.

59. The address at which notice was sent by the Revenue is, one of the addresses mentioned by the petitioner on his portal as per Section 282 of the Act read with Rule 127 of the Income Tax Rules. Further, the

notice under Section 148 was uploaded on the E-filing portal of the petitioner on 27.03.2021.The petitioner has himself chosen the communication address to be of Faridabad, Haryana which is clearly reflected in the document of PAN jurisdiction details of the petitioner.

60. The petitioner has also raised a plea that notice under Section 148 was never served upon him. The plea of petitioner is that the notice has not been sent at his address, rather the petitioner went to the extent of saying that the notice might have been sent to some other person of his name and may not even belong to him. It is a matter of record that the address at which the notice was sent was mentioned in the PAN details of the petitioner. In this regard, it is necessary to peruse Section 139A (5) it provides as under:

> *"(5) Every person shall—*
>
> *(a) quote such number in all his returns to, or correspondence with, any income-tax authority;*
>
> *(b) quote such number in all challans for the payment of any sum due under this Act;*
>
> *(c) quote such number in all documents pertaining to such transactions as may be prescribed by the Board in the interests of the revenue, and entered into by him:*
>
> ***Provided** that the Board may prescribe different dates for different transactions or class of transactions or for different class of persons:*
>
> ***Provided further** that a person shall quote General Index Register Number till such time Permanent Account Number is allotted to such person;*
>
> *(d) intimate the Assessing Officer any change in his address or in the name and nature of his business on the basis of which the permanent account number was allotted to him."*

61. A bare perusal of this provision, it amply clear that Section 139 A (5) (d) provides that it is the responsibility of the assessee to intimate the A.O. with respect to any change in his address or in the name and nature of his business on the basis of which the Permanent Account Number was allotted. Though, the petitioner has stated that he had sent a request for change of his address, however, no such communication has been placed on record by the petitioner. If the petitioner is claiming change of his address in his PAN details then, it was obligatory on his part to place the same on record. More so, these are disputed questions of facts, which can be agitated before the authority below. This Court in the writ jurisdiction cannot entertain such pleas.

62. The petitioner has also argued vehemently, regarding the discrepancy in the order disposing of objection filed by him against the reopening of assessment. The issue has been raised as to the fact that the date of order has been mentioned to be 09.02.2022 whereas the communication is dated 10.02.2022. We, consider that there is no force in this contention. It is clear from the record that the order dated 09.02.2022 has been communicated on 10.02.2022. The other discrepancy regarding the date of notice mentioned in the said order as 27.01.2021 instead of 27.03.2021 seems to be a typographical error.

63. The petitioner has also argued that he was not obliged to file any return for the relevant year, as there was no income. The plea of the petitioner is that he got an amount as an advance by virtue of the orders of the Court and the same cannot be assessed as an income in his hand for the assessment year 2016-17.

64. We consider that this issue cannot be determined by this Court in the writ jurisdiction, the petitioner can raise this issue before the authorities below, who is the appropriate forum to decide the same.

Conclusion

65. In view of the discussion made hereinabove, the writ petition filed by the petitioner is dismissed.

DINESH KUMAR SHARMA, J

MANMOHAN, J

JUNE 1, 2022/*Pallavi*