THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

Writ Petition Nos.25903, 28214, 28271, 32075, 32090, 32688, 33050, 33402, 33478, 34100, 34101, 34340, 34598, 34604, 34661, 34698, 34746, 34836, 35774, 36598, 36828, 36945, 37414, 37491, 37536, 43427, 45047 of 2022, Writ Petition Nos.15383, 47, 3719, 3721, 3729, 3738, 9695, 11599, 14485, 14492, 15421, 15736, 15745, 15768, 15779, 16164, 16223, 16224, 16761, 16783, 19966, 20914, 20929, 20959 and 23556 of 2023

COMMON ORDER:*(per Hon'ble Sri Justice **P.SAM KOSHY**)*

These batch of writ petitions have been filed assailing the order passed by the respondent No.1/The Income Tax Officer dated 29.07.2022, vide DIN & Notice No.ITBA/COM/F/17/2022-23/1044297902(1) for the assessment year 2016-17, under Section 148-A (d) of the Income Tax Act, 1961 (for short 'the Act'). The challenge is also to the consequential notice dated 29.07.2022, under Section 148 of the Income Tax Act, as well, issued by the respondent No.1 himself.

2. Heard Sri A.V. Krishna Kaundinya, learned Senior Counsel appearing on behalf of Sri A.V.A. Siva Kartikeya, learned counsel for the petitioner and Sri J.V. Prasad, learned counsel for the respondent-Department.

3. Though the aforesaid two orders have been assailed on various grounds, nonetheless, the foremost objection which the petitioners have raised is that of the two orders being in contravention of the amended provision of the Income Tax Act, 1961.

4. The objection specifically was that once when the respondent No.1 have decided to go in for re-assessment of the return submitted by the petitioner/assessee and notice for the same under Section 148A of the Act was issued, it was incumbent upon the respondent No.1 to have adhered to the amended provision of the Act. According to the learned Senior Counsel for the petitioner it was required to get the re-assessment done in a faceless manner, rather than being assessed by the jurisdictional officer as has been provided under Section 144B of the Act and in accordance with the scheme enacted by the Central Government under Section 151A of the Act. There were other objections also raised by the petitioners in this batch of writ petitions. But, since the aforesaid objections was substantially touching the jurisdictional issue itself, the learned Senior Counsel appearing for the petitioner requested for considering and deciding the aforesaid preliminary objection first. Further only if required and in case, the preliminary objection is held to be not sustainable, would there be a requirement for this Court to proceed further and decide the other issues raised.

5. In view of the request made by the learned Senior Counsel appearing for all the petitioner and which was accepted by the learned counsel for the respondent, we proceed to decide the aforesaid jurisdictional issue as a preliminary issue and only if required would we then proceed further to decide the other issues.

6. The preliminary objection raised by the petitioner which is being considered as the foremost issue is, "whether the impugned order under Section 148A (d) as well as the notice under Section 148 of the Act could be issued by the local jurisdictional officer, rather than the faceless assessment." The issue in other words was "whether was it not mandatory for the authorities concerned to initiate proceedings pertaining to re-assessment under Section 148A and 148 of the Act in a faceless manner, (rather than being proceeded by the local jurisdictional officer), as is envisaged under Section 144B as also under Section 151A of the Act."

7. Learned Senior Counsel appearing for the petitioner stressed hard on the fact that subsequent to the amendment incorporated in the Income Tax Act, 1961, with effect from 29.03.2022 all the proceedings initiated by the authorities concerned under Section 148A and 148 of the Act were all mandatorily to be proceeded in a faceless manner. Else, the same would amount to being violative of the Income Tax Act or in contravention to the procedure prescribed under law which is in force.

8. According to the learned Senior Counsel appearing for the petitioner once when the Central Board of Direct Taxes (for short 'CBIT'), have issued the notification dated 29.03.2022, whereby a scheme called e-assessment of Income Escaping Assessment Scheme 2022 which came into force with effect from 29.03.2022 itself; the assessment, re-assessment or re-computation under Section 147 and the issuance of notice under Section 148A shall be done through the automated allocation. Further the notices, to be issued, have to be in a faceless manner as is provided under Section 144B of the Act. It was also contended that the re-opening proceedings first of all could not have been initiated after a gap of three (3) years. Secondly, re-opening of the proceedings can only be permitted if the income chargeable to tax escaping assessment is more than fifty Rs.50,00,000/-.

9. It was further contended by the learned Senior Counsel appearing for the petitioner that the respondent No.1 has acted in a mechanical and arbitrary fashion while issuing notices through the jurisdictional officer. The said Act was without taking into consideration the amended provision under the Income Tax Act, 1961, as introduced under the Finance Act, 2021. It was also without proper verification of whether the so called income which has escaped assessment exceeds Rs.50,00,000/- or more.

10. Learned counsel for the respondent-Department on the other hand opposing the petition submits that it is not the case where a notice has been recently issued to the petitioner subsequent to the amendment brought in to the Act. According to him in all these cases, notices were issued prior to the amendment which had come. As such, the proceedings also have been drawn in terms of the un-amended provision. Moreover, the fact that no further approval was required to issue notices at this stage by the Assessing Officer lends support to the contention of the respondent-Department that the action on the part of the jurisdictional officer in initiating the proceedings was proper, legal and justified.

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

the Act. Since, section 144B of the Act does not provide for issuance of notice under Section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under Section 148 of the Act.

12. It was further contended by the learned counsel for the respondent-Department that the said notification does not state whether the notice is to be the scope of the scheme with regards to the procedure covered by it and lays down the legal contours of how such procedures are to be carried out. It states that the issuance of notice under Section 148 of the Act shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in a faceless manner to the extent provided under Section 144B of the Act. From the above, it is apparent that in the procedure for re-assessment, as it exists as on date, both these can be followed. Therefore, it will be incorrect to state that the issuance of notice by the JAO is without jurisdiction.

13. According to the learned counsel for the respondent-Department neither the Section nor the scheme dated 29.03.2022 speak about the detail specifics of the procedure to be followed therein. They lay down the general principles that should be followed so as to impart greater efficiency, transparency and accountability to the procedures contained therein. The said scheme lays down that the issuance of notice under Section 148 of the Act shall be through

automated allocation in accordance with Section 144B of the Act. It was also submitted that the CBIT has issued notification No.01/2022 dated 11.05.2022 containing guidelines for implementation of the Hon'ble Supreme Court's judgement in the case of *Union of India and Others vs. Ashish Agarwal.* Vide the said judgment, the Hon'ble Supreme Court revived nearly 90,000 notices issued under Section 148 between 01.04.2021 to 30.06.2021 re-opening assessment for the assessment year 2013-14 and subsequent years. It is to be stated that these notices were issued under the old provisions of re-opening. The Hon'ble Supreme Court had revived these notices quashed by certain High Courts by converting the notices issued under Section 148 (old) to notice under Section 148A (new) of the Act with a direction to continue the proceedings after following the procedure laid down under the provisions. As such, the instruction No.01/2022 of CBIT, the present notice under Section 148 dated 31.07.2022 and the order under Section 148A(d) dated 29.07.2022 are valid actions on the part of the Department.

14. It was further contended that the order passed under Section 148A(d) of the Act is not a final assessment order and the notice issued under Section 148 is only to commence the re-assessment proceedings and the assesse has the re-course of filing appeal before the CIT (Appeals) when the final order of assessment is passed.

15. According to the learned counsel for the respondent-Department the order passed under Section 148A(d) and the notice under Section 148 of the Act dated 29.07.2022 were passed/issued as per the provisions of the Act with appropriate sanction, after giving due opportunity to the petitioner, and after considering the submissions of the assessee. It is submitted that no prejudice is caused to the petitioner as the order passed under Section 148A(d) of the Act is not an assessment order and only an order to determine whether it is a fit case for issuance of notice under Section 148 of the Act.

16. Having heard the contentions put forth on either side and on perusal of records, what is now required to be considered is the factual matrix of the case. Admittedly, the notices were issued under Section 148 of the Act between 01.04.2021 to 31.06.2021 for re-opening of the assessments for the assessment year 2013-14 and subsequent years. Initially, these re-opening assessments were subjected to challenge before various High Courts and many of the High Courts had quashed the notices in the light of the subsequent amendment that had been brought to the Income Tax Act and the insertion of the new Section i.e. Section 148A. The decision of the High Courts which had allowed the writ petitions of various other assessee's was subjected to challenge before the Hon'ble Supreme Court. Where the Hon'ble Supreme Court had tagged up all the

matters and passed the landmark decision in the case of *UNION OF INDIA AND OTHERS. VS. ASHISH AGARWAL*[1].

17. The Hon'ble Supreme Court after considering the legal contentions raised at the bar, at paragraph No.7 held that the Finance Act, 2021, being of remedial and benevolent nature and having been substituted with a specific aim and object, more particularly, to protect the rights and interests of the assessee and the same being in public interest, held that they were in complete agreement with the view taken by the various High Courts while holding that the benefit of the new provisions shall be made available even in respect of the proceedings relating to the past assessment years, where notices have been issued under Section 148 on or after 01.04.2021 i.e. the date since when the Finance Act, 2021, became enforceable.

18. However, while upholding the judgements of the High Courts, the Hon'ble Supreme Court taking into consideration the fact that the Income Tax Department had issued approximately 90,000 notices under Section 148 of the un-amended Act and in all these cases, the Department would become remediless so far as re-assessment proceedings are concerned. Therefore, as a onetime measure invoking the powers conferred upon it under Section 142 of the Constitution of India, the Hon'ble Supreme Court ordered that the notices under

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[1] 2022 444 ITR 1 SC

Section 148 which were issued by the Department should be considered to have been issued under Section 148A of the Income Tax Act i.e. new provision inserted by way of the Finance Act, 2021, and permitted the Department to proceed further with the re-assessment proceedings as per the substituted provisions of Section 147 to 151 of the Income Tax Act as per the Finance Act, 2021.

19. It would be relevant at this juncture to take note of the observations made by the Hon'ble Supreme Court in paragraph No.7 and paragraph No.8. The relevant portion of which is being re-produced herein under:

> *"Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after April 1, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.*
>
> *However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147.*
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> *The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bona fide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced with effect from April 1, 2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the Income-tax Act as per the Finance Act, 2021. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bona fide belief that the*

amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provisions of the Income-tax Act as those deemed to have been issued under section 148A of the Income-tax Act as per the new provisions of section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the Income-tax Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the Income-tax Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under :

(i) The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the Income-tax Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective Assessing Officers shall within thirty days from today provide to the asseessees the information and material relied upon by the Revenue so that the asseessees can reply to the notices within two weeks thereafter ;

(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A9(a) be dispensed with as a onetime measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from April 1,

(iii) The Assessing Officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessees" ;

The Hon'ble Supreme Court further, in order to strike a balance between the rights of the Revenue as well as the respective assessee's ordered that the notices issued under Section 148 of the un-amended Act to be deemed to have been issued under Section 148A of the Income Tax Act as substituted by the Finance Act, 2021, and also ordered for construing or treating the notices to be the show cause

notice in terms of Section 148A (b) while disposing of the batch matters. The Hon'ble Supreme Court in its operative part gave the following directions in paragraph No.10, which again for ready reference is being reproduced herein under:

> *"In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W. T. No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under*
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> *(i) The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the Income-tax Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the Income-tax Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The Assessing Officer shall, within thirty days from today provide to the respective asseessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter ;*
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> *(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a onetime measure vis-A –vis those notices which have been issued under section 48 of the unamended Act from April 1, 2021 till date, including those which have been quashed by the High Courts.*
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> *Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required ;*
>
> *(iii) The Assessing Officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assesees ; thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted) ;*
>
> *(iv) All defences which may be available to the assessees including those available under section 149 of the Income-tax Act and all rights and contentions which may be available to the concerned assessees and Revenue under*

the Finance Act, 2021 and in law, shall continue to be available.

20. Keeping the aforesaid view of the Hon'ble Supreme Court, it would be relevant at this juncture to take note certain provisions of the Income Tax Act which stood amended with effect from 01.04.2021 by virtue of the Finance Act, 2021. Section 144B inserted by virtue of the Finance Act, 2021, with effect from 01.04.2021 provides for faceless assessment and sub-Section 1 of the said newly inserted Section 144B is an non-obstante clause. The relevant portion of sub-Section 1 of Section 144B necessary for adjudication of the preliminary issue under consideration is re-produced herein under:

"Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 of under section 144 or under section 147 as the case may be with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:-

(i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system;

(ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;

(iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit";

21. In continuation to the aforesaid provisions, it would be relevant to take note of yet another provision of law i.e. sub-Section 1 of

Section 151A which was inserted with effect from 01.11.2020. It refers to faceless assessment of income escaping assessment which would be relevant for better understanding of the issue being decided in the present batch of writ petitions, which again for ready reference is being re-produced herein under:

> *"The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 [or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A] or sanction for issue of such notice under section 151, so as to import greater efficiency, transparency and accountability by*
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> *(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;*
> *(b) optimising utilisation of the resources through economies of scale and functional specialisation;*
> *(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction".*

22. Similarly, the Central Board of Direct Taxes had also amended Section 130 of the Income Tax Act so far as conferring jurisdiction of the Income Tax Authorities in the light of the faceless assessment procedure being adopted. The amended Section 130 and sub-Section 1 which is relevant for the present issue under consideration again for ready reference is being reproduced herein under:

> *"The Central Government may make a scheme, by notification in the Official Gazette, for the purpose of*
>
> *(a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or*

(b) vesting the jurisdiction with the Assessing Officer as referred to in section 124; or
(c) exercise of power to transfer cases under section 127; or
(d) exercise of jurisdiction in case of change of incumbency as referred to in section 129,

so as to impart greater efficiency, transparency and accountability by

(i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;
(ii) optimising utilisation of the resources through economies of scale and functional specialisation;
(iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes or cases, with dynamic jurisdiction."

23. In furtherance to the powers conferred under sub-Sections 1 and 2 of Section 130 of the aforesaid Income Tax Act, the Central Board of Direct Taxes framed a scheme called as the "Faceless jurisdiction of Income Tax Authorities Scheme, 2022." A plain reading of the aforesaid notification would clearly reflect that as has been amended under Section 130. The Central Board of Direct Taxes has framed a scheme which defines the Act to be the Income Tax Act and it specifically defines automated allocation which is defined under Section 2 (1)(b), which again for ready reference is being re-produced herein under:

"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;"

Further Section 3 of the said scheme deals with vesting of the jurisdiction with the Assessing Officer, which again for ready reference is being reproduced herein under:

> *"vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act, shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in-*
>
> *(i) Section 144B of the Act with reference to making faceless assessment of total income or loss of assessee;"*

24. In furtherance to the aforesaid notification, the Central Board of Direct Taxes again in exercise of its powers conferred under sub-Sections 1 and 2 of Section 151A framed another scheme called as the e-assessment of Income Escaping Assessment Scheme 2022, which defines automated allocation is reproduced herein under:

> *"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."*

And the scope of the scheme again has been envisaged in Section 3 of the said scheme, which again for ready reference is being reproduced herein under:

> *"For the purpose of this Scheme,-*
>
> *(a) assessment, reassessment or recomputation under sectopm 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."

25. A plain reading of the aforesaid two notifications issued by the Central Board of Direct Taxes dated 28.03.2022 and 29.03.2022, it would clearly indicate that the Central Board of Direct Taxes was very clear in its mind when it framed the aforesaid two schemes with respect to the proceedings to be drawn under Section 148A, that is to have it in a faceless manner. There were two mandatory conditions which were required to be adhered to by the Department, firstly, the allocation being made through the automated allocation system in accordance with the risk management strategy formulated by the Board under Section 148 of the Act. Secondly, the re-assessment has to be done in a faceless manner to the extent provided under Section 144B of the Act.

26. After the introduction of the above two schemes, it becomes mandatory for the Revenue to conduct/initiate proceedings pertaining to reassessment under Section 147, 148 & 148A of the Act in a faceless manner. Proceedings under Section 147 and Section 148 of the Act would now have to be taken as per the procedure legislated by the Parliament in respect of reopening/ re-assessment i.e., proceedings under Section 148A of the Act.

27. In the present case, both the proceedings i.e., the impugned proceedings under Section 148A of the Act, as well as the consequential notices under Section 148 of the Act were issued by the local jurisdictional officer and not in the prescribed faceless manner. The order under Section 148A(d) of the Act and the notices under Section 148 of the Act are issued on 29.04.2022, i.e., after the "Faceless Jurisdiction of the Income Tax Authorities Scheme, 2022" and the "e-Assessment of Income Escaping Assessment Scheme, 2022" were introduced.

28. From the afore given factual matrix, firstly the statutory provisions enumerated in the preceding paragraphs and secondly, the subsequent direction given by the Hon'ble Supreme Court in the case of Ashish Agarwal, supra, what is clearly reflected is the fact that when the Hon'ble Supreme Court had partly allowed the petitions which were filed by the Union of India challenging the judgements of various High Courts whereby the notice under Section 148 of the unamended Act were set aside by the High Courts, the Hon'ble Supreme Court has only permitted the Union of India to proceed further with the reassessment proceedings under the amended provision of law, more particularly, as amended by the Finance Act, 2021. It never intended the authorities concerned to continue with the proceedings from the stage of the issuance of notices under Section 148, nor is the directions to that effect. And there cannot be any

confusion, ambiguity or mis-conception for the respondent-Department to have in this regard.

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

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

31. It is well settled principle of law that where the power is given to do certain things in certain way, the thing has to be done in that way alone and no any other manner which is otherwise not provided under the law.

32. The Hon'ble Supreme Court in the case of *Chandra Kishore Jha Vs. Mahaveer and others*[2]in paragraph No.17 laying down the aforesaid principle held as under "it is well settled solitary principle that if statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. The said principle of law was further reiterated in the case of *Cherrukurimani Vs. Chief Secretary Government of Andhra Pradesh and*

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[2] 1999 8 SCC 266

others[3]**,** wherein, again in paragraph No.14, the aforesaid principle has been reinforced by the Hon'ble Supreme Court holding that "where law prescribe a thing to be done in a particular manner following a particular procedure, it shall have to be done in the same manner following the provisions of law without deviating from the prescribed procedure. The said principle has again recently been reiterated and followed in the case of *Municipal Corporation Greater Mumbai Vs. Abhilash Lal and others*[4], and in the case of *Opto Circuit India Limited Vs. Axis Bank and others*[5]and again in the case of *Union of India Vs. Mahesh Sing*[6]**.**In the case of *Tata Chemicals Limited Vs. Commissioner of Customs (preventive) Jam Nager*[7], wherein it has been held that there can be no stopple against the law. If the law requires something to be done in a particular manner, then it must be done in that manner, if it is not done in that manner then it would have no existence in the eye of law. In paragraph 18 of the said judgment, the Hon'ble Supreme Court held as under:

> *"The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact,*

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[3] 2015 13 SCC 722
[4] 2020 13 SCC 234
[5] 2021 6 SCC 707
[6] CAP.No.4807 of 2022
[7] 2015 11 SCC 628

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

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

proceed further in terms of the substituted provisions brought in by way of Finance Act 2021.

34. What is also relevant to take note of the fact that the Hon'ble Supreme Court while exercising its power under Article 142 of the Constitution of India has also not relaxed the applicability of the Finance Act 2021. Rather, the Hon'ble Supreme Court in very clear and unambiguous terms had held that the notices issued under the un-amended provisions, which were struck down by the High Court, shall be treated as a notice under new amended provisions and the Union of India was directed to proceed further from that stage in terms of the amended provisions of law. In spite of such specific clear directions by the Hon'ble Supreme Court, the Union of India for reasons best known again proceeded with the procedure as it stood prior to the amended provisions which came into force from 01.04.2021.

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

instance. Secondly, it is also in direct contravention to the directives issued by the Hon'ble Supreme Court in the case of Ashish Agarwal, supra.

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

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

38. Since the Hon'ble Supreme Court had, in the case of Ashish Agarwal, supra, as a one-time measure exercising the powers under

Article 142 of the Constitution of India, permitted the Revenue to proceed under the substituted provisions, and this Court allowing the petitions only on the procedural flaw, the right conferred on the Revenue would remain reserved to proceed further if they so want from the stage of the order of the Supreme Court in the case of Ashish Agarwal, supra.

39. No order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

P.SAM KOSHY, J

LAXMI NARAYANA ALISHETTY, J

Date: 14.09.2023
GSD