

## Validity of Sec.148 notice issued by JAO after March 29, 2022

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Post introduction of faceless assessment, reassessment under section 147 of the Income Tax Act ('the Act') is becoming regular features. During the month of March, the assessee faces anxiety of receiving notices under section 148/148A of the Act and related compliance.

### Existing procedure of the reassessment

As per the provision of section 147 of the Act, If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income for such assessment year.

As per the provision of section 148 of the Act before making the reassessment under section 147 of the Act and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed under section 148A(d) of the Act, requiring him to furnish within a period of 90 days from the end of the month in which such notice is issued, a return of his income in respect of which he is assessable under this Act.

As per the provision of section 148A of the Act, the Assessing Officer, 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 as to why a notice under section 148 of the Act should not be issued;

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b).

(d) decide in the prescribed time period, 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 of the Act, by passing an order, with the prior approval of specified authority,.

At present in most of the cases, the jurisdictional assessing officer ('JAO') issues notice under section 148A(b) of the Act, passed the order under sec 148A(d) and issue notice under section 148 of the Act to file the return of income within specified time.

Once the assessee files the return of income pursuant to notice issued under section 148 of the Act, in terms of the provision of section 144B of the Act, the case transfers to faceless assessment (NFAC) unit for completion of reassessment under section 147 of the Act. NFAC pass the reassessment order under section 147 read with section 144B of the Act.

Thus, reassessment process upto issue of notice under section 148 of the Act is handled by JAO and

reassessment order under sec 147 is passed by NFAC.

### **Whether JAO has jurisdiction to issue notice under section 148 of the Act?**

As per the provision of section 151A (1) of the Act, the Central Government may make a scheme, by notification in the Official Gazette,

- (a) for the purposes of assessment, reassessment or re-computation under section 147
- (b) or issuance of notice under section 148
- (c) or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A
- (d) or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—

to impart greater efficiency, transparency and accountability by inter alia eliminating the interface between the Income Tax Authorities and assessee and introducing time-based assessment, reassessment or issue or sanction of notice with dynamic jurisdiction.

As per the provision of sec 151A (2) of the Act, the Central Government for the purpose of giving effect to the scheme made under subsection (1) authorised to issue notification in the Official Gazette, for giving direction that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Provided that no direction shall be issued after the 31st day of March 2022. Further, every notification issued under section 151A (1) and (2) of the Act to be laid before both the House of Parliament.

In exercised of the power conferred by sections 151A (1) and (2) of the Act, [CBDT issued notification No 18/2022 /E. No.370142/16/2022](#)-TPL dated 29th March 2022 and formulated scheme called “e-Assessment of Income Escaping Assessment Scheme 2022’ which is effective from 29th March 2022. As per the para 3 (Scope) of the scheme,

- (a) assessment, reassessment or re-computation 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 re-assessment of total income or loss of assessee.

As per the para 2(b) of the Scheme, 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.

Thus, in view of the provision of sec 151A of the Act read with Notification no 18/2022, any notice to be issued under sec 148/148A of the Act after 29th March 2022 should be complied with “e- Assessment of Income Escaping Assessment Scheme 2022’. Accordingly, reassessment notice should be routed through automated allocation and same should be issued by faceless assessment unit (NFAC). In another words, post 29th March 2022, JAO does not have power to issue notice under sec 148/148A of the Act. Any notice issued under section 148/148A by JAO after 29th March 2022 become bad in law.

Recently Hon’ble Bom High Court in the case of [Hexaware Technologies Ltd vs ACIT](#) has adjudicated that JAO has no power to issue notice under section 148 of the Act post CBDT notification dated 29th March 2022 issued under section 151A of the Act. Hon’ Bom HC inter-alia held that;

- (a) The Scheme dated 29th March 2022 in paragraph 3 clearly provides that the issuance of notice “*shall be through automated allocation*” which means that the same is mandatory and is required to be followed by the Department and does not give any discretion to the Department to choose whether to

follow it or not. That automated allocation is defined in paragraph 2(b) of the Scheme to mean an algorithm for randomised allocation of cases by using suitable technological tools including artificial intelligence and machine learning with a view to optimise the use of resources. Therefore, it means that the case can be allocated randomly to any officer who would then have jurisdiction to issue the notice under Section 148 of the Act.

(b) Section 151A of the Act itself contemplates formulation of Scheme for both assessment, reassessment or re-computation under Section 147 as well as for issuance of notice under Section 148 of the Act. Therefore, the Scheme framed by the CBDT, which covers both the aforesaid aspect of the provisions of Section 151A of the Act cannot be said to be applicable only for one aspect, i.e., proceedings post the issue of notice under Section 148 of the Act being assessment, reassessment or re-computation under Section 147 of the Act and inapplicable to the issuance of notice under Section 148 of the Act. The Scheme is clearly applicable for issuance of notice under Section 148 of the Act and accordingly, it is only the FAO which can issue the notice under Section 148 of the Act and not the JAO.

(c) If clause 3(b) (issue of notice under section 148 of the Act) of the Scheme is not applicable, then only clause 3(a) of the Scheme remains. What is covered in clause 3(a) of the Scheme is already provided in Section 144B (1) of the Act, which Section provides for faceless assessment, and covers assessment, reassessment or recomputation under Section 147 of the Act. Therefore, if Revenue's arguments are to be accepted, there is no purpose of framing a Scheme only for clause 3(a) which is in any event already covered under faceless assessment regime in Section 144B of the Act. The argument of respondent, therefore, renders the whole Scheme redundant. An argument which renders the whole Scheme otiose cannot be accepted as correct interpretation of the Scheme.

(d) The phrase "to the extent provided in Section 144B of the Act" in the Scheme is with reference to only making assessment or reassessment or total income or loss of assessee. Therefore, for the purposes of making assessment or reassessment, the provisions of Section 144B of the Act would be applicable as no such manner for reassessment is separately provided in the Scheme. For issuing notice, the term "to the extent provided in Section 144B of the Act" is not relevant. The Scheme provides that the notice under Section 148 of the Act, shall be issued through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in Section 148 of the Act and in a faceless manner. Therefore, "to the extent provided in Section 144B of the Act" does not go with issuance of notice and is applicable only with reference to assessment or reassessment. The phrase "to the extent provided in Section 144B of the Act" would mean that the restriction provided in Section 144B of the Act, such as keeping the International Tax Jurisdiction or Central Circle Jurisdiction out of the ambit of Section 144B of the Act would also apply under the Scheme. Further the exceptions provided in sub-section (7) and (8) of Section 144B of the Act would also be applicable to the Scheme.

(e) When an authority acts contrary to law, the said act of the Authority is required to be quashed and set aside as invalid and bad in law and the person seeking to quash such an action is not required to establish prejudice from the said Act. An act which is done by an authority contrary to the provisions of the statute, itself causes prejudice to assessee. All assessees are entitled to be assessed as per law and by following the procedure prescribed by law. Therefore, when the Income Tax Authority proposes to act against an assessee without following the due process of law, the said action itself results in a prejudice to assessee. Therefore, there is no question of petitioner having to prove further prejudice before arguing the invalidity of the notice.

(f) Office memorandum 20th February 2023 being F No.370153/7/2023 TPL is contrary to the provision of the Act as well as scheme dated 29th Marh 2022.

Further the Hon'ble Telangana High Court in the case of [Kankanala Ravindra Reddy vs. Income Tax Officer](#) has held that in view of the provisions of Section 151A of the Act notice issued under section 148 of the Act by JAO is bad in law.

### **Next Cause of the action**

In view of the express provision of section 151A of the Act and recent Hon'ble Bom High court judgment in the case of Hexaware (supra), it is pertinent to check whether notices issued under section 148 of the Act after 29th March 2022 is by JAO or by NFAC. If it is issued by JAO and reassessment proceeding is in

progress, option to file writ with High Court for quashing of notice under section 148 can be explored.

Even if the assessment order was issued under section 147 read with section 144B of the Act, option of filing of additional ground with CIT(A) can be explored.

Till the time the SLP is decided by the SC, Hon'ble Bom HC and Telangana High Court judgment will prevail and 148 notices issued by JAO post 29th March 2022 will be treated as bad in law