

HC: HC: Sec.148 notice by JAO valid, as proceedings basis information received during search

Oct 10, 2024

Talati And Talati LLP [TS-744-HC-2024(GUJ)]

Conclusion

Gujarat HC observes in case of Talati and Talati LLP that the Central Government framing scheme for "E-Assessment of Income Escaping Assessment", does not cover a case where notice under Section 148 is issued by the Jurisdictional Assessing Officer (JAO) based on the information received by him in the matter of Search and Seizure under Section 132 or requisitioned under Section 132A; Rejects Assessee's argument that JAO was not competent to issue the impugned notice under Section 148 in a case of Search and Seizure under Section 132; Distinguishes Bombay HC judgment in [Hexaware Technologies](#) by observing that the same falls within the arena of Explanation 1 to Section 148 and not where Explanation 2 to Section 148 is attracted, i.e. the same is not applicable to the search and seizure cases; Observes that Explanation 2 of Section 148 deals with the information received during search and seizure operations under Section 132 which requires fulfillment of pre-requisites conditions; Further observes that Section 151A contemplates framing of the scheme by the Central Government by notification in the official Gazette, even for the purpose of issuance of notice under Section 148 in the case of re-assessment or sanction for issue of such notice under Section 151, with the aim to impart greater efficiency, transparency and accountability by eliminating the interface between the income tax authority and the Assessee or any other person to the extent technologically feasible; Thus finds that feasibility of implying technology for the process, thus, would be relevant; HC Concurs with the Revenue that recording of satisfaction by the AO on perusal of the information received by him as a result of search and seizure operation under Section 132 requires application of human mind, inasmuch as, reasons affirmed on the part of the Satisfaction Note may also become subject matter of scrutiny by the Court; Thus holds Assessee's challenge to the notices under Section on the ground that the said notice could have been issued only through automated allocation in faceless manner and not by JAO, to be unsustainable.:HC GUJ

Decision Summary

The judgment was delivered by the division bench of Gujarat High Court comprising Chief Justice Sunita Agarwal and Justice Pranav Trivedi.

Advocates Sudhir M Mehta and Shailee S Mehta appeared for the Assessee and the Revenue was represented by Advocates Nikunt K Raval and Kalpana K Raval.

Assessee, an LLP engaged in running professional services / consultancy / advisory in the field of Chartered Accountancy, was subject to reassessment. Assessee preferred the present writ petition challenging the notice under Section 148 on the ground that it was issued by the Jurisdictional Assessing Officer (JAO) in violation of Section 151A as has been inserted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act' 2020 with effect from Nov 1, 2022 which provides for faceless assessment of income escaping assessment.

Observed that the Central Government has been empowered under Section 151A to formulate a scheme aimed at improving efficiency, transparency and accountability in assessment, re-assessment and re-computation processes of Income tax under Sections 147, 148 and 151. Considered Assessee's contention that with the E-Assessment of Income Escaping Assessment, has provided for issuance of notice under Section 148 of the Act through automated allocation in faceless manner, it is mandatory for the revenue to issue notice under Section 148 through automated allocation. Noted Revenue's argument that the concept of automated allocation, i.e. application of algorithm for randomized allocation of cases by using suitable technological tools including Artificial Intelligence and Machine Learning, as defined in Clause 2(1)(b) of the Scheme dated 29.03.2022, cannot be applied in a case of Search and Seizure under

Section 132, inasmuch as, issuance of notice under Section 148, in such cases, is governed by explanation to Section 148, extracted hereinbefore. HC noted that Section 148 is a procedure provided for issuance of notice in all cases of assessment, re-assessment or re-computation under Section 147, which empowers the Revenue to assess and reassess where any income chargeable to tax, in the case of an Assessee, who has escaped assessment for any assessment year, subject to the provisions of Sections 148 to 153. Further noted that Section 148A inserted by the Finance Act' 2021 provides for inquiry, opportunity of hearing to the Assessee before issuance of notice under Section 148. observed that Section 148A requires conducting an inquiry with the prior approval of the specified authority, provide opportunity of hearing to the Assessee, consider reply of the Assessee furnished in response to the show-cause notice, and decide on the basis of the material available on record including reply to the Assessee, whether or not the case is fit to issue a notice under Section 148, by passing an order. Pointed out that the said procedure under Section 148A is not applicable in a case of Search and Seizure under Section 132. Further pointed out that as per Explanation 1 and 2 of Section 148, provisions under Section 148 for issuance of notice before making assessment, re-assessment or re-computation under Section 147 operate in two different ways. Noted that provisions contained in Explanation 1 shows that the information with the Revenue for the purpose of Section 148 suggesting that the income chargeable to tax has escaped assessment under the Explanation.

Observed that Explanation 2 of Section 148 deals with the information received during search and seizure operations under Section 132 which requires fulfillment of pre-requisites conditions. Having perused the language employed in the Explanation 1 and Explanation 2 to Section 148, HC opines that, *"the method of automated allocation, i.e. for random allocation of cases through algorithm, or by using suitable technological tools, including artificial intelligence and machine learning, in accordance with risk management strategy formulated by the Board, as referred to in Explanation 1 clause (i) to Section 148 of the Act, for issuance of notice under Section 148 in a faceless manner, as per the scheme framed vide notification dated 29.03.2022, cannot be applied to the case of Search and Seizure under Section 132, where the Jurisdictional Assessing Officer (JAO) is required to record his satisfaction on the basis of the material for affirmation of opinion in an honest and bona fide manner"*;

Concurred with the Revenue that recording of satisfaction by the Assessing Officer on a perusal of the information received by him as a result of search and seizure operation under Section 132 requires application of human mind, inasmuch as, reasons affirmed on the part of the Satisfaction Note may also become subject matter of scrutiny by the Court; Distinguished Bombay HC judgment in [Hexaware Technologies](#) by observing that the same falls within the arena of Explanation 1 to Section 148 and not where Explanation 2 to Section 148 is attracted, i.e. the same is not applicable to the search and seizure cases. Having perused Central Government framing scheme for "E-Assessment of Income Escaping Assessment" under Section 151(1) and (2), HC holds Assessee's challenge to the notices under Section on the ground that the said notice could have been issued only through automated allocation in faceless manner and not by Jurisdictional Assessing Officer (JAO), to be unsustainable;

Rejects Assessee's argument that JAO was not competent to issue the impugned notice under Section 148 in a case of Search and Seizure under Section 132. Observed that Section 151A contemplates framing of the scheme by the Central Government by notification in the official Gazette, even for the purpose of issuance of notice under Section 148 in the case of re- assessment or sanction for issue of such notice under Section 151, with the aim to impart greater efficiency, transparency and accountability by eliminating the interface between the income tax authority and the Assessee or any other person to the extent technologically feasible; Thus found that feasibility of implying technology for the process, thus, would be relevant. Having perused Central Government framing scheme for "E-Assessment of Income Escaping Assessment" under Section 151(1) and (2), HC opines that, *"the aforesaid notification does not cover a case where notice under Section 148 is issued by the Jurisdictional Assessing Officer (JAO) the information received by him in the matter of Search and Seizure under Section 132 of the Act' 1961, or requisitioned under Section 132A"*.

Took note of the satisfaction notes issued by the Revenue and stated that the instant case has proceeded to the stage of issuance of the notice under Section 142 (1), which was issued by the Verification Unit of the Faceless Assessment Centre. Thus stated that the Assessee may pursue alternate remedy before the Competent Authority and may ask for virtual hearing to participate in the proceedings. Thus disposed of Assessee's writ petition.

Case Law Information

Taxpayer Name

- Talati And Talati LLP

Judicial Level & Location

- High Court Gujarat

Appeal Number

- R/SPECIAL CIVIL APPLICATION NO. 13198 of 2024

Date of Ruling

- 2024-10-01

Ruling in favour of

- Assessee

Section Reference Number

- [148](#)
- 151A
- [132](#)
- 148A

Nature of Issue

- Reopening of assessment
- Search and Seizure

Judges

- Chief Justice Sunita Agarwal
- Justice Pranav Trivedi

Counsel for Tax Payer

- Advocate Sudhir Mehta
- Shailee S Mehta

Counsel for Department

- Nikunt K Raval
- Kalpana Raval