IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER 2023

BEFORE

THE HON'BLE MR. JUSTICE B. M. SHYAM PRASAD

WRIT PETITION No.1109/2023 [T-IT]

BETWEEN :

ADARSH DEVELOPERS
REP BY ITS MANAGING PARTNER
SRI B M JAYESHANKAR
S/O LATE SRI B M MADAIAH
AGED ABOUT 67 YEARS
OFFICE AT 2/4, LANGFORD GARDENS,
RICHMOND TOWN,
BANGALORE- 560 025
PAN AAGFA3674G

... PETITIONER

(BY SRI. A SHANKAR, SENIOR ADVOCATE FOR
SRI. ANNAMALAI S, ADVOCATE)

Digitally signed by ANAND N
Location: HIGH COURT OF KARNATAKA

AND :

1 . THE DEPUTY COMMISSIONER
OF INCOME TAX
CENTRAL CIRCLE 2 (1)
3RD FLOOR, C R BUILDINGS,
QUEENS ROAD,
BANGALORE- 560 001

2 . NATIONAL FACELESS
ASSESSMENT CENTRE
REP. BY ADDITIONAL/JOINT/
DEPUTY/ADDITIONAL COMMISSIONER
OF INCOME-TAX/
INCOME-TAX OFFICER

INCOME-TAX DEPARTMENT
MINISTRY OF FINANCE
ROOM NO. 401, 2ND FLOOR,
E- RAMP, JAWAHARLAL NEHRU
STADIUM, DELHI- 110 003

... RESPONDENTS

[BY SRI N VENKATARAMAN, Addl. SGI FOR
SRI. M DILIP, ADVOCATE]

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ASSESSMENT ORDER PASSED BY THE R1 UNDER SECTION 143(3) OF THE INCOME TAX ACT, 1961 DATED 20.09.2022 BEARING DIN NO. ITBA//AST/S/143(3)/2022-23/1045739577 (1) FOR THE ASSESSMENT YEAR 2020-21 HEREIN MARKED AS ANNEXURE-A1; QUASH THE COMPUTATION SHEET ISSUED BY THE R1 DATED 20.09.2022 BEARING DIN AND DOCUMENT NO. ITBA/AST/S/530/2022-23/1045740084(1) IN RESPECT OF THE ASSESSMENT YEAR 2020-21 HEREIN MARKED AS ANNEXURE - A2.

THIS WRIT PETITION COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:-

O R D E R

The petitioner has impugned the first respondent's Assessment Order dated 20.09.2022 in DIN No.ITBA /AST/S/143(3)/2022-23/1045739577(1) [*Annexure-A1*] under Section 143[3] of the Income Tax Act, 1961 [for short *'the IT Act'*]. In addition, the petitioner has

impugned the consequential Computation and Demand Notice [*Annexures-A2 and A3*] as also Show Cause Notice dated 20.09.2022 [*Annexure-A4*] issued under Section 270A of the IT Act for the assessment year 2020-21.

2. The petitioner, a partnership firm engaged in the business of real estate development, has filed Returns of Income [ROI] under Section 139[1] of the IT Act for the Assessment Year 2020-21. The petitioner's case is selected for scrutiny, and the Additional Commissioner of Income Tax, NaFAC-1[1][2], Delhi [*the second respondent as the Prescribed Income Tax Authority*] [for short, *'the NaFAC']* has issued Notice dated 29.06.2021 [*Annexure-C*] to the petitioner under Section 143[2] of the IT Act. Subsequently, the first respondent has served Notices dated 23.11.2021, 09.12.2021, 03.01.2022, 11.01.2022, 19.02.2022, 28.04.2022 27.05.2022 and 12.08.2022 [*the copies of*

these Notices are appended to the writ petition as different annexures] under Section 142[1] of the IT Act calling upon the petitioner to furnish details such as computation of income, financial statements along with all the detailed schedules with party-wise and item-wise contents, the party-wise details of sundry advances that are written off and the reasons for writing off such advances, a brief note on various receipts shown in profit and loss account with the various activities carried on during the financial year 2019-20. The petitioner has filed certain responses to each of these notices, including the response dated 20.07.2022.

3. The first respondent has passed the impugned Assessment Order dated 20.09.2022 with certain additions and disallowances. The petitioner has filed its appeal against the first respondent's Assessment Order dated 20.09.2022 with the Commissioner of Income Tax [Appeals]-11 Bengaluru.

The petitioner has also filed separate applications for rectification under Section 154 of the IT Act with the first respondent on 18.10.2022 and 06.12.2022. The aforesaid appeal and the applications for rectification are pending consideration.

4. The Principal Commissioner of Income Tax [Central], Bengaluru by the order dated 20.12.2022 has granted stay of recovery in terms of the Assessment Order subject to the petitioner depositing the disputed amount in ten installments of Rs.1,96,28,424/-. This Court, in the light of the submission that the first of the installments in Rs.1,96,28,424/- is paid under protest, and because of the question that is canvassed, has recorded that the respondents are expected not to be precipitative. It is placed on record that in due deference to this observation, the respondents have not taken any action. Presently, the pleadings are complete. The respondents have requested for early disposal of the

petition emphasizing that a large number of notices have been issued by the Prescribed Income Tax Authority, and if the question for consideration remains pending for long there could be ramifications. Sri. A Shankar, the learned Senior Counsel for the petitioner, and Sri. N Venkataraman, the learned Additional Solicitor General of India, were initially heard on the following question for final disposal of the petition.

> *Whether the Additional Commissioner of Income Tax NaFAC-1(1)(2) could have assumed jurisdiction in respect of the petitioner's case which belongs to central charge for issuance of notice under Section 143(2) of the Income Tax Act, 1961; and if the aforesaid officer could not have so assumed jurisdiction, whether the proceedings must fail for want of due notice under Section 143(2) of the Income Tax Act, 1961.*

5. The petitioner's case is that its jurisdictional Assessing Officer is the Deputy Commissioner of Income

Tax, Central Circle 2(1), Bangalore [*the first respondent*] and as such, the Additional Commissioner of Income Tax, NaFAC-1(1)(2), Delhi [*the second respondent*] could not have assumed jurisdiction to issue notice dated 29.06.2021 [*Annexure-C* under Section 143[2] of the IT Act because the jurisdiction of the first respondent has not been *decentralized* insofar as the petitioner. The petitioner contends that because notice dated 29.06.2021 is issued by an officer without jurisdiction, the entire proceedings culminating with the impugned Assessment Order dated 20.09.2022 are without jurisdiction, and hence, this Court must interfere notwithstanding the fact that the petitioner has availed statutory remedy against the Assessment Order.

6. The respondents, who assert that the second respondent is vested with the jurisdiction to issue notice in view of the amendment to Section 143[2] of the IT Act with effect from 01.06.2016 and the insertion of Section

144B with effect from 01.04.2021, question the petitioner's *locus* to maintain the writ petition relying upon the provisions of Section 124[3] of the IT Act. On the question of jurisdiction to issue notice under Section 143[2] of the IT Act, the respondents assert that the Central Board of Direct Taxes [CBDT] has authorized the second respondent to act as the 'Prescribed Income Tax Authority' for the purposes of Section 143[2] of the IT Act in exercise of the powers conferred thereunder and Rule 12A of the Income Tax Rules, 1962 read with Section 143[2], and that the 'Prescribed Income Tax Authority' is vested with jurisdiction to issue notice under Section 143[2] of the IT Act for cases to be assessed under the provisions of Section 144B of the IT Act or outside such assessment in appropriate cases.

7. The respondents, to vindicate their case that the second respondent is vested with jurisdiction in law

to issue notice under Section 143[2] of the IT Act, have also, as part of their Statement of objections and convenience compilation filed during the course of hearing, given a historical background to bring out the evolution in the assessment proceedings with the elimination of the interface between Assessing Officers and Assessees by utilizing technology and the introduction of a team based assessment with dynamic jurisdiction.

8. If these are the elementary pleadings and contentions for and against the question that is framed for consideration, both Sri A Shankar and Sri. N Venkataraman have elaborated the respective contentions with detailed submissions. In the early stages of hearing, Sri. A Shankar had urged multiple grounds to vindicate the petitioner's case that the second respondent lacked jurisdiction to issue the Notice under Section 143[2] of the IT Act, but with the

completion of the pleadings and with the submissions by Sri N. Venkataraman, Sri A. Shankar acknowledges that the grounds are narrowed down substantially.

9. Sri A Shankar's submissions in support of the petitioner's case that the assessment proceedings are commenced with issuance of notice under Section 143[2] of the IT Act by an officer who could not have assumed such jurisdiction and therefore the entire proceedings culminating with the impugned assessment order dated 20.09.2022 [Annexure-A1] are summarized thus:

9.1 The Parliament with effect from 01.06.2016 has amended Section 143[2] of the IT Act stipulating that when an Assessing Officer or a Prescribed Income Tax Authority, *as the case may be,* considers it necessary or expedient to ensure that an assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any

manner, shall serve on the assessee a notice requiring him on a date specified either to attend or to produce or cause to be produced any evidence to explain the declarations in ROI. The provisions of Section 143[2] of the IT Act recognize that there will be more than one classes of cases [or incomes or businesses] for assessment, and in respect of these classes either the concerned Assessing Officer or the Prescribed Income Tax Authority, as the case may be, shall issue notice under Section 143[2] of the IT Act. As such, either the concerned Assessing Officer or the Prescribed Income Tax Authority, depending on the class of a case or income or business must issue notice.

9.2 The CBDT, with introduction of the Faceless Assessment Scheme [as e-Assessment Scheme] in the year 2019, has issued Notification dated 13.08.2020 classifying the assessment cases in two classes *viz.*, ***[a]*** the assessments in the matters of

Central Charge and International Tax Charge and ***[b]*** the scrutiny assessment otherwise with the stipulation that all the assessment orders shall be passed by the National e-Assessment Centre through the Faceless Assessment Scheme except in cases assigned to *Central Charge* and *International Tax Charge.* The CBDT has further stipulated that any assessment which is not in conformity with the afore shall be treated as *non-est.* The CBDT, even after the incorporation of the National Faceless Assessment Scheme under Section 144B in the IT Act, has issued orders under Section 119 of the IT Act on 31.03.2021 specifying that all assessment proceedings pending as on 31.03.2021 and the assessment proceedings initiated on or after 01.04.2021 [other than those in Central charges and International Taxation charges] shall be completed under Section 144B of the IT Act.

9.3 The CBDT, which had issued order dated 13.08.2020 in exercise of its powers under Section 119[2] of the IT Act, classifying Central Charges and International Taxation Charges as separate classes when Faceless Assessment Scheme, 2019 was in vogue, has not issued a similar order with the introduction of National Faceless Assessment Scheme with the insertion of the Section 144B of the IT Act. This order dated 13.08.2020 cannot continue with the introduction of the later Scheme, and the order dated 31.03.2021, issued under Section 119[1] of the Act, which is essentially an internal communication, cannot be effective, and as such, the arrangement under the previous Scheme ceased to operate.

9.4 The Parliament's intent in stipulating that the concerned Assessing Officer or the Prescribed Income Tax Authority, as the case may be, shall issue notice under Section 143[2] of the IT Act is to enable

separate commencement of assessment proceedings in different classes of cases. Therefore, the CBDT, both with the notification of the Faceless Assessment Scheme 2019 and incorporation of the National Faceless Assessment Scheme incorporated into the Act under Section 144B, has issued orders/notifications treating assessment under Central Charge and International Taxation Charge as separate classes of cases and excluding them from faceless assessment. In which event, the notice under Section 143[2] of the IT Act in the cases of Central Charge [and International Taxation Charge] will have to be issued by the concerned Assessing Officer and in the other cases there will have to be faceless assessment with the prescribed authority issuing such notices.

9.5 The settled law is that it must be presumed that every word in a statute is deliberately and consciously incorporated by the legislature and has to

be given effect accordingly. If the expression '*the assessing officer or the prescribed authority as the case may be'* is not accordingly read, the Parliament's intent in enabling different classes of cases with the stipulation that the assessing officer or the prescribed authority, as the case may be, shall issue notice under Section 143[2] of the IT Act will be ignored doing violence to the statutory provision despite the settled proposition.

10. Sri N. Venkataraman submits at the outset that the petition must be dismissed on the ground of maintainability because the petitioner cannot call in question the Assessing Officer's jurisdiction to pass the impugned Assessment Order dated 20.09.2022 [Annexure – A1] when the petitioner, upon receipt of Notice dated 29.06.2021 under Section 143[2] of the IT Act, has filed reply to such notice and to different notices issued thereafter under Section 142[1] of the IT

Act leading to the culmination of the assessment proceedings with the assessment order dated 20.09.2022 [Annexure-A1].

11. Sri N. Venkataraman canvasses that, even if the petitioner could have challenged the jurisdiction to issue notice dated 29.06.2021 [*Annexure-C*] under Section 143[2] of the IT Act, it would have to be within one month from the date on which the petitioner was served with the aforesaid notice. In this regard, the learned Additional Solicitor General, drawing support from the Division Bench Judgment of the Delhi High Court in ***Commissioner of Income Tax vs. Kapil Jain***[1], relies upon the provisions of Section 124[3] of the IT Act and emphasizes that the provisions of this Section stipulate that no person shall be entitled to call in question the jurisdiction of the assessing officer after the expiry of one month from the date of receipt of the

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[1] *2010 SCC Online Delhi 2596*

notice under Section 143[2] or after the completion of the assessment, whichever is earlier.

12. Sri N. Venkataraman submits that going by the history of the law, it is self-evident that, post 01.06.2016, either the concerned Assessing Officer or the Prescribed Income Tax Authority can issue notice under Section 143[2] of the IT Act, and insofar as the history of the law, the learned Additional Solicitor General submits that the history must be seen in four phases and elaborates thus.

THE FIRST PHASE:

This phase is prior to 31.05.2016 *i.e.,* before the amendment of Section 143[2] with effect from 01.06.2016. During this phase, the notice under Section 143[2] of the IT Act could be issued only by the concerned Assessing Officer and the Assessing Officer alone could complete the assessment.

THE SECOND PHASE:

This phase is with the amendment of Section 143[2] of the IT Act with effect from 01.06.2016. In this phase the notice under Section 143[2] of the IT Act could be issued either by the concerned Assessing Officer or the Prescribed Income Tax Authority but the assessment must only be completed by the Assessing Officer. Though this arrangement was put in place with the amendment to Section 143[2] of the IT Act, it was not given effect to.

THE THIRD PHASE:

The third phase is when Sections 143 [3A] to [3C] are inserted with effect from 01.04.2018 *vide* the Finance Act of 2018. These amendments empowered the Central Government to make a Scheme through notification in the Official Gazette to impart greater efficiency, transparency and accountability in assessment by

- eliminating the interface between the Assessing Officer and the Assessee by using technology to the extent feasible;
- optimizing utilization of resources through economies of scale and functional specialization; and
- introducing a team-based assessment with dynamic jurisdiction.

The Central Government has issued notifications notifying e-Assessment Scheme. This Scheme was in place only for a short period between 01.04.2018 and 31.03.2021 except in cases falling under Section 144[3] of the IT Act.

THE FOURTH PHASE

The fourth phase is with the introduction of faceless assessment into the IT Act by the Taxation and Other Laws [Relaxation and Amendment of Certain Provisions] Act, 2020 with effect from 01.04.2021. With

this amendment, Section 144B is brought into the IT Act stipulating that, notwithstanding anything to the contrary contained in any other provisions of the IT Act, the assessment under Section 143[3] or under Section 144 shall be made in the faceless manner. The golden rule in this phase is for faceless assessment with the Prescribed Income Tax Authority issuing notice under Section 143[2] of the IT Act subject to exception in the cases of Central Charges and International Taxation Charges. In these cases of exception notice under Section 143[2] of the IT Act must be issued by the *Prescribed Income Tax Authority* and served by National e-Assessment Centre and subsequently, directly displayed to the concerned jurisdictional Assessing Officer for carrying out further assessment proceedings.

13. Sri N. Venkataraman canvasses that the CBDT, in consonance with this evolving change, has issued notifications under Section 143[2] of the IT Act

authorizing the Additional Commissioner/ Deputy Commissioner of Income Tax [National E-Assessment Centre] to act as the Prescribed Income Tax Authority for the purposes of this Section. The CBDT has issued the first notification on 25.09.2020, and this is continued by the subsequent notification dated 31.03.2021. The CBDT has also notified Computer Assisted Scrutiny Selection [CASS, 2020] on 17.05.2021 stipulating that the Prescribed Income Tax Authority shall issue notice under Section 143[2] of the IT Act, such notice shall be served by National e-Assessment Centre and subsequently the cases shall be assigned to a specific Assessment Unit in a Regional e-Assessment Centre through an automated allocation system for the purposes of e-Assessment. Insofar as the cases relating to Central and International Taxation Charges, the instructions under CASS, 2020 are that the Prescribed Income Tax Authority shall issue notices and the cases subsequently directly displayed to the

concerned jurisdictional Assessing Officer for carrying out further assessment proceedings. Sri N. Venkataraman submits that these instructions are continued under CASS, 2021 dated 13.10.2021.

14. Sri N. Venkataraman emphasizes that the CBDT's Notification dated 13.08.2020, though issued when the Faceless Assessment Scheme, 2019 was in force, will continue to be effective providing for assessment in cases of Central and International Taxation Charges through the jurisdictional Assessing Officer after the notices are issued by the Prescribed Income Tax Authority, and the operation of this notification, which carves out an exception to the golden rule of assessment through the Faceless Scheme after issuance of notice by the 'Prescribed Income Tax Authority', does not cease to operate with the repeal of the Faceless Assessment Scheme, 2019 with the

enactment of Taxation and Other Laws [Relaxation and Amendment of Certain Provisions] Act, 2020 introducing Section 144B. The learned Additional Solicitor General, to support this contention relies upon Section 24 of the General Clauses Act, 1897 and the decision of the Hon'ble Supreme Court in ***Fibre Boards Private Limited, Bangalore v. Commissioner of Income-tax Bangalore***[2].

15. Sri A. Shankar in rejoinder rebuts the canvass on the maintainability of the writ petition challenging the assessment order dated 20.09.2022 [Annexure- A1] contending that the petitioner does not challenge the jurisdiction of the first respondent to pass the impugned order because the petitioner's case before this Court is in the premise that the first respondent, and not the second respondent, is the jurisdictional Assessing Officer. The learned Senior Counsel argues

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[2] *[2015] 10 SCC 333*

that this Court must consider that the petitioner is categorical that the impugned assessment order dated 20.09.2022 [*Annexure – A1*] is by the jurisdictional Assessing Officer, but such officer first has not assumed jurisdiction with the issuance of notice under Section 143[3] of the IT Act, and therefore, the Assessment Order dated 20.09.2022 must fail.

16. Sri A. Shankar further submits that the embargo under Section 124[3] of the IT Act is to call in question the jurisdiction of the Assessing Officer as defined under Section 2[7A] of the IT Act unlike in the present case where the petitioner, without questioning the jurisdiction of the Assessing Officer, is contending that the assessment proceedings could not have been continued with the notice under Section 143[2] of the IT Act being issued by the Prescribed Income Tax Authority. Sri A. Shankar, relying upon the decision of

the High Court of Gujarat in ***CIT v. Ramesh D Patel***[3]**,** also submits that in any event the embargo under Section 124[3] of the IT Act will be only when an assessee proposes to question the Assessing Officer's territorial jurisdiction.

17. Sri A. Shankar and Sri N. Venkataraman, are heard on the question framed for hearing, but as they have dilated on the question of maintainability of the petition, this Court will have to consider the following two questions:

> [a] *Whether the Additional Commissioner of Income Tax NaFAC-1(1)(2) could have assumed jurisdiction in respect of the petitioner's case which belongs to Central Charge for issuance of notice under Section 143(2) of the Income Tax Act, 1961; and if the aforesaid officer could not have so assumed jurisdiction, whether the proceedings must fail for want of due notice*

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[3] *326 ITR 492 [GUJ]*

under Section 143(2) of the Income Tax Act, 1961.

[b] *Whether the petitioner can invoke this Court's jurisdiction under Article 226 of the Constitution of India to call in question the Assessment Order dated 20.09.2022 [Annexure- A1] on the ground that the Prescribed Income Tax Authority who has issued the notice under Section 143[2] of the IT Act could not have assumed jurisdiction to issue such notice despite the fact that:*

- *the petitioner, upon receipt of such notice, has participated in the assessment proceedings without demur with these proceedings culminating with the impugned Assessment Order dated 20.09.2022 [Annexure - A1], and*

- *the petitioner has filed statutory appeal as against this assessment order 20.09.2022 [Annexure A1], apart from seeking rectification under section 154 of the IT Act and when it is extended the advantage of*

certain interim orders against the demand computed after the assessment order.

18. The first question must be considered in the light of the changes that are brought about by way of statutory amendments and statutory orders to introduce faceless assessment to usher in greater efficiency, transparency and accountability by:

- *eliminating the interface between the assessing officer and the assessee, not entirely but to the extent technologically feasible*
- *optimizing utilization of the resources through, what are described, as economies of scale and functional specialization, and*
- *introducing a team-based assessment with a dynamic jurisdiction.*

In this regard this Court must refer to the provisions of Section 143[3A] of the IT Act, which are inserted along with Sections 143[3B] and 143[3C] by the Finance Act, 2018 with effect from 01.04.2018.

19. The provisions of Section 143[3B] of the IT Act empower the Central Government, for the purposes of giving effect to a scheme as contemplated under Section 143[3A] of the IT Act, to notify that any provision of the IT Act relating to the assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. These provisions are inserted after Section 143[2] is substituted *vide* the Finance Act, 2016 with effect from 01.06.2016.

20. The Parliament in substituting the provisions of Section 143[2] of the IT Act has introduced the first change paving way for the later changes. The provisions of Section 143[2] of the IT Act prior to the amendment *vide* the Finance Act, 2016 and after such amendment read as under:

Post Amendment	*Prior to Amendment*
(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return: *Provided that no notice under this sub-section shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.]*	*"(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,-* *(i) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:* *Provided that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;* *(ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in*

	support of the return: *Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished."*

21. Prior to this amendment, consequent to the different amendments starting with Direct Tax Laws [Second Amendment] Act, 1989 and up until the Finance Act, 2008, if the Assessing Officer, under Section 143[2][i] of the IT Act, earlier to 01.06.2003, had reasons to believe that any claim of loss or exemption or deduction or allowance in the ROI is inadmissible, should have issued notice with details of specified; and similarly, for the period after 01.06.2003 and the Assessing Officer considered it either necessary or expedient, to ensure that an assessee has not understated the income or has not computed excessive loss, or has not under-paid the tax in any manner, should have served notice on the concerned assessee as

required under Section 143[2][ii] of the IT Act subject to the time limit in the proviso to such sub-section.

22. However, with the amendment *vide* the Finance Act 2016, where the ROI is furnished under Section 139, or response is filed on service of a notice under Section 142[1], either the Assessing Officer or the Prescribed Income Tax Authority, as the case may be, if, it is considered necessary or expedient to ensure that an assessee has not understated the income or has not computed excessive loss or has not underpaid tax in any manner, shall serve on the assessee a notice for attendance or production of evidence as mentioned therein. This notice is to be served on an assessee only within the time contemplated in the proviso appended to this subject. It would suffice, for the purposes of the present controversy, to record that if there is change inasmuch as an Assessing Officer or the Prescribed Income Tax Authority can serve notice under Section

143[2] of the IT Act, the provisions of Section 143[3] have always stipulated that the Assessing Officer shall complete the assessment in writing assessing the total income loss of the assessee and determining the sum payable. Subsequently changes have been made to introduce e-assessment/faceless assessment, but this change has remained unaltered.

23. The Central Government, with the amendment of Section 143[2] of the IT Act and the introduction of Section 143[3A]-[3C] Act, has notified Faceless Assessment Scheme, 2019 *vide* the notification dated 12.09.2019 in exercise of jurisdiction under Section 143[3A] of the IT Act. The Scheme is initially called the E-assessment Scheme, 2019, and the scope of the Scheme, as contained in paragraph-3 thereof, is to ensure that the assessment shall be made in respect of such territorial area, or persons or class of persons,

incomes or class of incomes, or cases or class of cases as may be specified by the CBDT[4].

24. The CBDT, under this Scheme, is empowered to set up National E-assessment Centre and Regional E-assessment Centers [*with jurisdiction to make assessment in accordance with the provisions of this Scheme*] as also Assessment Units, Verification Units, Technical Units and Review Units with the power to specify the respective jurisdictions. In paragraph-5 of the Scheme, the procedure for the assessment is detailed, and again for the purposes of the present petition, it would be necessary to emphasize that in terms of paragraph 5[xxi] of the Scheme[5], the National E-assessment Centre could, at any stage of the

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[4] *The Board is defined under the Scheme to be the Central Board of Direct Taxes [CBDT] constituted under the Central Board of Revenue Act, 1963.*

[5] *[xxi] Notwithstanding anything contained in paragraph xx, the National e-assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the assessing officer having jurisdiction over such case.*

assessment, if considered necessary, transfer the case to the concerned Assessing Officer having jurisdiction over such case. Crucially, the CBDT, given the scope of the Scheme delineated in paragraph 3 of the Scheme, can specify *inter alia* the class of cases for assessment under the Scheme.

25. The CBDT, with the introduction of this Scheme and the establishment of the necessary Units as aforesaid, has issued order dated 13.08.2020 in [F No. 187/3/2020-ITA-1] stipulating that all assessment order shall be passed by the National E-assessment Centre through the Faceless Assessment Scheme, 2019 except insofar as assessment orders in the case of Central Charges and International Tax Charges with the stipulation that any assessment which is not in conformity with this arrangement shall be treated as *non est* and deemed to have never been passed. The CBDT, in exercise of the powers conferred under Section

143[2] of the IT Act read with rule 12E of the Income Tax Rules, 1962, has authorized the Additional Commissioner/Deputy Commissioner of Income Tax[National Assessment Centre] to act as the Prescribed Income Tax Authority for the purposes of Section 143[2] of the IT Act stipulating that this Notification shall come into force with effect from 13.08.2020.

26. It is undisputed that with the introduction of the Scheme and the CBDT's order as aforesaid, the Prescribed Income Tax Authority, for the relevant assessment years, has issued notice under Section 143[2] to all the assessees and the assessment proceedings are continued under the Faceless Assessment Scheme, 2019 except insofar as Central Charges and International Tax Charges.

27. The Faceless Assessment Scheme, 2019 is repealed with effect from 01.04.2021 and National

Faceless Assessment Scheme is introduced by the Parliament inserting Section 144B of the IT Act. The petitioner does not have any quarrel with the Prescribed Income Tax Authority issuing notices in the cases of Central Charges and International Taxation Charges under the erstwhile Scheme, but contends the Prescribed Income Tax Authority under the new Scheme cannot assume jurisdiction in these cases. The background and the antecedent matrix in which the new Scheme [National Faceless Assessment Scheme] is incorporated will be a relevant consideration, and in this regard, this Court must refer to the decision of the Hon'ble Supreme Court in ***Shashikant Laxman Kale v. Union of India***[6], wherein its held as follows:

> *"17. For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of*

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6 *(1990) 4 SCC 366*

appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. .....

18. Not only this, to sustain the presumption of constitutionality, consideration may be had even to matters of common knowledge; the history of the times; and every conceivable state of facts existing at the time of legislation which can be assumed. Even though for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasise the availability of larger material to the court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision."

28. This Court must observe that the essential features of the Faceless Assessment Scheme, 2019 are retained with certain modifications under the National Faceless Assessment Scheme in Section 144B of the IT Act, and undeniably, the Parliament's intention in incorporating the Faceless Assessment into the IT Act with inclusion of Section 144B is to continue the Faceless Assessment subject to some changes as felt necessary from the past experience. This is a crucial aspect, and must be examined in the light of fact that CBDT, under both the two Schemes, is conferred with jurisdiction to specify the classes of cases in which the assessment has to be faceless. The relevant provisions are as follows:

Paragraph 3 of the Faceless Assessment Scheme, 2019	***Section 144B [2] of the IT Act***
Scope of the Scheme.— The assessment under this Scheme shall be made in respect of such territorial area, or persons or class of persons, or incomes or class	*The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or*

of incomes, or cases or class of cases, as may be specified by the Board	*incomes or class of incomes, or cases or class of cases, as may be specified by the Board*

29. The CBDT, with the National Faceless Assessment Scheme on the anvil, has issued Order dated 31.03.2021 under Section 119[2] of the IT Act stipulating that all the assessment proceedings pending as on 31.03.2021 and assessment proceedings initiated on or before 01.04.2021 [*other than those a settled charges and International Taxation chances*] shall be completed under Section 144B of the IT Act. The Directorate of Income Tax [Systems] has issued Communication dated 17.05.2021 to the Principal Chief Commissioner of Income Tax/Chief Commissioners of Income Tax stating that in cases pertaining to Central Charges and International Taxation, notices under Section 143[2] of the IT Act have been issued by the Prescribed Income Tax Authority and served on the assessee concerned electronically and subsequently

these cases have been directly displayed to the concerned jurisdictional assessing officer for carrying out further assessment proceedings.

30. The efficacy of the Communication dated 17.05.2021 to continue the arrangement that prevailed when Faceless Assessment Scheme, 2019, is called in question by the petitioner essentially on the ground that the CBDT order dated 13.08.2020 stands lapsed with the introduction of the National Faceless Assessment Scheme and the Communication dated 17.05.2021 cannot be relied upon to sustain the same arrangement when the provisions of section 143[2] of the IT Act, recognizing the possibilities of the different classification of classes of income/cases, stipulate that the Assessing officer or the Prescribed Income Tax Authority, as the case may be, shall serve notice for the purposes of Section 143 [3] of the IT Act.

31. However, the respondents contend that the CBDT Order dated 13.08.2020 continues to hold the field notwithstanding the repeal of Faceless Assessment Scheme with the introduction of the National Faceless Assessment Scheme under section 144B of the IT Act because of the provisions of section 24 of the General Clauses Act, 1897. This Court must observe that if this proposition can prevail, then the petitioner cannot succeed in its challenge to the assessment order dated 20.09.2022 [Annexure-A1] on the ground that the jurisdictional Assessing Officer [*the first respondent*] should have issued the notice under section 143[2] of the IT Act and not the Prescribed Income Tax authority [*the second respondent*].

32. The provisions of Section 24 of the General Clauses Act, 1897 provide for continuation of orders etc., issued under enactments repealed and re-enacted.

"Section 24. Continuation of orders, etc., issued under enactments repealed and re-enacted.— Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5-A of the 8 Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."

These provisions contemplate that where any central Act or Regulation, after the commencement of the General Clauses Act, 1897 is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any order or regulation made under the repealed Act or Regulation shall continue in force and be deemed to have been made or issued under the re-enactment unless it is inconsistent with the provisions of the re-enactment and until it is superseded by any order, scheme or rule or such other issued under the provisions of the re-enactment.

33. The Hon'ble Supreme Court in ***'Fibre Boards Private Limited v. CIT*** *supra,* while considering the earlier decisions on Section 24 of the General Clauses Act, 1897 has reiterated that, unlike Section 6 of the General Clauses Act, 1897 which saves certain rights, Section 24 continues notifications, orders, schemes, rules etc., that are made under a

Central Act which is repealed and re-enacted with or without modification declaring that the objective of Section 24 is to continue uninterrupted subordinate delegation that may be made under a Central Act that is repealed or re-enacted with or without modification.

34. In the present case, at the first instance, Sections 143[3A] – 143[3C] are incorporated into the Act enabling Notification of a Scheme for the purposes of making assessment under Section 143[3] or Section 144 to usher in efficiency, transparency and accountability in the assessment proceedings and stipulating that the Central Government may, for the purposes of giving effect to the Scheme proposed, direct, by a Notification in the Official Gazette, that any of the provisions of the IT Act relating to the assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations.

35. In exercise of this power, the Central Government has notified Faceless Assessment Scheme, 2019 and the CBDT, which is conferred with powers to ensure that assessment shall be under the Scheme in respect of certain persons or class of persons or class of incomes under the terms of the Scheme, has issued order dated 13.08.2020 under Section 119[2] of the IT Act stipulating that all assessment orders shall be by the National E-Assessment Centre through the Faceless Assessment Scheme, 2019 except insofar as the cases assigned to Central Charges and International Taxation Charges.

36. Further, with the CBDT also issuing appropriate notification in exercise of powers under Section 143[2] of the IT Act authorizing certain officers as the Prescribed Income Tax Authority for the purposes of this section, notices have been served on all assessees, including the assessees in the case of Central

Charges and International Taxation Charges, and because of the order dated 13.08.2020, the assessment proceedings insofar as the aforesaid two categories are carried forward by the jurisdictional Assessing Officer. This arrangement with the necessary statutory orders is part of the Scheme notified in exercise of powers under Section 143[3A] – 143[3C].

37. The terms of the Scheme which is part of the Scheme notified under sub-delegation is brought into the enactment with the introduction of Section 144B of the IT Act, and thus, the Faceless Assessment Scheme, 2019 is repealed with this enactment. It must be observed at this stage that it is not pointed out to this Court that the National Faceless Assessment Scheme which is now part of the Statute contained any condition that would be inconsistent with the arrangement under the Faceless Assessment Scheme,

2019 or that the CBDT has issued any directions to the contrary.

38. In fact, it is submitted that the order dated 31.03.2021 issued by the CBDT is to continue the arrangement in the Scheme under the National Faceless Assessment Scheme This order dated 31.03.2021 in its material part reads as under:

> *"Order under sub-section (2) of Section 144B of the Income-tax Act, 1961 for specifying the scope cases to be done under the Act - regarding*
>
> *In pursuance of sub-section (2) of Section 144B of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), the Central Board of Direct Taxes hereby specifies that all the assessment proceedings pending as on 31.03.2021 and the assessment proceedings initiated on or after 01.04.2021 (other than those in the Central Charges and International Taxation charges) which fall under the following class of cases shall be completed under section 144B of the IT Act:-*
>
> *a. where the notice under section 143(2) of the IT Act was/is issued by the (erstwhile) NeAC or by the NaFAC;*
>
> *b. where the assessee has furnished her / his return of income under section 139 or in response to a notice issued under section 142(1) or section 148(1); and a notice under*

section 143(2) of the IT Act, has been issued by the Assessing Officer or the Prescribed Income-tax Authority, as the case may be;

c. where the assessee has not furnished her/ his return of income in response to a notice issued under section 142(1) of the IT Act by the Assessing Officer;

d. where the assessee has not furnished her/his return of income under section 148(1) of the IT Act and a notice under section 142(1) of the IT Act has been issued by the Assessing Officer.

2. This order shall come into force with effect from the 1st day of April, 2021."

39. This Court must opine that there is a transition from a Scheme notified under the provisions of the IT Act to a Scheme under the IT Act incorporation all the essential without material changes insofar as assessments generally and assessments in the cases of Central Charges and International Taxation Charges and there is nothing in this transition, including the provisions of Section 144B or the CBDT's Order, to infer exclusion of the operation of CBDT's order dated 13.08.2020. This Court must therefore conclude that

the operation of the CBDT's order dated 13.08.2020 is saved by the application of the Section 24 of the General Clauses Act, 1897.

Conclusions on Question No. II

40. The petitioner after being served with the notice under Section 143[2] under the National Faceless Assessment Centre on 29.06.2021 has filed response, and the petitioner has also filed response to the subsequent notices served under Section 142[1] of the IT Act. The petitioner has thus participated in the proceedings culminating with the assessment order dated 20.09.2022. The petitioner has availed its statutory remedy against this assessment order in not just filing an appeal under Section 246A of the IT Act but also in filing an application for rectification under Section 154 of the IT Act. These proceedings are pending consideration, and during the pendency of these proceedings, the petitioner has also filed an

application for stay before the Principal Commissioner of Income Tax which is disposed of on 20.12.2022 "*requesting the petitioner to pay an amount equal to ten percent of the disputed demand after disposal of the rectification application filed by the petitioner in ten equal monthly installments starting from the month of January 2023*".

41. The petitioner has paid the first installment in terms of this interim order, and it is at this stage that the petitioner has approached this Court essentially on the ground that the petitioner is not challenging the jurisdiction of the first respondent to pass the impugned assessment order dated 20.09.2022 but is calling in question the jurisdiction of the Prescribed Income Tax authority to issue notice under Section 143[2] of the IT Act under the National Faceless Assessment Scheme.

42. The provisions of Section 124 reads as follows:

"Jurisdiction of Assessing Officers.

Section 124. *(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—*

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(2) Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner; or where the question is one relating to areas within the jurisdiction of different Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as

the Board may, by notification in the Official Gazette, specify.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(a) where he has made a return under sub-section (1) of section 115WD or under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 115WE or sub- section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier;

(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier.

(4) Subject to the provisions of sub-section (3), where an assessee calls in question the jurisdiction of an Assessing

Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub-section (1) or sub-section (2) of section 120."

43. It must be observed that Section 124[1] of the IT Act mentions the Assessing Officer's territorial jurisdiction in respect of a person when such jurisdiction is vested by any direction or order issued under Section 120[1] or 120[2] of the IT Act, and Section 124[2] stipulates that when a question arises as to whether an Assessing Officer has jurisdiction to assess any person, such question shall be determined by the officers as mentioned therein with a further stipulation on the Officers who can decide such question when it

relates to different jurisdiction. Section 124[3] prescribes the time limit. Where a return is filed under Section 115WD[1] or under Section 139[1], an Assessee cannot call in question the jurisdiction of the Assessing Officer after the expiry of one month from the date on which the assessee is served with notice under Section 143[2] or 143[1] or 115WE[2] and after the completion of assessment but on the condition that the earlier of the two will apply. The provisions of Section 124[1] relate to the territorial jurisdiction and determination of the questions relating to territorial jurisdiction when raised within the time limit under Section 124[3] by the officers mentioned in Section 124[2]. The provisions of Section 124 stipulate that when an assessee calls in question the jurisdiction of the Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under Section 124[2].

44. These provisions, it is argued, is limited to those cases where territorial jurisdiction is challenged, but even according to the decision[7] relied upon by the petitioner, these provisions *mainly refer to the territorial* jurisdiction. It is implicit from this that the restriction under Section 124[3] of the IT Act on the right to raise the question of jurisdiction must extend to all grounds on which jurisdiction is called in question. If the right to call in question the jurisdiction is left open to be raised at any stage, the proceedings will remain inconclusive and that could not have been the intendment of the legislature. Therefore, this Court must opine that the petitioner must fail even on the second question.

45. The petitioner, because of the undertaking given by the respondents before this Court, which is continued through these months, has had the

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7 *CIT v. Ramesh D Patel [supra]*

advantage of not tendering the further installments in terms of the order 20.12.2022. However, with the disposal of this petition answering the questions framed against the petitioner, the petitioner must necessarily pursue its appeal subject to deposit of further installments in terms of the order dated 20.12.2022 starting from 20.01.2024. Hence the following:

ORDER

The petition is rejected, and the petitioner, in terms of the orders of the Principal Commissioner of Income Tax, Central, Bengaluru, shall be at liberty to pay installments due but from the month of February 2024.

Sd/-
JUDGE

NV