IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4322 OF 2024

The B N Gamadia Parsee Hunnarshala Trust ...Petitioner

Versus

Income-tax Officer (Exemption) Ward 2(4), Mumbai & Ors ...Respondents

Mr. J.D. Mistri, Senior Advocate, a/w B.V. Jhaveri, for the Petitioner.

Mr. Akhileshwar Sharma, for Respondents.

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE : SEPTEMBER 23, 2024

PC :

1. We have heard Mr. Mistri, learned Senior Counsel for the petitioner and Mr. Sharma, learned Counsel appearing for the respondent. Mr. Sharma seeks an adjournment to file reply affidavit. Mr. Mistri, learned Senior Counsel has fairly stated that the impugned notice under Section 148 of the Income-tax Act, 1961 ("***the Act***") as also the prior proceedings under Section 148A(b) and 148A(d) were initiated by the Jurisdictional Assessing Officer ("***JAO***") who had no jurisdiction. Considering the law as laid down by this Court in the case of *Hexaware*

Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors. [1] (**"Hexaware"**). In addition to such contention Mr. Mistri would also submit that the approach of the JAO in passing the order under Section 148A(d) is also wholly incorrect and improper as he has not taken into consideration the materials already submitted by the petitioner-assessee which were in compliance with the provisions of Section 11 of the Act. It is also a submission that the prescribed form setting out the objects of the Trust was furnished, which has been completely overlooked while issuing the impugned notice.

2. In this view of the matter, considering the position in law as laid down by this Court in *J.D. Printers Pvt. Ltd. vs. The Income Tax Officer – 15(1)(2) & Ors.*[2] we are of the opinion that the petition would deserve final hearing.

3. We may also observe that considering the similar issue is involved we have passed similar orders in *M/s. Leena Power Tech Engineers Pvt. Ltd. vs. The Assistant Commissioner of Income Tax 15(1) & Ors*[3].

1 (2024) 464 ITR 430
2 Writ Petition No. 12187 of 2024
3 Writ Petition No.12189 of 2024

ORDER

i) Rule. Respondent waives service.

ii) Pending the hearing and final disposal of this petition, there shall be interim relief in terms of prayer clause (D).

iii) Reply affidavit to the petition be filed within three weeks from today.

[SOMASEKHAR SUNDARESAN, J.] **[G. S. KULKARNI, J.]**