IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7958 OF 2025

Force Motors Limited .. Petitioner

Versus

Assistant Commissioner of Income Tax & Ors .. Respondents

Mr. Percy Pardiwala*, with Mr. Shrenik Gandhi, Aishwaryajeeta Tawde i/b Kanga & Co, Advocates for the Petitione*r.

Mr. Vikas T. Khanchandani*, Advocates for the Respondents.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JUNE 23, 2025

P. C.

1. The above Writ Petition challenges the impugned Show Cause Notice dated 2nd August 2024/12th August 2024 issued under Section 148A(b); the impugned order dated 30th August 2024 passed under Section 148A(d) and the impugned notice dated 30th August 2024 issued under Section 148 of the Income Tax Act, 1961 (for short ***"the I. T. Act***").

2. The challenge to all the aforesaid notices and the order is basically on two grounds. The first ground is that, the impugned notices as well as the order have been passed by the Jurisdictional Assessing Officer

when in fact the same ought to have been passed by the Faceless Assessing Officer under the Scheme dated 29th March 2022 floated by the Central Board of Direct Taxes under Section 151A read with Section 144B of the I. T. Act. On this issue, reliance is placed on the judgment of this Court in the case of ***Hexaware Technologies Ltd Vs. Assistant Commissioner of Income-tax, Circle 15 (1) (2) [(2024) 162 taxmann.com 225 (Bombay)].*** The second ground of challenge is that, in any event, in the facts of the present case, there was a scrutiny assessment done under Section 143 (3) of the I. T. Act and the issue which forms the subject matter of reopening the assessment was specifically considered by the Assessing Officer in the scrutiny proceedings and was thereafter allowed. Once this is the case, merely based on an audit objections reassessment proceedings cannot be initiated and this would amount merely to a change of opinion which is impermissible. In other words, it is the contention of the Petitioner that under Section 148, the Assessing Officer has the power to reassess but not review.

3. In this regard, reliance is placed on two decisions of this Court, one in the case of ***Knight Riders Sports Pvt Ltd v/s Assistant Commissioner of Income Tax, Central Circle - (4) (2) [Writ Petition No. 2269 of 2023 decided on 26th September 2023]*** and the

judgment in ***Hexaware Technologies Ltd*** (supra). There is also the issue of limitation for challenging the said notices and the order.

4. Mr. Pardiwala fairly stated that the decision in ***Hexaware Technologies Ltd*** (supra) has been challenged by the Revenue before the Hon'ble Supreme Court and is pending. He, however, submitted that this Writ Petition can be disposed of without really going into the issue whether the Jurisdictional Assessing Officer had the power to issue the 148 Notice because even assuming for the sake of argument that he had the power to do so, this case would be squarely hit by the concept of "change of opinion" and which is impermissible for issuing a notice under Section 148 of the I. T. Act. He, therefore, submitted that leaving aside the issue raised in ***Hexaware Technologies Ltd*** (supra) (regarding the power of the Jurisdictional Assessing Officer to issue the impugned notice), the above Writ Petition can be disposed of on the ground of change of opinion alone.

5. The learned counsel appearing on behalf of the Revenue stated that the papers of the above Writ Petition have been served on the Department only on 18th June 2025, and therefore, he requires time to go through the papers and seek necessary instructions before he can address the Court. He, therefore, requested that the matter be stood over for a week.

6. Acceding to his request, we now place the above matter on Board on 7th July 2025. The Respondents, if they wish to file any reply, shall do so on or before the next date and serve a copy of the same on the advocates for the Petitioner.

7. We make it clear to the parties that we may dispose of this Writ Petition at the admission stage itself, time permitting. We, further, make it clear that it would be only on the issue whether in fact there is a change of opinion whilst issuing the impugned notices, and not any other issue.

8. In the meanwhile, and until further orders, we direct that without prejudice to the rights and contentions of the parties, there will be ad-interim relief in terms of paragraph 14.3 which reads thus:-

> *"14.3. that pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to:stay the effect, implementation and operation of the impugned SCN dated 2nd August 2024/12th August 2024, the impugned Order dated 30th August 2024 and the impugned Notice dated 30th August 2024 and restrain the Respondents, particularly Respondent No.1, from taking any steps or acting in pursuance of the impugned SCN dated 2nd August 2024/12th August 2024,*

impugned Order dated 30th August 2024 and impugned Notice dated 30th August 2024."

9. Stand over to 7th July 2025.

10. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Aswale