IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO 15243 OF 2025

Santosh Suresh Kakade .. Petitioner

Versus

Income Tax Officer,
Ward – 14 (3), Pune & Ors. .. Respondents

Mr. Sagar Tilak *a/w. Preshita Adamane, a/w. Saachi Bhiwandkar , Advocates for the Petitioner.*

Mr. Akhileshwar Sharma *(through V.C.)*, *Advocate for the Respondent / Revenue.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

DATE: December 02, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition *interalia* challenges the Notice issued under Section 148 of the Income Tax Act, 1961 on various grounds. One of the grounds is that the Notice has been issued by the Jurisdictional Assessing Officer when the law mandates that it has to be issued by the Faceless

Assessing Officer. This is a fatal defect and therefore the Notice has to be quashed, is the argument of the Petitioner.

3. It is the Petitioner's contention that this issue is squarely covered by a decision of a Division Bench of this Court in the case of ***Hexaware Technologies Ltd. V/s. Assistant Commissioner of Income-Tax, circle 15(1)(2) [(2024)] 162 taxmann.com 225 (Bombay)].***

4. On the other hand, Mr. Sharma, the learned Advocate appearing on behalf of the Revenue, stated that though it is true that this issue is concluded by the decision in *Hexaware Technologies Limited (supra),* the said decision has been challenged before the Hon'ble Supreme Court, and the Hon'ble Supreme Court is likely to take up the matter shortly. He submitted that in the facts of the present case the Notice issued under Section 148 is dated 26th July 2022. Pursuant to this Notice an Assessment order is also passed on 16th May 2023. The petitioner did not participate in the Reassessment Proceedings and never filed his Return. The Reassessment order passed by the Assessing Officer was thereafter challenged by the Petitioner under Section 264 of the Income Tax Act, 1961. Once these are the facts, then, and especially considering the delay in approaching this Court, the above Writ Petition ought not to be entertained, was the submission of Mr. Sharma.

5. It is not in dispute that the issue in the present case is concluded by the decision rendered by this Court in *Hexaware Technologies Limited (supra).* This Court, in *Hexaware Technologies Limited (supra)*, has come to the conclusion that after 29th March 2022, any Notice issued under Section 148 would have to be issued under the faceless mechanism, namely the Faceless Assessing Officer, and not the Jurisdictional Assessing Officer. In the facts of the present case, it is undisputed that the Notice issued under Section 148 is by the Jurisdictional Assessing Officer. Once this is the case, then the Notice issued under Section 148 itself is wholly without jurisdiction, and any order passed pursuant to the said Notice would also be without jurisdiction. Once it is held that the Notice issued under Section 148 is wholly without jurisdiction, the Jurisdictional Assessing Officer cannot get jurisdiction merely by the efflux of time. We, therefore, do not find merit in the contentions raised by Mr. Sharma.

6. We accordingly set aside the impugned Notice issued under Section 148 and all other proceedings / orders emanating therefrom.

7. We however grant liberty to the Revenue to revive the above Writ Petition in the event the decision in *Hexaware Technologies Ltd (supra)* is set aside by the Hon'ble Supreme Court on this issue. We make it clear that it will not be necessary for the Revenue to file a separate Interim Application to

seek a revival of this Petition and the same can be done simply by moving a Praecipe before this Court. It is further ordered that in the event the above Petition is revived, there will be a stay to the operation and implementation of the impugned notice issued under Section 148 until further orders. It is needless to clarify that if the Hon'ble Supreme Court dismisses the SLP challenging the decision in *Hexaware Technologies Limited (supra)*, there would be no question of any revival.

8. We also make it clear that once the Petition is revived and restored, the same would have to be decided on its own merits considering that several other issues are also raised challenging the Notice issued under Section 148.

9. Rule is accordingly made absolute and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

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.

[AMIT S. JAMSANDEKAR , J.] **[B. P. COLABAWALLA, J.]**

Sufiyan Syed – P.A.