

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.565 OF 2025**

Sanjay Nathalal Shah

.. Petitioner

Versus

Assistant Commissioner of Income Tax,
Central Circle-5(2) & Others

.. Respondents

Mr.Dharan Gandhi, Advocate for the Petitioner

**Ms.Swapna Gokhale i/b Mr.Suresh Kumar, Advocate for the
Respondents**

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: JULY 24, 2025**

P. C.

1. Mr.Gandhi, the learned Advocate appearing on behalf of the Petitioner tenders a draft amendment to include an additional ground in the Writ Petition which challenges the Notice issued under section 148 of the Income Tax Act, 1961.

2. Considering that this is only an additional ground and also considering that this is a pre-admission amendment, we do not find any

impediment in allowing the Petitioner to carry out the amendment as set out in the draft amendment handed in.

3. The Petitioner shall carry out the amendment as per the draft handed in immediately in front of the Associate. Re-verification is dispensed with.

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

5. The above Writ Petition *inter alia* 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.

6. It is the Petitioners' 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)]***.

7. On the other hand, 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 Ltd (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 immediately on re-opening. She has fairly stated that there is no stay to the judgment in *Hexaware Technologies Ltd (supra)*.

8. Considering these facts, we do not propose to keep the matter pending in this Court. Once it is fully covered by the decision in *Hexaware Technologies Ltd (supra)* we are bound to follow it.

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

10. 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 needless to clarify that if the Hon'ble

Supreme Court dismisses the SLP challenging the decision in *Hexaware Technologies Ltd (supra)*, there would be no question of any revival.

11. 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.

12. 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.

13. 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.]