
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.4017 OF 2025

Shell India Markets Private Limited

.. Petitioner

Versus

The Deputy Commissioner of Income Tax,
Circle-3(4), Mumbai & Anr.

.. Respondents

**Mr. J. D. Mistri, Senior Advocate a/w Vishal Kalra,
Sheeja John, Snigdha Gautam, Anoushka John i/b M. P.
Savla & Co., Advocates for the Petitioner.**

Mr. Arjun Gupta, Advocate for the Respondent.

**CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE : NOVEMBER 17, 2025**

P. C.

1. Rule. Rule made returnable forthwith. The Respondents waive service. With the consent of the parties, taken up for final hearing.

2. The present Petition, filed under Article 226 of the Constitution of India, 1950, prays for orders to quash and set aside (i) the impugned notice dated 17th July 2025 issued under Section 143(2)

of the Income Tax Act, 1961 ('the Act') **(Exhibit-H)**, (ii) a notice dated 26th August 2025 issued under Section 142(1) of the Act **(Exhibit-J)**, and (iii) all proceedings pursuant thereto for the Assessment Year ('A.Y.') 2007-08.

3. For the A.Y.2007-08, the erstwhile assessee, i.e., Shell Technology India Private Limited ("STIPL") filed its return of income on 30th October 2007, declaring a total income of INR 26,53,092.

4. Thereafter, the erstwhile assessee, STIPL merged with the **Petitioner, Shell India Markets Private Limited**, with effect from 01st April 2008, pursuant to a Scheme of Amalgamation approved by the Hon'ble High Courts of Karnataka and Madras vide orders dated 22nd February 2010 and 24th February 2010, respectively. The Scheme of Amalgamation provided *inter alia* that upon the Scheme becoming effective, STIPL shall stand dissolved without undergoing the process of winding up.

5. The Petitioner, by way of submission dated 21st September 2010, brought to the attention of the then Assessing Officer, the fact of the aforesaid amalgamation/merger and the name of the merged

entity [i.e. the Petitioner]. The Petitioner also furnished copies of the orders passed by the Hon'ble High Courts. However, the then Assessing Officer proceeded with the assessment proceedings and issued *inter alia* a notice under Section 143(2) of the Act on 19th November 2010 in the name of 'STIPL', which was not in existence as on that date. Thereafter, a final Assessment Order dated 07th October 2011 under Section 143(3) read with Section 144C(13) of the Act, was also passed in the name of erstwhile entity, i.e. STIPL.

6. In appellate proceedings, the Income Tax Appellate Tribunal, vide its order dated 20th December 2017, held that the Assessment Order dated 7th October 2011, having been passed in the name of a non-existent entity, i.e. STIPL, was a nullity in the eyes of law and liable to be quashed.

7. Respondent No. 1, challenged the Tribunal's order by way of appeal to this Court. This Court, by its judgment and order dated 27th March 2025 [in *Income Tax Appeal No. 2381 of 2018*], upheld the Tribunal's order setting aside the assessment order dated 7th October 2011. This Court in its judgement and order dated 27th March 2025 clarified that the Department's appeal against the Tribunal's order

was being dismissed solely on the ground that the notice and the Assessment Order had been passed in the name of the transferor company (*STIPL*), and accepted the submission of the Respondent–Assessee that such orders could not have been made against a non-existent company. The Court further observed that the consequence of this submission was that the Assessment Order and Notice ought to have been issued in the name of the transferee company and not the transferor. Accepting this position, the Court clarified that its order dated 27th March 2025 would not preclude the Appellant–Revenue from initiating fresh proceedings against the transferee company, in accordance with law, for assessing the income in the hands of the transferee company.

8. Without taking any other steps, on 17th July 2025, Respondent No.1 issued a notice to the Petitioner under Section 143(2) of the Act referring to the order of this Court dated 27th March 2025, claiming that income was proposed to be assessed in the Petitioner’s hands in “compliance” with the order of this Court, and hence required the Petitioner to submit evidence in support of “its” return of income, and gather all information, documents which may be relevant.

9. In response thereto, the Petitioner vide its letter dated 29th July 2025, explained that the said notice was barred by limitation, that no assessment order could be passed in this manner, and no notice under Section 148 of the Act had been served on it, and hence the notice was invalid and beyond jurisdiction. Instead of dropping the proceedings, Respondent No.1 issued a notice under Section 142(1) of the Act, wherein he relied upon Section 260 of the Act to justify the proceedings and required the Petitioner to submit various details within 15 days. This notice also purports to provide an opportunity of being heard with respect to “all issues raised in under Section 148 of the Act (reasons for reopening)”.

10. The Petitioners have, by this Petition, challenged the notice under Section 143(2) dated 17th July 2025 and the notice under Section 142(1) dated 28th August 2025.

Submissions on behalf of the Petitioner

11. Mr. Mistri, learned Senior Counsel appearing for the Petitioner, has assailed the legality and validity of the impugned notices on various grounds set out in the Petition. The main

contentions urged were (i) there was no “finding or direction” by the High Court when dismissing the revenue’s appeal of the type that would enable the revenue to apply Sections 150 or 153(6) of the Act; (ii) assuming for the sake of argument that it was held that the High Court’s order contained such a finding or direction, the relevant statutory provisions had not been adhered to when seeking to undertake further proceedings to assess the Petitioner; (iii) any proposed assessment order would be barred by limitation; (iv) the impugned notice was barred by limitation; (v) the provisions of the Act invoked by the Respondents did not confer jurisdiction on Respondent No.1; and (vi) Respondent No.1 had no jurisdiction to issue the impugned notices.

12. Mr. Mistri submitted that the impugned Notices have been issued on a complete misreading of the judgment dated 27th March 2025. The judgment does not contain any finding or direction that would satisfy the well settled legal meaning of the phrase. What is contemplated by the phrase is that the finding or direction must be such as is necessary for the disposal of a particular case. In the instant case, this Court in its judgement and order dated 27th March 2025 had simply applied the well settled law laid down by the Hon’ble Supreme

Court in ***Principal CIT vs Maruti Suzuki India Ltd. [(2019) 416 ITR 613 (SC)]*** and ***Reliance Industries Ltd. Vs P.L. Roongta & Ors. [(2025) 479 ITR 770]***, and held that no assessment order could be passed in the name of a non-existent entity such as STIPL. He submitted that the subsequent amplification/clarification issued was not necessary to dispose of the appeal, and hence could not be considered to fall within the meaning of the phrase “finding or direction” issued by this Court allowing the Respondents to overcome the limitation provisions under the Act. He emphasised that the words “this order would not preclude the Appellant-Revenue from initiating fresh proceedings against transferee company, in accordance with law” *ex facie* make it clear that the Court merely left it open to the Respondents to take any steps permitted by the Act. These words do not amount to a direction to initiate fresh assessment for A.Y.2007-08, nor completion of the assessment under Section 153 of the Act, in the hands of the Petitioner.

13. In this connection, Mr. Mistri has placed reliance on the decision of this Hon’ble Court in the case of ***Wavy Construction LLP V/S Assistant Commissioner of Income-Tax [(2025)]***

473 ITR 1 (Bombay)], which has re-iterated the legal position, after an exhaustive review of the authorities on the subject, including the decisions of the Hon'ble Supreme Court in **ITO V/S Murlidhar Bhagwan Das [(1964) 52 ITR 335 (SC)]** and **Rajinder Nath V/S CIT [(1979) 120 ITR 14 (SC)]**.

14. Mr. Mistri contended that the impugned notice under Section 143(2) of the Act, was clearly issued beyond the period of limitation prescribed in the proviso to Section 143(2). He submitted that the impugned notice under Section 143(2) has been issued contrary to the statutory period of three months from the end of the financial year in which the return was furnished and is, invalid and bad in law for this reason as well. Further, the Petitioner contends that, the conditions prescribed under Section 143(2) are not attracted, since the provision stipulates that the Assessing Officer may issue a notice only after being satisfied that it is expedient or necessary to scrutinize the return of the assessee. Mr. Mistri contended that no such satisfaction, as required by law, has been recorded or demonstrated by Respondent No.1 in the present case.

15. It is urged that even assuming for the sake of argument it is held that the High Court order contains a “finding or direction” as contemplated by Sections 150 and 153(6) of the Act, further proceedings against the Petitioner could not be taken by merely issuing the impugned notice under Section 143(2) of the Act. Section 150 of the Act explicitly requires that a notice/proceeding under the re-assessment provisions of the Act must first be issued. It was submitted that despite what is mentioned in the Section 142(1) order dated 26th August 2025, Respondent No.1 has admitted in the affidavit in reply dated 3rd November 2025 that no Notice under Section 148 of the Act for reopening the assessment has been issued to the Petitioner. The proceedings are, therefore, invalid and bad in law for this reason as well.

16. Mr. Mistri also contended that in any event it was the Tribunal [by its order dated 20th December 2017] that had quashed the impugned assessment order dated 7th October 2011. Accordingly, even if the extended period of limitation permitted by Section 153(6) of the Act was available, it would have to be calculated from the date of receipt of the Tribunal’s order. The High Court’s Judgement dated

27th March 2025, merely dismissed the Revenue's appeal, and could not further extend the period of limitation.

17. The grounds in the Petition also highlight other infirmities in the impugned notices, *inter alia*, that the notices are issued to the Petitioner in its standalone capacity and not as the successor to *STIPL*. It is submitted that Section 260(1A) of the Act, merely empowers the Assessing Officer to give effect to an order passed by the High Court under Section 260A of the Act, and nothing further. For all these reasons, it was contended that the impugned Notice (s) issued under Section 143(2) as well as 142(1) are bad and ought to be set aside.

Submissions on behalf of the Revenue

18. On the other hand, Mr. Gupta, learned Counsel for the Revenue, while opposing the Petition, relies solely on Section 153(6) of the Act. Mr. Gupta contended that the High Court order records that “...*the consequence of the Petitioner's submission and the order ... is that the income should have been assessed in the name of the transferee company and not the transferor company,*” and that this constitutes a finding or direction. On this basis, Mr. Gupta argued

that no further step was required and Respondent No.1 was entitled to straightaway issue notice under Section 143(2) of the Act and proceed to make an assessment in the hands of the Petitioner. It was urged that in pursuance thereof, the Revenue was entitled to pass an order within the extended period of twelve months as provided under Section 153(6) of the Act, reckoned from the end of the month in which this Court's order was received by the Revenue authorities. Mr. Gupta contended that the present case does not require reassessment under Section 148 but is simply an assessment pursuant to the High Court's findings. In support of this contention, he referred to certain observations of the Hon'ble Supreme Court in ***Rajinder Nath V/S Commissioner of Income Tax [(1979) 120 ITR 14 (SC)]***, extracted in the affidavit in reply dated 3rd November 2025. Mr. Gupta, for Respondent No.1, accepted that in view of the plain language of the order of this Court, no direction can be said to have been issued, but contended that the judgement contains a finding that the income is to be assessed in the hands of the Petitioner/amalgamated company. It was urged that the original period of limitation for passing an order of assessment was not applicable, and the extended limitation period under Section 153(6) of the Act became available for passing an assessment order in the

hands of the Petitioner. Mr. Gupta submitted that the interpretation canvassed by the Petitioner would make the provisions of Section 153(6) otiose and also placed reliance on the decision in the case of ***Reliance Industries Ltd. V/S P. L. Roongta & Ors. [(2025) 479 ITR 770]*** (order dated 14th February 2025), wherein similar directions were issued by this Court. It was his further submission that the Petitioner is not correct in contending that the impugned notice is barred by limitation in view of the proviso to Section 143(2) of the Act, and that the Court should ignore the proviso, since the proviso cannot apply to a notice issued in such a “second round” of proceedings. He therefore submitted that the Petition ought to be dismissed.

Reasons and conclusion

19. We have considered the submissions made on behalf of the Petitioner and the Revenue. There is no dispute regarding the facts, circumstances, and sequence of events in the present case.

20. The first issue that requires consideration is whether the order of the Court in Income-tax Appeal No. 2381 of 2018 dated 27th March 2025 contains any “...finding or direction...” which is required

to be given effect to. The Constitution Bench of the Hon'ble Supreme Court in the case of ***Income Tax Officer V/S Murlidhar Bhagwan Das [(1964) 52 ITR 335 (SC)]***, while interpreting the expression 'finding' in the *parimateria* provision under the 1922 Act, has held that a finding is, therefore, a decision on an issue framed in a suit and a finding shall be one which by its own force, or in combination with findings on other issues, should lead to the decision of the suit itself. It was observed that such a finding must be necessary for passing the final order or giving the final decision in the appeal. Similarly, the expression "direction" as used in the provision was interpreted, and the Court observed that the expression "direction" cannot be construed in vacuum, but must be collated to the directions which the Appellate Assistant Commissioner or other Tribunals can issue, under the powers conferred on him or them under the respective Sections. It was observed that therefore the expression "finding" and the expression "direction" to mean, a "finding" that is necessary for giving relief in respect of the assessment of the year in question, and a "direction" is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the provisions.

21. *In Rajinder Nath (supra)* the expressions “finding” and “direction” fell for consideration of the Hon’ble Supreme Court as used in the provisions of Section 153(3)(ii) of the Act. The question before the Court was whether there was any finding or direction within the meaning of Section 153(3)(ii) of the Act in the order passed by the Appellate Assistant Commissioner, in consequence of which, or to give effect to, the assessments in question could be made within the extended period of limitation. The Hon’ble Supreme Court held that in order to fall within the ambit of the phrase, “finding” given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. As regards the expression “direction” in Section 153(3)(ii) of the Act, it was observed that it was well settled that it must be an express direction necessary for the disposal of the case before the authority or Court. It must also be a direction which the authority or Court is empowered to give while deciding the case before it. It was held that the meaning of the expressions “finding” and “direction” in Section 153(3)(ii) of the Act must be so confined, and more particularly so, considering the fact that Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or Court. It

was a provision which merely raises the bar of limitation for making an assessment order under Section 143 or Section 144 or Section 147.

22. After extensively considering the decisions of the Supreme Court abovementioned, a division bench of the Bombay High Court in *Wavy Construction LLP (supra)* reiterated this well settled position in law.

23. Applying these principles to the facts of the present case, we are of the opinion that the order of this Court dated 27th March 2025 cannot be said to contain any “direction” within the meaning of the word since the Court merely clarified that the revenue authorities **were not precluded from initiating fresh proceedings** against the transferee company (Petitioner) **in accordance with law**. The emphasised words clearly rule out any question of a “direction” being issued by the Court. This is also accepted by the Respondents. As to whether the said order contained any “finding” within the meaning of the word, we are of the view that in the first place there is no finding at all. The Court has merely recorded what it felt was the consequence and effect of the submission made by the Petitioner which had been accepted by the Court. Clearly an effect or consequence can only arise

after the submission has been accepted by the Court. Ex facie this can never be a finding necessary to decide the appeal before the Court. To put it differently, in order to decide the appeal before it, the Court merely applied the principle laid down in *Maruti Suzuki's case (supra)* and held that no assessment could be made on a non-existing company. No consideration of the assessment in the hands of the Petitioner was necessary to decide and finally dispose of the appeal. Therefore, even assuming that a finding exists it is clearly not a “finding” necessary to dispose of the appeal before the Court. Accordingly, there is no question of the provisions of Section 153(6) being attracted in the facts of the present case.

24. For all the reasons set out above, we are of the view that the order of this Court in Income-tax Appeal No.2381 of 2018 dated 27th March 2025 does not contain any “finding” or “direction” as contemplated by the provisions of Section 153(6) of the Act and consequently no order of assessment could be passed in the case of the Petitioner for the A.Y.2007-08 in view of the bar of limitation in Section 153(1) of the Act.

25. Moreover, neither the order in *Reliance Industries Ltd. (supra)* passed by this Court, nor the Department's reliance on the decision in *Rajinder Nath (supra)*, advances the Department's case. They do not lend support to the proposition urged by the Revenue in the facts of the present case.

26. In view of what has been set out above, it is not necessary for us to go into the various other grounds raised in the Petition or contentions urged by Mr. Mistri, which are expressly left open for consideration should the need so arise in this or some other appropriate case.

27. In view of the foregoing discussion, the petition needs to succeed. It is accordingly allowed in terms of prayer clause (a), which reads as follows:-

“(a) issue a writ of and/or order and/or directions in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned notice dated 17 July 2025 issued under Section 143(2) of the Act (Exhibit-H), notice dated 26 August 2025 issued under Section 142(1) of the Act (Exhibit-J) and the consequent proceedings thereof for AY 2007-08;”

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

29. 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.]