BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2025

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD)No.20536 of 2025
and
W.M.P(MD)No.15896 and 15897 of 2025

P.Udhayakumar ... Petitioner

Vs.

1.National Faceless Assessment Centre,
Income Tax Department,
Jawahar Lal Nehru Stadium,
New Delhi-110 003

2.Income Tax Officer,
Ward 1, Dindigul,
Income Tax Office, Palani Byepass Road,
Kottapatti Post, Dindigul - 624 002. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 2nd Respondent contained in its Notice issued under Section 148 of the Income Tax Act, 1961, bearing DIN and Notice No.ITBA/AST/S/148-1/2022-23/1042617767(1), dated 07.04.2022, and all proceedings in furtherance there including but not limited to the Assessment Order passed by the first respondent under Section 147 read with Section 144 and Section 144B of the Income Tax Act, 1961, bearing DIN. ITBA/AST/S/147/2023-24/1060663712(1), dated 08.02.2024, Notice issued by the first Respondent under Section 156 of the Act, bearing DIN and Notice No.ITBA/AST/S/156/2023-24/1060663859(1), dated 08.02.2024 and notice issued by the first respondent under Section 274 read with Section 270A of the Act, bearing DIN:ITBA/PNL/S/270A/2023-24/1060663943(1), dated 08.02.2024, show cause notice issued by the first respondent under Section 270A, bearing DIN:ITBA/PNL/F/270A/2024-25/1063968960(1) dated 08.042024, notice issued by the first respondent bearing DIN and Letter No.ITBA/PNL/F?17/2024-25/1064581372(1) dated 02.05.2024; Notice issued by the first respondent bearing DIN & Letter No.ITBA/PNL/F/17/2024-25/1064851379(1), dated 14.05.2024, and letter issued by the second respondent bearing DIN and Letter No.ITBA/COM/F/17/2024-25/1071215362(1) dated 13.12.2024 and quash the same as arbitrary, unjust and illegal for the assessment year 2018-2019, for the PAN:AFGPU0233C.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

The petitioner is before this Court challenging the impugned notice issued under Section 148 of the Income Tax Act, 1961, on 07.04.2022 and the consequential assessment order dated 08.02.2024 passed under Section 147 read with Sections 144 and 144B of the Income Tax Act, 1961.

2. It is noticed that pursuant to a notice issued under Section 148A(b) of the Income Tax Act on 24.03.2022, an order came to be passed on 07.04.2022 under Section 148A(d) of the Act, in view of the amendments to the statutory mechanism for reopening the assessments, with effect from 01.04.2024 vide amendment to the provisions of the Income Tax Act, 1961 vide Finance Act, 2021. Subsequently, the impugned notice was issued on 07.04.2022 and consequential assessment order on 08.02.2024.

3. The petitioner was also issued a notice on 08.02.2024 under Section 270A read with Section 274 of the Income Tax Act, 1961, for penalty and the said proceedings are said to be pending. The petitioner was served with a recovery notice on 13.02.2025. It is in this background, the petitioner has now approached this Court belatedly by filing this writ petition on 21.07.2025.

4. The learned counsel for the petitioner submits that there was a dispute in view of the conflicting views of the two learned Single Judges of this Court. The Division Bench of this Court has recently held that the proceedings under Section 148 A of the Income Tax Act, can be issued only by the faceless authority and not by the jurisdictional assessing authority, in

the light of the changes brought to the provisions of the Income Tax Act with effect from 01.04.2021.

5. It is submitted that the Division Bench of the High Court of Bombay in the case of ***Hexaware Technologies Limited Vs Assistant Commissioner of Income Tax reported in (2024) 162 taxmann.com 2025***, held that such proceedings were without jurisdiction. It is submitted that the Division Bench of this Court recently by its order dated 24.06.2025 in W.P.No.35385 of 2024 has ordered as under:

> "*9. Keeping open all rights and contentions of parties, including liberty to apply to this Court, in case the Revenue succeeds before the Apex Court, for revival of this petition, the notice issued in this petition is quashed and set aside.*
>
> *10. In this petition, apart from the issue of notice issued by JAO instead of FAO, all or many of the issues which were considered in Hexaware Technologies Ltd (supra) are involved.*
>
> *11. To the extent the issues raised in Hexaware Technologies Ltd (supra) are not covered, those are kept open to be raised at the appropriate stage.*
>
> *12. With the liberty as noted above, this petition stand disposed of holding in favour of assessee. There will be no order as to costs. Consequently, the interim applications also stand disposed of.*"

6. The learned Standing Counsel for the respondents referred to Section 124(3)(b) of the Income Tax Act, 1961 and submits that the petitioner is not entitled to question the jurisdiction after the assessment order was passed on

08.02.2024. That apart, it is submitted that the present writ petition is liable to be dismissed on account of the laches, as a considerable time has lapsed since the assessment order was passed on 08.02.2024.

7. It is submitted that the although the notice under Section 148 A(b) of the Act was issued by the jurisdictional assessing Officer on 24.03.2022 and further orders was passed under Section 148A(d) on 07.04.2022 by the jurisdictional assessing officer, the impugned assessment order was passed pursuant to the notice under Section 148 of the Act on 08.02.2024.

8. In this connection, the learned Standing Counsel for the respondents has drawn attention to the decision of this Court in W.P(MD)No.13626 of 2024 in the case of ***Ontivillu Gopidoss Jothilakshmi Vs.The Income Tax Officer and others***, wherein, Paragraph No.80, this Court discussed the entire scheme of the reassessment proceedings in the light of the amendments brought to the Income Tax Act, 1961, with effect from 01.04.2021.

9.The learned Standing Counsel for the respondents drew attention to Paragraph No.60 onwards and a specific reference was made to Paragraph No. 63, wherein it was held that there is no embargo on the jurisdictional assessment officer under the scheme of the Act, to issue notice either under Section 148A(b) or for passing order under Section 148A(d) of the Income Tax Act, 1961, in absence of amendment to the e-Assessment Escaping Assessment Scheme, 2022 vide Notification No.18/2022/F.No. 370142/16/2022-TPL (Part 1) dated 29.03.2022 issued under Section 144B of the Income Tax Act, 1961.

10. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents, I am of the view that the present writ petition is liable to be dismissed on account of the laches.

11. That apart, there is an acquisance on the part of the petitioner in view of the scheme under Section 124(3)(a) of the Income Tax Act, 1961, which reads as under:

"124.Jurisdiction of Assessing Officers.
(1)....
(2)....
(3)No person shall be entitled to call in question the jurisdiction of an Assessing Officer
(a) Where he has made a return] [under sub-section (1) of section 115-WD or under sub-section (1) of section 139], after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or [sub-section (2) of section 115-WE or sub-section (2) of

section 143] or after the completion of the assessment, whichever is earlier."

12. That apart, Paragraph No.63 in the case of ***Ontivillu Gopidoss Jothilakshmi*** stated supra, this Court has clearly explained the position which has not been considered by the Division Bench of this Court. In fact, the decision of the High Court of Bombay in the case of ***Hexaware Technology Limited*** stated supra.

13. At this stage, the learned counsel for the petitioner seeks liberty to file an appeal against the assessment order dated 08.02.2024.

14. This Court is of the considered view that liberty is not required, as the petitioner has an alternate remedy in terms of Section 246 A read with Section 249(3) of the Income Tax Act, 1961, providing the petitioner filing appropriate application for condoning the delay.

15. Considering the fact that the Division Bench of this Court, in its order dated 24.06.2025, while dealing with some what situation, the content of which extracted above, the petitioner can be permitted to file an appeal before the appellate Commissioner and await for the order of the Hon'ble Supreme Court and take advantage of the same, in case, the issue is answered

in favour of the petitioner.

16. The writ petition stands dismissed with the above liberty. No costs. Consequently, the connected miscellaneous petitions are closed.

29.07.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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2.Income Tax Officer,
Ward 1, Dindigul,
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C.SARAVANAN, J.

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