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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 12011/2025

M/S MALA PETROCHEMICALS AND POLYMERS .....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Sumit Lalchandani, Ms. Soumya Singh and Ms. Sakshi Rustagi, Advs.

versus

THE INCOME TAX OFFICER & ORS. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Apoorv Agarwal, Mr. Parth Samwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Muskan Goel, Mr. Himanshu Gaur and Mr. Nischay Purohit, Advs.

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\+ W.P.(C) 12013/2025 CM APPL. 49049/2025

ROHIT KUMAR JAIN .....Petitioner

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Sumit Lalchandani and Ms. Sakshi Rustagi, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 61(1), DELHI .....Respondent

Through: Mr. Abhishek Maratha, SSC with Mr. Apoorv Agarwal, Mr. Parth Samwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Muskan Goel, Mr. Himanshu Gaur and Mr. Nischay Purohit, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% **19.08.2025**

1. This petition at Item No. 4, has been filed by the petitioner with the following prayers:

> *"a) Writ in the nature of mandamus/certiorari and/or any other appropriate writ, order or direction quashing and setting aside the impugned notice dated 12.06.2025 (Annexure P-1) issued under section 148 of the Income Tax Act 1961 for AY 2019-20 and no.1 wholly without jurisdiction in view of various judgements of the Hon'ble High Court and further because the Hon'ble Supreme Court of India is seized of the matter.*
> *b)Further, issue writ in the nature of mandamus and/ or any other appropriate writ order or direction staying the operation of the impugned notice dated 12.06.2025 (Annexure P-I) issued under section 148 of the Income Tax Act 1961 for AY 2019-20, till the decision of present writ petition by this Hon'ble High Court;*
> *c)Further issue any other appropriate writ, order or direction, which this Hon'ble High Court may deem fit and proper in the facts and circumstances of the present case, may kindly be issued in favour of the petitioner.*
> *d) Dispense with the service of the advance notices upon the respondents;*
> *e) Exempt the petitioner from filing the certified/ original copies of documents annexures with permission to place on record true typed/photocopies of the same;*
> *f) Costs of the petition may also be awarded in favour of the petitioner.*
> *g) During the pendency of this writ petition, the operation of the impugned notice dated 12.06.2025 issued U/s 148 of the Income Tax Act, 1961 (Annexure P-1) for the Assessment Year 2019-20 may kindly be stayed."*

2. This petition at Item No. 5, has been filed by the petitioner with the following prayers:

> *"a) Issue a writ of and/or order and or directions in the nature of certiorari or any other appropriate writ, order, or direction quashing impugned notice dated 27.03.2025 issued under Section 148A(1) of the Act and the impugned order dated 25.06.2025 passed under Section 148A(3) of the Act;*

and the impugned notice dated 25.06.2025 issued under Section 148 of the Act;

b) Issue a writ of and/or order and/or direction in the nature of Prohibition commanding Respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said purported notice under Section 148 of the Act and/or in any proceedings initiated thereunder for the AY 2019-20, and grant stay on the reassessment proceedings;

c) Issue any other Writ, order, or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

d) To dispense with from filing certified copies of Annexures.

e) To allow the writ petition with cost in favor of the Petitioner and against the Respondents."

3. Both the petitions have identical issues and the challenge has been made to notices issued on 12.06.2025 and 27.03.2025 under Section 148 & under Section 148A(1) of the Income Tax Act, 1961 for the Assessment Year (AY) 2019-20 on the ground that the notice has been issued by Jurisdictional Assessment Officer (JAO) and not by Faceless Assessment Officer (FAO) and as such, the same need to be set aside.

4. So far as this issue is concerned, the same is no more *res integra* having been decided by this Court in a batch of petitions the lead matter being ***TKS Builders Pvt. Ltd. vs. Income Tax Officer, Ward 25(3) New Delhi**, **NC- 2024:DHC:8330-DB*** decided on 28.10.2024 wherein, this Court has *inter alia* held that both the authorities i.e. JAO and FAO have the concurrent jurisdiction to issue notice under Section 148.

5. At this stage, learned counsel for the petitioners submit that the judgment in the case of ***Hexaware Technologies Ltd. vs. Assistant Commissioner of Income Tax, Circle 15(1)(2) [(2024) 162 Taxmann.com 225(Bombay)],*** which has been considered by this Court and distinguished

in the case of ***TKS Builders Pvt. Ltd.*** (supra) is in appeal before the Supreme Court, so also ***TKS Builders Pvt. Ltd.*** (supra).

6. In fact, we have been informed that the judgments rendered by the other High Courts like Telangana, Madras, Gujarat, Punjab and Haryana on identical issue are also pending consideration before the Supreme Court. According to them, appropriate shall be that till the SLP/appeals are decided by the Supreme Court, this petition be entertained by this Court and interim order as sought, be granted.

7. Submission is also made by the learned counsel for the petitioners that the SLP filed by the Revenue against the judgment of the High Court of Bombay by following ***Hexaware*** (supra) has been dismissed by the Supreme Court.

8. On the other hand, the learned counsel appearing for the Revenue submits that it is true that the appeals are pending considerations before the Supreme Court but the interim order granted by the Supreme Court is only to the extent that the proceedings may take place but any order adverse to the assessee, shall not be given effect to.

9. In other words, it is their submission that the judgment of this Court in ***TKS Builders Pvt. Ltd.***(supra) has not been stayed and hence need to be followed. In fact, our attention has been drawn to the order passed by this Court in similar Writ Petition filed by certain assessees wherein this Court, by referring to the judgment in case of ***TKS Builders Pvt. Ltd.*** (supra), has dismissed the petition. The same being W.P. No. 9581/2024 ***Nadeem Khan vs. Income Tax Officer, Ward 46(4) Civic Centre, Minto Road, New Delhi***. Similarly, in the W.P. No. 13242/2024 ***ML Khanna HUF vs. Assistant Commissioner of Income Tax & Ors.***, the petitioner who filed the petition,

has withdrawn the same, as the issue covered by the decision of this Court in ***TKS Builders Pvt. Ltd.*** (supra).

10. Our attention has also been drawn to the order passed on 11.08.2025, wherein a similar submission like the one made before us to entertain the petition and to grant the interim relief made before the Bombay High Court has been rejected by the Bombay High Court stating in Paragraphs 6, 7, 8 & 9 of W.P. No.5102/2022, ***Proviso Builders and Developers vs. Asst. Commissioner of Income Tax, Central Circle 4(3) and Anr. NC: 2025:BHC-AS:34510-DB*** as under :

> *"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 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)].*
> *4. <u>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 shortly. He has fairly stated that there is no stay to the judgment in Hexaware Technologies Ltd (supra). 5. 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.</u>*
> *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 isse. 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.

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."

11. The submission of the counsel for the Revenue is that the Bombay High Court has followed its decision in ***Hexaware Technologies Ltd.***(supra) by stating it, is binding on it. The submission is also that as ***TKS Builders Pvt. Ltd.***(supra) has decided the issue, surely the said judgment is binding on this Court and as such need to be followed and the petition should be dismissed.

12. Having heard learned counsel for the parties, we are of the view that the issue raised in so far as Delhi is concerned, the same shall be covered by the judgment of this Court in ***TKS Builders Pvt. Ltd.***(supra) and the same being binding on us, unless we take a contra view and refer the matter to the larger Bench. The fact that Writ Petition being 9581/2024 involving identical issue has been dismissed by this Court by following the judgment in the case of ***TKS Builders Pvt. Ltd.***(supra) and the other W.P. No. 13242/2024 has been withdrawn as the issue is covered by the ***TKS Builders***

Pvt. Ltd.(supra) and also there is no stay of the Judgment by the Supreme Court, we are of the view that this petition should also follow the same result and be dismissed. We order accordingly.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 19, 2025

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