



\$~94 & 95

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

%

Date of Decision : 23.09.2025

+ **W.P.(C) 14754/2025, CM APPL. 60731/2025 & CM APPL. 60732/2025**

+ **W.P.(C) 14755/2025, CM APPL. 60733/2025 & CM APPL. 60734/2025**

M/S EMPIRE FASTENERS

.....Petitioner

Through: Mr. Atul Yeshwant Chitale, Sr. Adv.
with Mr. Shaurya Pratap Singh
Barhat, Ms. Gunjan Ahuja and Ms.
Suchitra Atul Chitale, Advs.

versus

THE ASSISTENT COMMISSIONER OF INCOME TAX . & ANR.

.....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr.
Apoorv Agarwal, Ms. Nupur Sharma,
Mr. Gaurav Singh and Mr.
Bhanukaran Singh Jodha, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO, J. (ORAL)

1. These petitions have been filed with the following prayers:-

“(i) Issue a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned Order bearing No. ITBA/AST/F/148A/2025-



26/1077934313(1) dated 27.06.2025 passed by Respondent No. 1 under sub-section (3) of section 148A of the Income Tax Act, 1961 for the Assessment Year 2019-20;

(ii) Issue a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the impugned Notice bearing No. ITBA/AST/S/148_1/2025-26/1077935009(1) dated 27.06.2025 issued by Respondent No. 1 under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2019-20, and;”

2. The submission of Mr. Atul Yeshwant Chitale, learned Senior Counsel for the petitioner is primarily that the impugned notice issued on 08.03.2025 under Section 148A(1) of the Assessment Year (‘AY’) 2019-20 was issued by the Jurisdictional Assessing Officer and not by the Faceless Assessing Officer and as such, the proceedings culminating in the issuance of notice under Section 148A gets vitiated. He also states that the issue is covered by the judgment of the Bombay High Court in the case of **Hexaware Technologies Ltd. vs. Assistant Commissioner of Income Tax, 2024 SCC OnLine Bom (1249)** and recently in the case of **Prakash Pandurang Patil vs. Income Tax Officer, Ward 5, Panvel & Ors in Writ Petition No. 10749/2024**, decided by the Bombay High Court in favour of the assessee, the SLP against which has been dismissed by the Supreme Court in **Income Tax Officer Ward 5 Panvel & Ors. vs. Prakash Pandurang Patil, Special Leave Petition (Civil) Diary No. 39689/2025**, on 18.08.2025. According to him, the issue as to whether it is the Faceless Assessing Officer which would have the requisite jurisdiction stands settled by the Supreme Court. He states that the dismissal of the SLP being on



merits, the judgment of the Bombay High Court, which has relied upon in ***Hexaware Technologies Ltd. (Supra)***, has been upheld.

3. Mr. Abhishek Maratha submits that the contentions of Mr. Chitale are unmerited inasmuch as this Court, while dismissing a petition seeking similar relief, has settled the law in ***TKS Builders Pvt. Ltd. vs. Income Tax Officer, 2024 SCC OnLine Del 7508***, which, though under challenge before the Supreme Court, has not been stayed. Hence, it would be binding on this Court. As such, insofar as the jurisdiction of Delhi is concerned, both the officers i.e., the Jurisdictional Assessment Officer and the Faceless Assessment Officer, have concurrent jurisdiction to initiate proceedings for re-assessment. To buttress this argument, he has relied upon the judgment in ***Khoday Distilleries Limited (now known as Khoday India Limited) and Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal (under liquidation) represented by the Liquidator, (2019) 4 SCC 376***, wherein paragraph 26.2 states as under:-

“26.2. We reiterate the conclusions relevant for these cases as under: (Kunhayammed case, SCC p. 384)

“(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the



grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC.”

4. He states that the order of the Supreme Court in **Prakash Pandurang Patil (Supra)** does not give any reasons and as such is a dismissal *in limine*. Further, his contention is that this Court in the case of **PC Jeweller Limited vs. Assistant Commissioner Of Income Tax & Anr., W.P.(C) 13229/2024**,



decided on 23.01.2025, has dismissed a petition with similar challenges by relying upon **TKS Builders Pvt. Ltd.**

5. Having heard the learned counsel for the parties, we are of the view that the submission of Mr. Chitale cannot be accepted for the reason that a co-ordinate Bench of this Court in the case of **TKS Builders Pvt. Ltd. (Supra)** has settled the issue insofar as the jurisdiction of Delhi is concerned, by stating that both the Jurisdictional Assessing Officer and the Faceless Assessing Officer have concurrent jurisdiction.

6. Suffice it to state, as referred to by Mr. Maratha, a co-ordinate Bench of this Court in the case of **PC Jeweller (Supra)**, has also dismissed a writ petition seeking similar relief by following the ratio in **TKS Builders Pvt. Ltd. (Supra)**. Though the judgment in **PC Jeweller (Supra)**, has been taken in appeal before the Supreme Court, we note that the Revenue has been permitted to continue the proceedings on the caveat that any order, if passed adverse to the petitioner, shall not be given effect.

7. While it is true that the appeal against **TKS Builders Pvt. Ltd. (Supra)** is also pending adjudication before the Supreme Court, we note that the Supreme Court has not stayed the operation of the judgment. The judgment in **Hexaware Technologies Ltd. (Supra)** is also pending consideration before the Supreme Court.

8. That apart, even in the cases of **M/s Mala Petrochemicals and Polymers vs. the Income Tax Officer & Ors. WP(C) 12011/2025, decided on 19.08.2025, Mehak Jagga vs. ITO (W.P.(C) 13149/2025, decided on 28.08.2025 and All India Kataria Education Society vs. DCIT W.P.(C) 14225/2025, decided on 15.09.2025** we have dismissed similar petitions by



relying upon *TKS Builders Pvt. Ltd. (Supra)*.

9. In view of the above, the captioned petitions are dismissed. The pending applications, having become infructuous, are also dismissed.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 23, 2025/sr