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

WRIT PETITION NO. 1122 OF 2026

Devendra Jaswantrai Shah .. Petitioner

Versus

Income Tax Officer Ward
26(1)(1) Mumbai and Ors. .. Respondents

Adv. Sham V. Walve*, a/w Sameer Dalal and Bhavik Chheda, for the Petitioner.*

Adv. Ravi Rattesar*, for the Respondent.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: MARCH 18, 2026

P. C.

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

2. The above Writ Petition has been filed challenging the Notice dated 18th April 2022 issued under Section 148 of the Income Tax Act, 1961 (for short '**the IT Act**'), and the consequential Assessment Order dated 4th December 2023 for the A.Y. 2015 – 16.

3. Brief facts of the case are that a Show Cause Notice under Section 148A(b) of the IT Act was issued on 24th March 2022, alleging that an immovable property acquired by the Petitioner revealed that the income chargeable to tax represented in the form of an asset had escaped assessment. The Petitioner was asked to show cause why a notice under Section 148 should not be issued to him. The Petitioner claims that he was unable to respond to the Show Cause Notice due to oversight. Thereafter, an Order dated 18th April 2022 was passed under Section 148A(d) holding that the Petitioner's case is fit for issuance of notice under Section 148 of the IT Act for A.Y. 2015 – 16. Accordingly, the impugned Notice dated 18th April 2022 came to be issued to the Petitioner under Section 148 of the IT Act by Respondent No. 1. The Petitioner filed a return of income in response to the impugned Notice under Section 148 of the IT Act.

4. The impugned Notice finally culminated into an Assessment Order dated 4th December 2023, passed under Section 147 read with Sections 144 and 144B of the IT Act. Accordingly, a Demand Notice dated 4th December 2023 under Section 156 of the IT Act, along with a Computation Sheet were also issued. Subsequent thereto, the Income Tax Department has also passed Penalty Orders under Sections 271(1)(c) and 271F of the IT Act, which are annexed to the Writ Petition.

5. At the outset, Mr. Walve, the learned counsel appearing for the Petitioner, submits that the jurisdictional issue raised in this Writ Petition is concluded in favour of the Petitioner by the Hon'ble Supreme Court's judgment in ***Union of India vs. Rajeev Bansal [2024] 167 taxmann.com 70 (SC)*** as far as A.Y. 2015 – 16 is concerned. He points out that the Department has categorically made a concession before the Hon'ble Supreme Court on the validity of notices under Section 148 of the IT Act issued after 1st April 2021 for A.Y. 2015 – 16 at Paragraph 19(f) of the judgment in *Rajeev Bansal (Supra)*. In view of the same, Mr. Walve submits that the impugned Notice dated 18th April 2022 issued to the Petitioner is time-barred and deserves to be quashed and set aside notwithstanding the fact that the Return of Income filed by the Petitioner in response to the impugned Notice under Section 148 was accepted by the Department. He submits that any recovery of demand and penalty against the Petitioner based on a notice which is invalid would be violative of Article 265 of the Constitution of India.

6. Per contra, Mr. Rattesar, the learned counsel appearing for the Respondents, urged that the return of income filed by the Petitioner against the impugned Notice under Section 148 of the IT Act came to be accepted by the Department and now the Petitioner cannot challenge the validity of the re-assessment at this stage. He also argued that in any case, the Petitioner has belatedly approached this Court and thus, on the ground of laches, this

Writ Petition also need not be entertained. However, he does not dispute the fact that the impugned Notice relates to A.Y. 2015 – 16 and that the same has been issued on 18th April 2022. He also fairly stated that in view of the Department's concession before the Hon'ble Supreme Court in *Rajeev Bansal (supra)*, the issue on the validity of such notices under Section 148 of the IT Act issued for A.Y. 2015 – 16 now stands concluded.

7. In response to the aforesaid arguments, Mr. Walve drew our attention to a judgment passed by this Court in ***Mitra Biswas vs. Income Tax Officer [2026] 183 taxmann.com 161 (Bombay)*** to say that this Court, under similar circumstances, has quashed and set aside the impugned Notice issued under Section 148 of the IT Act and consequential Orders. He also relied on a judgment of this Court in ***Bhoomi Viral Shah vs. Income-tax Officer [2024] 165 taxmann.com 682 (Bombay)*** to say that the re-assessment proceeding which is *void ab initio* cannot be saved under any circumstances or labelled to be not void, merely because the Petitioner belatedly approached this Court and more so when the Department has levied penalty based on such re-assessment proceedings. He submits that there was a reasonable cause for delay and that the same has been explained by the Petitioner at Paragraph Nos. 3(xiii) to 3(xiv) of the Writ Petition.

8. We have heard the learned counsel appearing for the parties and considered all rival submissions. It is not in dispute that the Impugned Notice is dated 18th April 2022 and relates to A.Y. 2015 – 16. It is also not in dispute that the Department has made a concession before the Hon'ble Supreme Court in *Rajeev Bansal (supra)*, which reads as under:

> *"f. The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;"*

9. This Court in *Mitra Biswas (supra)*, under similar circumstances, had quashed the impugned Notice issued under Section 148 of the Act and consequential Orders relating to A.Y. 2015 – 16 in light of Hon'ble Supreme Court's judgment in *Rajeev Bansal (supra)*.

10. We may observe that notwithstanding the fact that return of income filed by the Petitioner was ultimately accepted by the Department, the Department cannot recover any demand or levy penalty based upon a notice which is unsustainable in law. As far as the delay in approaching this Court is concerned, we note that the Petitioner has explained the same in his Writ Petition. We may also observe that since the Department has unequivocally conceded the issue in question before the Hon'ble Supreme Court in *Rajeev Bansal (supra)*, we do not deem it appropriate to deny relief to the Petitioner solely on the ground of delay. Any delay on the part of the Petitioner would not validate a notice which is otherwise declared to be invalid in the eyes of the law, more so when the Department has levied a penalty based upon such notice. We thus find merit in the submissions as canvassed on behalf of the Petitioner that the impugned Notice under Section 148 of the Act and all consequential Orders/Notices for A.Y. 2015 – 16 are bad in law. Accordingly, the impugned Notice dated 18th April 2022 issued under Section 148 of the Act (Exhibit 'D'), the Assessment Order (Exhibit 'G'), and all consequential orders/notices, including Penalty Orders emanating therefrom, are hereby quashed and set aside.

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

12. 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.]**

Darshan Patil

Signed by: Darshan Patil
Designation: PA To Honourable Judge
Date: 23/03/2026 16:42:31