आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.:2013/Chny/2025**
निर्धारण वर्ष / Assessment Year: **2018-19**

Mavilai Primary Agricultural Cooperative Credit Society Limited KV 92, Mavilai Paccs, Ammandivilai S.O., Mavilai, Kanyakumari - 629 204.	vs.	**ITO,** Ward -1, Nagercoil.
[PAN:AACTM-8935-C] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. G. Reddi Prakash, C.A.
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, J.C.I.T.

सुनवाई की तारीख/Date of Hearing : 17.09.2025
घोषणा की तारीख/Date of Pronouncement : 04.11.2025

आदेश /O R D E R

PER S. R. RAGHUNATHA, AM:

The present appeal is filed by the assessee against the order dated 11.02.2025 passed by the Commissioner of Income Tax (Appeals) (hereinafter referred to as "CIT(A)", dismissing the appeal filed by the assessee against the assessment order dated 24.02.2023 passed u/s.147 read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

2. We find that there is a delay of 82 days in filing the present appeal before us. The Ld.AR placed on record an affidavit from the assessee, explaining the reasons for the delay and prayed that the delay be condoned and the appeal be taken up on merits. Per contra, the Ld.DR opposed the petition for condonation of delay and submitted that the assessee has not made out a case for condoning the delay and that the appeal may be dismissed in limine on the grounds of limitation. On going through the reasons for delay, we are satisfied that the assessee had sufficient cause in not presenting the appeal within the period of limitation specified under the Act. We, accordingly, condone the delay in filing the appeal and now proceed to hear the case on merits.

3. At the outset, the Ld. AR for the assessee has raised an additional ground relating to jurisdiction of Jurisdictional Assessing Officer ('JAO') in the light of the CBDT Notification dated 29.03.2022 and the decision of the Hon'ble Madras High Court in the case of TVS Credit Services Ltd. Vs. DCIT (W.P.No.22402 of 2024 dated 24.06.2025).

4. The Ld.DR, objected to the admission of additional ground raised by the assessee.

5. We have heard the admission of legal issue and found substance in the submissions of the Ld. Counsel for the assessee and hence, we admit the legal issue/jurisdictional ground, in view of the decision of the Hon'ble Supreme Court in the case of NTPC v. CIT reported in [1998] 229 ITR 383 (SC).

6. Brief facts of the case are that the assessee is a District Central Co-operative Bank, whose case for the Assessment Year 2018-19 (hereinafter referred to as "impugned assessment year") was reopened by way of an order dated 30.03.2022 passed u/s.148A(d) of the Act and a notice dated 30.03.2022 issued u/s.148 of the Act, both issued by the jurisdictional Assessing Officer, Income Tax Officer, Exemption Ward, Tirunelveli. Thereafter, the assessment is completed by the National Faceless Assessment Centre, by making an addition of (a) Rs.12,05,254/- u/s.80P of the Act and (b) Rs.73,00,000/- u/s.69 of the Act. Aggrieved, the assessee preferred an appeal before the CIT(A), who dismissed the same and against which, the assessee had preferred the present appeal.

7. The Ld. AR for the assessee referred to the notice u/s.148 of the Act dated 30.03.2022 and order under Clause (d) of section 148A of the Act, dated 30.03.2022 and pointed out that both the notice u/s.148 of the Act as well as the order u/s.148A(d) of the Act has been issued by the Income Tax Officer, Exemption Ward, Tirunelveli. The ld.AR further referred to the CBDT Notification dated 29.03.2022 which formulated a Scheme called "the e-assessment of income assessment scheme, 2022" and hence argued that the notices issued on or after 29.03.2022 by the jurisdictional Assessing officer (JAO) are invalid and any deviation from the faceless procedure violates section 151A and renders such proceedings unsustainable in law. The assessee submitted that since the reopening notice is invalid, the consequent assessment order is also

invalid. Further the ld.AR submitted that the Hon'ble Madras High Court has decided the issue in favour of the assessee in its order in the case of *TVS Credit Services Ltd. Vs. DCIT (W.P.No.22402 of 2024 dated 24.06.2025)* and hence prayed for quashing the order of assessment and subsequent proceedings as void ab initio.

8. The Ld.DR supported the orders of the authorities below and further submitted that the proposition of the assessee is erroneous, since it makes no difference to the validity of the reopening notice, whether it is the jurisdictional Assessing Officer or the National Faceless Assessment Centre and prayed that the appeal be dismissed. She further relied upon para 8 of the order the Hon'ble jurisdictional High Court in the case of TVS Credit Services Ltd. v. DCIT in WP No.22402 of 2024 & WMP No.13336 of 2023 which is as under:

> *8.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 these petitions, the notices issued in these petitions are quashed and set aside.*

9. We have heard the rival submissions perused the material available on record and CBDT circular and case law cited by the assessee. We find that the CBDT issued a Notification dated 29.03.2022 formulating "the e-assessment of income assessment Scheme, 2022". The Scheme provides that (a) the assessment/re-assessment are re-computation u/s.147 of the Act and (b) issuance of notice u/s.148 of the Act shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred

u/s.148 of the Act for issuance of notice and in a faceless manner to the extent providing in Section 144B of the Act with reference to making assessment/re-assessment of total income or loss of the assessee. We find that the impugned order u/s.148A(d) dated 30.03.2022 and the impugned notice u/s.148 dated 30.03.2022 have been issued by the Income Tax Officer, Exemption Ward, Tirunelveli [JAO] and not by the NFAC which is not in accordance with the aforesaid Scheme. We find that the order under Clause (d) to Section 148A of the Act and the notice u/s.148 has been passed after CBDT Notification dated 29.03.2022. Hence, the aforesaid CBDT Notification dated 29.03.2022 is directly applicable in this case.

10. The Hon'ble Telangana High Court in Kankanala Ravindra Reddy Vs ITO (2023) 156 taxmann.com 178 (Telangana) and Hon'ble Bombay High Court in Hexaware Technologies Ltd Vs ACIT (2024) 464 ITR 430 (Bom) has decided the controversy in favour of the assessee.

11. Furthermore, the above view is affirmed by the Hon'ble Telangana High Court in M/s.Ta Infra Projects Limited Vs The DCIT [Writ Petition Nos.26645, 26654, 26667, 28497, 26788 of 2024 and 12437, 9561, 14549, 14664, 14674, 12873 of 2025 dated 14.07.2025], following the judgments of the Hon'ble Telangana High Court in Kankanala Ravindra Reddy Vs ITO (2023) 156 taxmann.com 178 (Telangana) and Hon'ble Bombay High Court in Hexaware Technologies Ltd Vs ACIT (2024) 464 ITR 430 (Bom) has set aside the notices issued u/s.148 by JAO.

12. Further, we take note of the decision of the Hon'ble Telangana High Court in Sri Venkatramana Reddy Patloola Vs DCIT [Writ Petition Nos.13353, 16141 and 16877 of 2024 dated 24.07.2024], following the judgments of the Hon'ble Telangana High Court in Kankanala Ravindra Reddy Vs ITO (2023) 156 taxmann.com 178 (Telangana) and Hon'ble Bombay High Court in Hexaware Technologies Ltd Vs ACIT (2024) 464 ITR 430 (Bom) wherein the notices issued u/s 148 of the Act has been set aside and held as under:

> *29. In view of foregoing analysis, it is clear that the respondents have erred in not following the mandatory faceless procedure as prescribed in the scheme dated 29.03.2022. Since notices under Section 148 of the Act were not issued in a faceless manner, the entire further proceeding founded upon it and assessment orders stand vitiated. Thus, the impugned notices under Section 148 of the Act and all consequential assessment orders based thereupon are set aside. Liberty is reserved to the respondents to proceed against the petitioners in accordance with law.*

13. The Hon'ble Telangana High Court in Deepanjan Roy Vs ADIT (Int. Taxn.)-2 Hyd & Anr [Writ Petition No.23573 of 2024 dated 29.08.2024], following the judgment in Writ Petition No.13353 of 2024 and batch dated 24.07.2024 held as under:

> *In view of the consensus arrived at, this Writ Petition is allowed in terms of order passed in W.P.No.13353 of 2024 and batch. The direction contained in the said order shall apply mutatis mutandis to this case with full force. No costs.*

14. The revenue further filed Special Leave Petition (Civil) before the Hon'ble Supreme Court vide SLP(C) No. 018753 / 2025, Diary No (s).33956/2025 titled ADIT (Int. Taxn.) 2 Hyd & Anr Vs Deepanjan Roy, challenging the judgment of the Hon'ble Telangana High Court passed in Writ Petition No.23573 of 2024

dated 29.08.2024. However, the Hon'ble Supreme Court upon hearing the counsel made the following order 16.07.2025 as under:

> *1. Delay condoned.*
>
> *2. Exemption Application is allowed.*
>
> *3. Having heard the learned counsel appearing for the petitioners – Revenue and having gone through the materials on record, we find no good reason to interfere with the impugned order passed by the High Court.*
>
> *3. The Special Leave Petition is, accordingly, dismissed. 4. Pending applications, if any, shall also stand disposed of.*

15. We further note that the revenue's SLP(C) No. 021188/ 2024 in the case of Hexaware Technologies Ltd against the judgment of the Hon'ble Bombay High Court in Hexaware Technologies Ltd Vs ACIT (2024) 464 ITR 430 (Bom) is still pending adjudication before the Hon'ble Supreme Court.

16. The Supreme Court in a landmark judgement in the case of *Kunhayammed* v. *State of Kerala* [2000] 113 Taxman 470/245 ITR 360 (SC) has summarised the doctrine of merger as follows:-

> *"Where an appeal or revision is provided before a superior forum against an order passed by a Court, Tribunal or any other authority and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges with the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law".*

17. The Supreme Court in the aforesaid case has concluded as follows:-

(*i*) *Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is*

the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(*ii*) *The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.*

(*iii*) *The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.*

(*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 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.*

18. In the case of *S. Shanmugavel Nadar v. State of Tamil Nadu [2003] 263 ITR 658 (SC),* the Apex Court held that what merges is the operative part i.e. the mandate decree issued by the court which may have been expressed in positive or negative form. The application of the doctrine depends on the nature of the appellate or revisional order, the scope of the statutory provisions

conferring jurisdiction and the subject matter of challenge with the following remarks:-

> *"……..Though loosely an expression "merger of judgement, order or decision of a Court or forum into the judgement, order or decision of a superior forum" is often employed, as a general rule, the judgment or order having been dealt with by a superior forum and having resulted in confirmation, reversal or modification, what merges is the operative part, i.e., the mandate or decree issued by the Court which may have been expressed in positive or negative form. For example, take a case where the subordinate forum passes an order and the same, having been dealt with by a superior forum, is confirmed for reasons different from the one assigned by the subordinate forum, what would merge in the order of the superior forum is the operative part of the order and not the reasoning of the subordinate forum, otherwise there would be an apparent contradiction. However, in certain cases, the reasons for the decision can also be said to have merged in the order of the superior Court if the superior Court has, while formulating its own judgment or order, either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgment or order of the subordinate forum."*

19. Hence, in the light of above discussion, simplicitor dismissal of revenue Special Leave Petition (Civil) at admission stage before the Hon'ble Supreme Court vide SLP(C) No.018753/2025, Diary No(s).33956/2025 titled ADIT (Int.Taxn.) 2 Hyd & Anr Vs. Deepanjan Roy, challenging the judgment of the Hon'ble Telangana High Court passed in Writ Petition No.23573 of 2024 dated 29.08.2024 has no declaration of law and binding effect under Article 141 of the Constitution of India.

20. The Hon'ble jurisdictional High Court in the case of *TVS Credit Services Ltd. v. DCIT in WP No.22402 of 2024 & WMP No.13336 of 2023* on similar issue held as under:

> *"2. Learned Single Judge in order dated 20.12.2024 in WP Nos.25223 of 2024 held that it does not matter if the Jurisdictional Assessing Officer*

(JAO) issues the notice and it is not mandatory that it should be issued by the Faceless Assessment Officer (FAO). Another learned Single Judge in order dated 21.04.2025 in WP No.22402 of 2024 and batch cases, followed what was held by the Bombay High Court in Hexaware Technologies Ltd vs. Assistant Commissioner of Income Tax'; and opined that it was mandatory for the FAO to issue notice and issuance of notice by JAO would make the notice invalid.

3. Learned Single Judge thereafter directed the matter to be placed before the Chief Justice for constituting a Division Bench to consider the divergent views. It is, therefore, all these matters were listed before us today.

4. We follow the law as laid down in Hexaware Technologies Ltd (supra), the said judgment was authored by one of us (Chief Justice), that it is mandatory for the FAO to issue the concerned notices and issuance thereof by the JAO would make the notice invalid.

5. Counsels for assessees are ad idem that the law as laid down in Hexaware Technologies Ltd (supra) will apply. Learned Additional Solicitor-General, however, submits that the Revenue does not accept the law as laid down in Hexaware Technologies Ltd (supra); and that there is a special leave petition filed against the order and judgment in Hexaware Technologies Ltd (supra) and the same is expected to be taken up after the Supreme Court reopens.

6. Admittedly, learned Additional Solicitor-General, in fairness, states that there is no stay. Therefore, the law as laid down by Hexaware Technologies Ltd (supra) applies.

7. It is clarified that if the Apex Court reverses the judgment of Hexaware Technologies Ltd (supra), parties will be governed by the decision of the Apex Court.

8. 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 these petitions, the notices issued in these petitions are quashed and set aside.

9. In these petitions, apart from the issue of notices issued by JAO instead of FAO, all or many of the issues which were considered in Hexauxare Technologies Ltd (supra) are involved.

10. 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.

11. With the liberty as noted above, all petitions stand disposed of holding in favour of assessees. There will be no order as to costs. Consequently, the interim applications also stand disposed of.

21. The coordinate bench of this Tribunal has already considered the decision of the Hon'ble jurisdictional High Court in the case of *TVS Credit Services Ltd.(supra)* and and decided the issue in favour of assesse in the identical set of facts and circmustances in the case of Mr.Loganathan Dhandapani Vs.ACIT. ITA No.2240/Chny/2024 dated 14.08.2025, by holding as under:

"11. The Hon'ble Bombay High Court in the case of Hexaware Technologies Ltd., (supra) is noted to have has even dealt with the decision rendered by the Hon'ble Calcutta High Court in favour of the Revenue, but concurred with the view of the Hon'ble Telangana High Court in the case of Sri Venkataramana Reddy Patloola v. DCIT reported in [2023] 156 taxmann.com 178 (Telangana) and held that in view of the provisions of Sec.151A of the Act read with Faceless Scheme dated 29.03.2022, notices issued by the JAO u/s.148A(d)/148 of the Act was invalid and bad in law. We further note that aforesaid decision of the Hon'ble Telangana High Court has been followed not only by the Hon'ble Bombay High Court, but also by the Hon'ble Gauhati High Court in the case of Ram Narayan Sah v. Union of India reported in 163 taxmann.com 478, and the Hon'ble Punjab & Haryana High Court in the case of Jatinder Singh Bhangu v. Union of India reported in 165 taxmann.com 115 and other cited cases (supra). And as noted (supra) the Hon'ble jurisdictional High Court (Single Bench) order in the case of Mark Studio India (P.) Ltd. v. Income-tax Officer, held in favour of Revenue, was reversed by the Hon'ble Division Bench by order dated 24.06.2025 by holding as under:

> This appeal impugns an order passed by the learned Single Judge.
>
> 2. The learned Single Judge was pleased to dismiss the petition on the ground that even if the notice has been issued by Jurisdictional Assessment Officer and not Faceless Assessment Officer, the notice issued under Section 148A/148 of the Income Tax Act will be valid.
>
> 3. Ms.Vardhini Karthik submitted that this Court has, in many matters, held, following the judgment of the Bombay High Court in Hexaware Technologies Limited v. Assistant Commissioner of Income Tax', that notice that has to be issued by Faceless Assessment Officer has to be issued Faceless Assessment Office and if issued by Jurisdictional Assessment Officer, the same is not valid.

> 4. Ms.Premalatha, who takes notice for the Revenue, states that the law as proposed by Ms.Vardini Karthick is correct and therefore, the Court may quash and set aside the notices, but keep open liberty of the Revenue to re-ignite the notices in case the Apex Court interferes with the order and judgment of the Bombay High Court in Hexaware Technologies (supra).
>
> 5. Keeping open the Revenue's rights and contentions, as noted above, the impugned notices dated 15.04.2024 are quashed and set aside. The appeal is disposed of. There shall be no order as to costs. Consequently, the interim application is closed.
>
> 12. In the light of the aforesaid discussion, we find that in the case in hand, the JAO had issued notice u/s.148A(b) of the Act dated 14.03.2022 followed by order u/s.148A(d) of the Act dated 31.03.2022 and followed by notice u/s.148 dated 31.03.2022 which impugned notices have been issued despite faceless scheme was notified by Central Government on 29.03.2022 pursuant to section 151A of the Act, making it mandatory for the issuance of notice u/s.148A(b), 148A(d) as well as 148 of the Act by the Faceless Mechanism, the impugned notices especially issued u/s.148 dated 31.03.2022 is found to be invalid and bad in law, since it has been issued contrary to law and is against the 'Rule of Law'; which impugned action of the JAO vitiates the reopening of assessment for AY 2018-19 by issuance of impugned notice dated 31.03.2022 u/s.148 of the Act and is therefore held to be illegal and bad in law and therefore, assessment order dated 16.03.2023 is held to be null in eyes of law; and the assessee succeeds, on the legal issue which is held in favour of the assessee and therefore, we are inclined not to go into the merits of the addition made by the NFAC.
> 13. In the result, appeal filed by the assessee is allowed."

22. Therefore, respectfully following the decision of the Hon'ble jurisdictional High Court in the case of *TVS Credit Services Ltd.(supra)*, we set aside the impugned notice u/s.148 of the Act and consequential orders thereof. However, in the light of the Para No.8 of the judgment of the jurisdictional High Court, we also keep open of rights and contentions of parties including liberty to approach this bench, in case, the Revenue succeeds before the Apex Court for revival of this appeal. In the case of revival, the assessee has a right to argue all the grounds raised in the present appeal.

23. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 04th November, 2025 at Chennai.

Sd/-	**Sd/-**
(जॉर्ज जॉर्ज के)	**(**एस**.** आर**.** रघुनाथा**)**
(GEORGE GEORGE K)	**(S. R. RAGHUNATHA)**
उपाध्यक्ष /**VICE PRESIDENT**	लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 04th November, 2025

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3.आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF