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.: 2524/CHNY/2025**

निर्धारण वर्ष/Assessment Year: 2015-16

Ms. Sowmya Kannan, No.634-A, Ramasamy Salai, K K Nagar, Chennai – 600 078.	Vs.	**The Income Tax Officer,** Non-Corporate Ward 19(4), Chennai.
PAN: AAOPK 5170F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Abhishek Murali, CA
प्रत्यर्थी की ओर से/Respondent by : Ms. Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing : 20.11.2025
घोषणा की तारीख/Date of Pronouncement : 20.11.2025

आदेश/ O R D E R

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi dated 31.07.2025, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2015-16.

2. At the very outset, we notice that the assessee has filed addition grounds of appeal challenging the validity of the assumption of jurisdiction for issuance of notice under section 148 of the Act. The Ld.AR vehemently argued that the notice under section 148 of the Act issued by the Income Tax Officer, Non-Corporate Ward 19(4), Chennai is lacking jurisdiction in view of Notification issued by the CBDT dated 29.03.2022 which formulated a Scheme called "the e-assessment of Income Escaping Assessment Scheme, 2022". By relying upon the decision of the Hon'ble High Court of Madras in the case of TVS Credit Services Ltd. v. DCIT in W.P. No. 22402 of 2024, the Ld.AR argued that the reassessment proceedings initiated by the Jurisdictional Assessing Officer are void ab initio.

3. The Ld. DR relied on the order passed by the AO & First Appellate Authority (FAA)

4. We have heard rival submissions and perused the material on record. By way of Additional grounds of appeal, the assessee has raised legal issue of assumption of jurisdiction for issuance of notice under section 148 of the Act. Since the additional ground raised by the assessee relate to a pure legal issue, which does require examination of new facts, we proceed to adjudicate the legal issue of

assumption of jurisdiction for issuance of notice under section 148 of the Act. On perusal of the notice issued under section 148 of the Act dated 08.04.2022, we note that the same has been issued by the Income Tax Officer, Non-Corporate Ward 19(4), Chennai i.e., [JAO], which has been referred to in at page 1 of the assessment order of the Assessment Unit, Income Tax Department, NFAC. 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 or 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.*

5. We find that the impugned notice u/s.148 dated 08.04.2022 has been issued by the Income Tax officer, Non-Corporate Ward 19(4), Chennai [JAO] and not by the NFAC which is not in accordance with the aforesaid Scheme. We also find that the impugned order under Clause (d) to Section 148A of the Act dated 08.04.2022 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.

6. On identical facts, the Chennai Bench of the Tribunal in the case of Chellappan Sankaranathan vs. ACIT in ITA No.930/CHNY/2025 (order dated 19.08.2025) by relying on the judgment of 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 and other judicial precedents, has set-aside the notice issued u/s.148 of the Act and consequential orders thereof. The relevant finding of the Tribunal read as follows:-

> *6. We have heard the rival submissions perused the appeal papers 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 recomputation 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 notice u/s.148 dated 27.03.2023 has been issued by the Income Tax officer, Intl Taxn Circle MDU [JAO] and not by the NFAC which is not in accordance with the aforesaid Scheme. We also find that the impugned order under Clause (d) to Section 148A of the Act dated 27.03.2023 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.*
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> *7. 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.*
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> *8. Furthermore, 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.

9. Further, 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) has set aside the notices issued u/s 148 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.

10. 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.

11. 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 the 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.

12. 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.

13. 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 summarized 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"

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.

14. 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."

15. 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.

16. 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 issued 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 Hexaware 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.

17. Therefore, respectfully following the decision of the Hon'ble jurisdictional High Court, 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.

7. In light of the above, we set aside the impugned notice issued under section 148 of the Act and consequential order passed pursuant thereto. However, in the light of the Para No.8 of the decision of the jurisdictional High Court in the case of TVS Credit Services Ltd., *supra,* 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.

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

Order pronounced in the open court on 20th November, 2025 at Chennai.

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

चेन्नई/Chennai,
दिनांक/Dated, the 20th November, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.