आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'C' BENCH: CHENNAI** **श्री मनु कुमार गिरि, न्यायिक सदस्य एवं** **श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष** **BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND** **SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**		
आयकर अपील सं./**ITA No.2618/Chny/2025** निर्धारण वर्ष/**Assessment Year: 2018-19**		
Jithender Tatia, No.127, 9th Block, Flat No.9031, 3rd Floor, TVH Lumbini Square, Purasawalkam, Chennai-600 007.	**v.**	The ITO, Ward-115(92), Chennai.
[**PAN: AAFPJ 8967 N**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr. Hitesh, Advocate For Mr.D. Anand, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Anitha, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	19.11.2025
घोषणाकीतारीख /Date of Pronouncement	:	26.11.2025

आदेश **/ O R D E R**

PER MANU KUMAR GIRI, JM:

The captioned appeal by the assessee is arising out of the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 10.06.2025 for AY 2018-19.

2. At the outset, we notice that the assessee by the ground No.3 challenges the JAO jurisdiction to issue notice u/s148 dated 31.03.2022 of the Act.

3. We note that Page No.2 of the assessment order which talks of notice u/s.148 of the Act dated 31.03.2022 and pointed out that the notice u/s.148 has been issued by the Income Tax Officer, Non Corp Ward 9(1) CHE/ i.e; (JAO). He further referred to CBDT Notification dated 29.03.2022 which formulated a Scheme called "the e-assessment of income assessment scheme, 2022".

4. The Ld.DR relied upon the impugned order and further, pleaded that CBDT Notification dated 29.03.2022 is not applicable in the present case. He 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.*

5. 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 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 notice u/s.148 dated 31.03.2022 has been issued by the Income Tax Officer, Non Corp Ward 9(1) CHE/ i.e; (JAO) and not by the NFAC which is not in accordance with the aforesaid Scheme. We also find that the impugned notice u/s 148 has been issued after CBDT Notification dated 29.03.2022. Hence, the aforesaid CBDT Notification dated 29.03.2022 is directly applicable in this case.

6. 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.

7. 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.

8. 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.*

9. 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.*

10. 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.*

11. 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.

12. 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"*

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.*

13. 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."

14. 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.

15. Further, Hon'ble Delhi High Court in the case of *Yukti Export & Ors Versus Income Tax Officer Ward 60(7) Delhi & connected matters [W.P.(C) 15024/2025 CM APPL. 61869-71/2025 dated 26.09.2025]* on the similar issue has held as under:

1. A common issue has arisen in the captioned petitions, i.e., whether the Jurisdictional Assessing Officer ('JAO') or the Faceless Assessing Officer ('FAO') would have the jurisdiction to initiate re-assessment proceedings under Section 148 of the Income-Tax Act, 1961 ('the Act, hereinafter).

2. The contention of Mr. Anand Chaudhuri, learned counsel for the petitioners is that the issue is no more res integra inasmuch as there have been multiple judicial pronouncements stating that it is the FAO, that shall have the requisite jurisdiction to issue notices under Section 148 of the Act. In this regard, he has referred to the following judgments of various High Courts:-

a. Hexaware Technologies Ltd. v. ACIT [2024] 162 taxmann.com 225 (Bombay HC);

b. Prakash Pandurang Patil v. ITO [2024:BHC-AS:32759-DB] (Bombay HC);

c. Sri Venkataramana Reddy Patloola v. DCIT [W.P. Nos. 13353, 16141 & 16877 of 2024] (Telangana HC);

d. Deepanjan Roy v. ADIT (International Taxation)-2 [W.P. No.23573 of 2024] (Telangana HC);

e. Jatinder Singh Bhangu v. Union of India [CWP 15745 of 2024] (Punjab & Haryana HC);

f. Royal Bitumen (P.) Ltd. v. ACIT [2024] 164 taxmann.com 606 (Bombay HC);

g. Everest Kanto Cylinder Ltd. v. DCIT/ACIT [2024] 165 taxmann.com 192 (Bombay HC);

h. Sundaram Multi Pap Ltd. v. ACIT [2024] 164 taxmann.com 608 (Bombay HC);

i. Venus Jewel v. ACIT [2024] 164 taxmann.com 414 (Bombay HC).

3. He states that the Revenue carried some of these judgments in appeal, and the Supreme Court has since conclusively settled the issue, by dismissing the SLP in Deepanjan Roy (Supra) and Prakash Pandurang Patil (Supra). According to him, the latter dismissal was on the merits of the case as is clear from the order of the Supreme Court, the relevant portion whereof is reproduced as under:-

> *"2. Even otherwise, we see no reason to interfere with the impugned order passed by the High Court.*
>
> *3. The Special Leave Petition is, therefore, dismissed on the ground of delay as well as merits."*

His submission is that the Supreme Court has settled the law under Article 141 of the Constitution of India and laid down that only FAO would have the jurisdiction to issue notices under Section 148 of the Act.

4. He states that though this Court has held conversely, that both JAO and FAO would have the concurrent jurisdiction to initiate the proceedings, the same runs contrary to the judgment of the Supreme Court in ITO, Ward 5, Panvel & Ors. v. Prakash Pandurang Patil [SLP(C)Diary No. 39689/2025, dismissed on 18.08.2025, as well as the statutory mandate of Section 151A of the Act.

5. He submits that the contrary view propounded by a co-ordinate bench of this Court in T.K.S. Builders (P.) Ltd. v. ITO, [2024] 167 taxmann.com 759 (Del.), followed in M/s Mala Petrochemicals and Polymers v. ITO, WP(C) 12011/2025 and Mehak Jagga v. ITO, WP(C) 13149/2025, recognising a supposed concurrent jurisdiction of JAO and FAO, is ex facie per incuriam, as it disregards the statutory mandate of Section 151A and binding law under Article 141. The doctrine of per incuriam, as settled by the Supreme Court in Hyder Consulting (UK) Ltd. v. State of Orissa, (2016) 6 SCC 362, squarely applies since the decision of this Court was rendered in disregard of binding pronouncements of the Supreme Court and is thus not good law.

6. He further stated that this Court in PC Jeweller Ltd. v. ACIT, W.P.(C) 13229/2024, dated 23.01.2025, had dismissed the writ petition therein by relying upon the ratio of T.K.S. Builders (Supra). However subsequently, in appeal, the Supreme Court vide SLP (C) Diary

No. 13266/2025, order dated 04.04.2025, categorically directed that the Revenue may proceed with the reassessment proceedings, but any adverse order against the petitioner therein shall not be given effect to until further orders. This direction of the Supreme Court, by necessary implication, constitutes an interim stay and any reliance on T.K.S. Builders (supra), is no longer tenable in law. To buttress this argument, he has relied upon the judgments of the Supreme Court in S. N. Mukherjee vs. Union of India, (1990) 4 SCC 594 and Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359.

7. Per contra, Mr. Siddhartha Sinha, learned Senior Standing Counsel for the respondents submits that the contention of Mr. Chaudhuri are unmerited inasmuch as this Court has followed a consistent position that insofar as the jurisdiction of Delhi is concerned, both JAO and FAO would have concurrent jurisdiction to initiate proceedings for re-assessment. Though the judgment in TKS Builders (Supra) has been taken in appeal before the Supreme Court, there has been no stay of the same.

8. He states that in any case, the order of the Supreme Court in Prakash Pandurang Patil (Supra) does not state reasons for dismissal, and as such, it is a dismissal in limine. As such, the order does not read down the judgment in T.K.S. Builders (Supra) or affirm the judgment of the Bombay High Court in Hexaware Technologies Ltd. (Supra), as has been claimed by Mr. Chaudhuri.

9. Having heard the learned counsel for the parties, we are of the view that the submission of Mr. Chaudhuri cannot be accepted for the reason that this Court has settled the law relating to the issue in TKS Builders (Supra), which though under challenge before the Supreme Court, has not been stayed.

10. This Court has maintained a consistent position, that both JAO and FAO possess concurrent jurisdiction to initiate reassessment proceedings under Section 148 of the Act. In fact, in PC Jeweller Ltd. (Supra), a coordinate bench of this Court had dismissed a writ petition seeking similar relief by following the judgment in TKS Builders (Supra). Though the said judgment has been taken in appeal before the Supreme Court, the Revenue has been permitted to continue the proceedings with a caveat that any order, if passed adverse to the petitioner therein shall not be given effect.

11. 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, All India Kataria Education Society vs. DCIT W.P.(C) 14225/2025, decided on 15.09.2025 and M/s Empire Fasteners vs. The Assistent Commissioner of Income Tax & Anr. W.P.(C) 14754/2025, decided on 23.09.2025, we have dismissed similar petitions by relying upon TKS Builders Pvt. Ltd. (Supra).

12. Mr. Chaudhuri has put forth a contention that since the Supreme Court has dismissed the SLP preferred against the judgment of the Bombay High Court in Prakash Pandurang Patil (Supra), wherein the High Court had held that only FAO would have the jurisdiction to initiate proceedings under Section 148 of the Act, thereby meaning that the decision has attained finality, and would, by necessary implication read down the judgment of this Court in TKS Builders (Supra). We do not find any merit in the submission, for the reason that the Supreme Court while dismissing the SLP, had only stated that it does not find any merit in the SLP, without giving any detailed reasons.

13. In Fuljit Kaur vs. State of Punjab and Others, (2010) 11 SCC 455, the Supreme Court in paragraph 7 has held as under:-

> *"7. There is no dispute to the settled proposition of law that dismissal of the special leave petition in limine by this Court does not mean that the reasoning of the judgment of the High Court against which the special leave petition has been filed before this Court stands affirmed or the judgment and order*

> *impugned merges with such order of this Court on dismissal of the petition. It simply means that this Court did not consider the case worth examining for the reason, which may be other than merit of the case. Nor such an order of this Court operates as res judicata. An order rejecting the special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law or a binding precedent." (Emphasis supplied)*

14. In this regard, we may refer to the judgment of the Supreme Court in State of Orissa and Another vs. Dhirendra Sundar Das and Others, (2019) 6 SCC 270, wherein it was observed as under:-

> *"9.27. It is a well-settled principle of law emerging from a catena of decisions of this Court, including Supreme Court Employees' Welfare Assn. V. Union of India [Supreme Court Employees' Welfare Assn. V. Union of India, (1989) 4 SCC 187, paras 22 and 23 : 1989 SCC (L&S) 569] and State of Punjab v. Davinder Pal Singh Bhullar [State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770, paras 112 and 113 : (2012) 4 SCC (Civ) 1034 : (2012) 4 SCC (Cri) 496 : (2014) 1 SCC (L&S) 208] , that the dismissal of an SLP in limine simply implies that the case before this Court was not considered W.P. (C) 15024/2024 & connected matters Page 8 of 13 worthy of examination for a reason, which may be other than the merits of the case. Such in limine dismissal at the threshold without giving any detailed reasons, does not constitute any declaration of law or a binding precedent under Article 141 of the Constitution."*
>
> *(Emphasis supplied)*

15. Even in the judgment in Kunhayammed and Others (Supra) relied upon by Mr. Chaudhuri, the Supreme Court has observed as under:-

> *40. A petition seeking grant of special leave to appeal may be rejected for several reasons. For example, it may be rejected (i) as barred by time, or (ii) being a defective presentation, (iii) the petitioner having no locus standi to file the petition, (iv) the conduct of the petitioner disentitling him to any indulgence by the court, (iv) the question raised by the petitioner for consideration by this Court being not fit for consideration or deserving being dealt with by the Apex Court of the country and so on. The expression often employed by this Court while disposing of such petitions are — "heard and dismissed", "dismissed", "dismissed as barred by time" and so on. May be that at the admission stage itself the opposite party appears on caveat or on notice and offers contest to the maintainability of the petition. The Court may apply its mind to the merit worthiness of the petitioner's prayer seeking leave to file an appeal and having formed an opinion may say "dismissed on merits". Such an order may be passed even ex parte, that is, in the absence of the opposite party. In any case, the dismissal would remain a dismissal by a non-speaking order where no reasons have been assigned and no law has been declared by the Supreme Court. The dismissal is not of the appeal but of the special leave petition. Even if the merits have been gone into, they are the merits of the special leave petition only. In our opinion neither doctrine of merger nor Article 141 of the*

Constitution is attracted to such an order. Grounds entitling exercise of review jurisdiction conferred by Order 47 Rule 1 CPC or any other statutory provision or allowing review of an order passed in exercise of writ or supervisory jurisdiction of the High Court (where also the principles underlying or emerging from Order 47 Rule 1 CPC act as guidelines) are not necessarily the same on which this Court exercises discretion to grant or not to grant special leave to appeal while disposing of a petition for the purpose. Mere rejection of a special leave petition does not take away the jurisdiction of the court, tribunal or forum whose order forms the subject-matter of petition for special leave to review its own order if grounds for exercise of review jurisdiction are shown to exist. Where the order rejecting an SLP is a speaking order, that is, where reasons have been assigned by this Court for rejecting the petition for special leave and are stated in the order still the order remains the one rejecting prayer for the grant of leave to appeal. The petitioner has been turned away at the threshold without having been allowed to enter in the appellate jurisdiction of this Court. Here also the doctrine of merger would not apply. But the law stated or declared by this Court in its order shall attract applicability of Article 141 of the Constitution. The reasons assigned by this Court in its order expressing its adjudication (expressly or by necessary implication) on point of fact or law shall take away the jurisdiction of any other court, tribunal or authority to express any opinion in conflict with or in departure from the view taken by this Court because permitting to do so would be subversive of judicial discipline and an affront to the order of this Court. However this would be so not by reference to the doctrine of merger.

41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court. ... ...

43. We may look at the issue from another angle. The Supreme Court cannot and does not reverse or modify the decree or order appealed against while deciding a petition for special leave to appeal. What is impugned before the Supreme Court can be reversed or modified only after granting leave to appeal and then assuming appellate jurisdiction over it. If the order

> *impugned before the Supreme Court cannot be reversed or modified at the SLP stage obviously that order cannot also be affirmed at the SLP stage." (Emphasis supplied)*

16. Further, in Khoday Distilleries Ltd. & Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal, (2019) 4 SCC 376, the Supreme Court held 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."*

17. Mr. Chaudhuri has endeavoured to demonstrate that the reasons assigned by the Supreme Court, in Prakash Pandurang Patil (Supra), which we have reproduced in paragraph 3 above, would make it clear that the SLP has been dismissed both on merits and on delay. According to him, this would mean that by necessary implication, the judgment in Hexaware Technologies Ltd. (Supra), relied upon by the Bombay High Court in the impugned judgment therein, would stand affirmed and the judgment of this Court in TKS Builders (Supra) would stand negated. This plea does not appeal to us, for the reason that the Supreme Court has only dismissed the SLP without dealing with the issue. Going by the above discussed judicial pronouncements, the same cannot be said to have set aside TKS Builders (Supra). That apart, we find that the SLP preferred against TKS Builders (Supra) is still pending adjudication before the Supreme Court.

18. As such, the judgment in TKS Builders (Supra) would still hold the fort insofar as the jurisdiction of Delhi is concerned. We are bound by the same.

19. Though there is no dispute on the proposition of law laid down in Hyder Consulting (UK) Ltd. (Supra), the same would not come to the rescue of the petitioners in the peculiar facts of this case.

20. In view of the above discussion, we find no merit in the present appeals, the same are dismissed. The pending applications having become infructuous are also dismissed.

16. However, the Hon'ble jurisdictional High Court, as referred by both parties, 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 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.

17. Therefore, respectfully following the decision of the Hon'ble jurisdictional High Court, we set aside the impugned notice u/s.148 dated 31.03.2022 of the Act and consequential orders thereof. Hence, ground No.3 of the assessee is allowed. However, in the light of 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 the present Appeal. In the case of revival, the assessee has a right to argue grounds as raised in Appeal.

18. In the result, appeal filed by the assessee is allowed in terms above.

Order pronounced in the open court on 26th day of November, 2025 at Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(मनु कुमार गिरि)**
(S.R.RAGHUNATHA)	**(MANU KUMAR GIRI)**
लेखा सदस्य/**ACCOUNTANT MEMBER**	न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 26th November, 2025.
TLN

<u>आदेश की प्रतिलिपि अग्रेषित</u>**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF