Nisar Mohibullah Khan v. Principal Commissioner of Income Tax & Ors. (WP 6348/2025)

Writ Petition No. 6348 of 2025

2026:BHC-AUG:1054-DB | Writ Petition No. 6348 of 2025 | 2026-01-12

JAO-issued section 148 notice set aside following Hexaware; conditional revival by praecipe with continuing protection if revived.

Income-tax Act, 1961: section 148

High Court of Judicature at Bombay | 2-judge bench (Division Bench, Aurangabad Bench) | Justice Arun R. Pedneker | Justice Vaishali Patil-Jadhav

Assessment years:

Revival requires the specified Supreme Court event and a Revenue praecipe

If Hexaware is set aside on this issue, Revenue may seek revival without a separate interim application. A revived notice remains stayed until further orders; other challenges remain for decision. Dismissal of the SLP means no revival under this liberty.

01 FACTS OF THE CASE

Nisar Mohibullah Khan challenged a section 148 notice issued by the Jurisdictional Assessing Officer in Writ Petition No. 6348 of 2025. The Aurangabad Bench considered the challenge by reference to its consistent application of Hexaware after the faceless reassessment scheme of 29.03.2022. The short order does not identify the assessment year, notice date, alleged escaped income or underlying transactions.

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02 DISCUSSION BY THE HON'BLE COURT

Revenue relied on the Delhi High Court's 28.10.2024 decision in T.K.S. Builders/GDR Finance for concurrent JAO and FAO jurisdiction. The Bench nevertheless followed its own Court's consistent application of Hexaware: after 29.03.2022, the section 148 notice could be issued by the FAO, not the JAO. It decided this issuing-authority issue; paragraph 7 expressly preserves other challenges for determination if the petition is revived.

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03 JUDICIAL DECISION

The Court set aside the impugned section 148 notice and all proceedings/orders emanating from it. If the Supreme Court sets aside Hexaware on this issue, Revenue may revive the petition by praecipe without a separate interim application. Upon revival, implementation and operation of the notice remain stayed until further orders, and the petition must be decided on its own merits. If the Supreme Court dismisses the SLP, there is no question of revival.

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04 OUTCOME / IN WHOSE FAVOUR

Writ Petition No. 6348 of 2025 disposed of with relief against the JAO notice and its consequential proceedings/orders. The relief carries the stated revival mechanism; there is no determination of the taxpayer's substantive income liability.

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05 EXPERT COMMENTS

AKHB EXPERT COMMENTS — editorial analysis, distinct from the Court's findings.

Identify the authority defect actually decided — For Nisar Mohibullah Khan, the decisive point was the issuing officer under the post-29.03.2022 scheme. Revenue's competing Delhi authority was considered, but the Bench applied Hexaware. The order supports this jurisdictional challenge; it does not establish that every notice in every factual setting is invalid. Its silence on the assessment year and alleged income prevents any inference that an addition was rejected on evidence.

Revival is a litigation step, not automatic assessment restoration — The liberty has a specific trigger: Hexaware must be set aside by the Supreme Court on this issue. Revenue must then move a praecipe. Even a revived petition carries a stay of the notice until further orders. Thus reversal of the precedent would not itself conclusively validate this assessment or dispose of the remaining objections; dismissal of the SLP excludes revival under the stated mechanism.

Preserve the other objections separately — Paragraph 7 keeps the other challenges available for a merits decision if restoration occurs. Counsel should retain the notice, consequential orders and the existing pleaded grounds rather than treat jurisdictional relief as adjudication of limitation, escaped income or procedural compliance. This order records no findings on those questions and does not establish any later Supreme Court outcome.

Source: PDF p.1

SOURCE & VERIFICATION

High Court of Judicature at Bombay official judgment PDF - AKHB Repository (20260112_HCBM030178502025.pdf)

3-page official High Court of Judicature at Bombay judgment PDF (20260112_HCBM030178502025.pdf, 54,361 bytes).

All 3 original pages read and visually inspected; all five panels audited.

Open cited source rendition

All three original pages reviewed. The order does not specify the notice date, assessment year or disputed income.

STATUTORY SCOPE

The order applies section 148 and the faceless reassessment scheme dated 29.03.2022. It does not state the assessment year or independently analyse other statutory provisions.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment has not been independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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