03.11.2026-Bombay High Court Upholds Reassessment Despite Disputed ₹50 Lakh Escapement Threshold

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Summary; The Bombay High Court at Goa examined a writ petition filed by Molbio Diagnostics Limited challenging an order dated 28 December 2024 under **Section 148A(d) of the Income Tax Act, 1961** and a reassessment notice dated 29 December 2024 under **Section 148** for Assessment Year 2020-21. The petitioner contended that the proceedings were barred by limitation because the alleged escaped income did not reach the ₹50 lakh threshold required for reopening beyond three years under **Section 149(1)(b)**. The dispute arose from survey material concerning transactions with Stellar Diagnostics India Private Limited and Nexellence Consulting Private Limited, including allegations of bogus royalty and professional-fee expenditure.

The petitioner argued that ₹49.50 lakh relating to Stellar was shown as an advance rather than expenditure for AY 2020-21. It further submitted that, although ₹1.01 crore had been claimed as professional-fee expenditure relating to Nexellence, ₹1 crore was reflected as an advance in the relevant accounts. According to the petitioner, only ₹1 lakh was potentially attributable to AY 2020-21, placing the amount below the statutory threshold. The Revenue maintained that survey findings raised serious questions regarding the genuineness of the transactions and that the reassessment proceedings should be allowed to continue.

The Division Bench of Justices Bharati Dangre and Nivedita P. Mehta observed that the assessing authority had material giving rise to a reasonable belief at the initial stage that the transactions required investigation. The Court considered the alleged ₹5,11,88,304 royalty expenditure relating to Big Tech Private Limited, the claimed professional fees and the discrepancies concerning advances and expenditure. It held that the taxpayer could produce supporting documents and establish the correct amounts during the reassessment proceedings. The Court declined to determine the disputed factual questions in its extraordinary writ jurisdiction.

The High Court also noted that separate proceedings concerning AY 2021-22 remained pending and that the transactions across the two years could require examination together. Referring to the principles governing judicial interference at the reassessment stage, it concluded that the jurisdictional requirements could not be treated as breached merely on

the petitioner's disputed interpretation of the accounts. The writ petition was dismissed, leaving the petitioner free to participate in the reassessment proceedings and pursue available statutory remedies.

Cases Discussed

1. Acropolis Realty (P.) Ltd. Vs Income-tax Officer (Delhi High Court); (2024) 168 taxmann.com 406**.**

2. Nitin Nema Vs Principal Chief Commissioner of Income-tax (Madhya Pradesh High Court); (2023) 155 taxmann.com 276.

3. Sanath Kumar Murali Vs Income-tax Officer (Karnataka High Court); (2023) 152 taxmann.com 231.

4. Harbanslal Sahnia & Anr. Vs Indian Oil Corporation Ltd. & Ors. (Supreme Court); AIR 2003 SC 2120.

5. Red Chilli International Sales Vs Income-tax Officer (Supreme Court); (2023) 146 taxmann.com 224.

6. Sevnesa Vincom (P.) Ltd. Vs Principal Commissioner of Income-tax (Jharkhand High Court); (2024) 159 taxmann.com 500.

7. 1-1 Identity Solutions Operating Company (P.) Ltd. Vs Assistant Commissioner of Income-tax, Central Circle-25 (Delhi High Court); (2025) 174 taxmann.com 969**.**

8. Naresh Balchandrao Shinde Vs Income-tax Officer (Bombay High Court); (2023) 146 taxmann.com 66.

9. Excel Commodity and Derivative (P.) Ltd. Vs Union of India (Calcutta High Court); (2023) 150 taxmann.com 94.

10. U.S. Associates Vs Principal Commissioner of Income Tax (Chhattisgarh High Court); (2023) 149 taxmann.com 230.

11. Catchy Prop-Build (P.) Ltd. Vs Assistant Commissioner of Income-tax (Delhi High Court); (2022) 145 taxmann.com 510.

12. Classic Stripes (P.) Ltd. Vs Deputy Commissioner of Income Tax (Bombay High Court); (2024) 162 taxmann.com 467.

13. Hindustan Lever Ltd. Vs R.B. Wadkar (Bombay High Court); (2004) 137 Taxman 479.

14. Anshul Jain Vs Principal Commissioner of Income Tax (Supreme Court); (2025) **302 Taxman 367.**

15. Dinesh Verma Vs Income Tax Officer (Punjab & Haryana High Court); (2022) 141 taxmann.com.

16. Assistant Commissioner of Income Tax Vs Rajesh Jhaveri Stock Brokers (P.) Ltd. (Supreme Court); (2007) 161 Taxman 316.

17. Anshul Jain Vs Principal Commissioner of Income Tax (Supreme Court); (2022) 289 Taxman 239.

18. Anshul Jain Vs Principal Commissioner of Income Tax (Punjab & Haryana High Court); (2022) 143 taxmann.com 37.

19. ARB Hotels Resorts (P.) Ltd. Vs Anshul Jain Vs Principal Commissioner of Income Tax (Allahabad High Court); 2024 Taxman 419.

20. Vivek Saran Agarwal Vs Union of India (Allahabad High Court); (2024) 296 Taxman 281.

21. Gulmohar Silk Pvt. Ltd. Vs Income Tax Officer Ward (Delhi High Court); W.P.(C) No. 5787/2022; 07/04/2022.

22. Larsen & Toubro Ltd. Vs State of Jharkhand and Ors. (Supreme Court); Civil Appeal No. 5390/2007.

FULL TEXT OF THE JUDGMENT/ORDER OF BOMBAY HIGH COURT

1. Heard Mr P Vaidhya along with Mr Nigel Fernandes, the learned counsel for the petitioner and Ms Swati Kamat Wagh, the learned Standing Counsel for the respondents.

2. Rule. The rule is made returnable forthwith with the consent of and at the request of the learned counsel appearing for the parties.

3. The Petitioner has assailed the impugned order dated 28.12.2024 passed under **Section 148A(d)** and the notice dated 29.12.2024 issued under **Section 148 of the Income Tax Act, 1961** (hereinafter referred to as 'the said Act') along with ancillary reliefs.

4. The facts as narrated in the petition are as under:

i. Petitioner is a medical diagnostic device company that provides single point of care platform for accurate disease diagnostics.

ii. On 03/04/2019, Petitioner appointed M/s Nexellence Consulting Pvt Ltd. (M/s Nexellence) as technical/commercial consultants for the tenders issued by Central/State Government for supply of products manufactured or for the services rendered by the Petitioner company.

iii. On 09/04/2019, Petitioner entered into an agreement with M/s Stellar Diagnostics India Pvt Ltd (M/s Stellar) wherein it was mutually agreed to share technology and subsequent research and development for application and validation for cost effective diagnostic tool for Tuberculosis.

iv. On 08/02/2021, Petitioner filed Return of Income (ROI) for the Previous year relevant to the impugned assessment year (AY) 2020-2021 declaring total loss @ Rs. 38,23,21,036/-.

v. Vide intimation dated 25/11/2021, the return filed by Petitioner was processed and accepted under Section 143(1) of the Act.

vi. Vide notice dated 25/10/2024 issued under **section 148A(b)** of the Act, Respondent no.1 alleged that Respondent No.1 has information indicating that income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. The notice referred to a survey action under section 133A of the Act carried on in the Petitioner's premises on 11/3/2024 and certain adverse material impounded during the survey. In the notice, reliance was also placed on statements recorded during the survey action and to the verification of ledger extracts of M/s. Stellar which indicated that Petitioner had given advance royalties to M/s Stellar for the research and development expenses during FY 2019-2020 to 2023-24 and by the said notice it was further stated that petitioner had failed to show any document relating to service provided by the petitioner.

vii. In the show cause notice it was concluded that payment of Rs. 49,50,000/- made towards advance royalty is bogus in nature and has only been booked as expense to reduce the net profit. In the notice, it was further stated that Respondent no. 1 had verified the ledger extracts of M/s Nexellence and allegation was made that petitioner has made payment to the company during the Financial Year 2019-2020 to 2023-2024 without providing documents relating to services rendered by the said company. In the said notice, Respondent no 1, further alleged that petitioner had claimed deduction on account of professional charges of Rs. 1,01,00,000/- paid to M/s Nexellence only to reduce net profit and in view of the same, the respondent no 1 Proposed to make disallowance of Rs.1,50,50,000/- and petitioner was called upon to answer as to why notice under section 148 should not be issued on the basis on the above information.

viii. By reply dated 13/12/2024, Petitioner stated as under:

a. That Respondent no. 1 has not applied its mind in respect of information received by him based on survey action and documents provided by the Petitioner during the course of survey.

b. Petitioner has not claimed any expenditure in the profit and loss account as alleged by Respondent no. 1. Payment of advance amounting to Rs. 49,50,000/- towards royalty paid to M/s Stellar was not claimed as deduction under section 37(1) of the said Act and the same was merely shown as an advance in the balance sheet under the head "current asset" and the said expenditure of Rs. 49,50,000/- is claimed as deduction in the subsequent assessment year 2021-2022.

To support the same, reliance was placed on the ledger account of M/s Stellar, agreement dated 09/04/2024, the balance sheet and profit and loss account as on 31/03/2023.

b. That out of the total payment to M/s Nexellence, an amount of Rs. 1,00,00,000/- was claimed as expenditure in the profit and loss account and 1,00,00,000/- was shown as advance in the Balance Sheet under the head "current asset". The expenditure of 1,00,00,000/- is claimed as deduction in AY 2021-2022. In support of the same, Profit and Loss Account, ledger account and balance sheet of company was furnished. Respondent no 1 is not justified in treating the payments as bogus in nature and there is no escapement of any income.

c. As per Section 149, no notice under Section 148 can be issued beyond 3 years provided the income chargeable to tax has escaped assessment amounts or is likely to amount to 50 lakhs or more.

d. That payment of 49,50,000/- made to M/s Stellar as royalty was not claimed as deduction under section 37(1) of the Act for AY 2020-2021.

e. In the meantime, vide notice dated 25/10/2024 under section 148A(b) of the Act was issued for subsequent assessment year 2021-2022 to initiate assessment proceedings. In the said notice, respondent no 1 referred to the survey action made under sect 133A(a) of the act and relied on statements made in the course of survey and doubted the genuineness of payments made to M/s Stellar, M/s Nexellence and M/s Global Enterprises. In the said notice that income chargeable to tax has escaped assessment for the AY 2021-2022 and therefore Petitioner was called upon to show cause as to why notice under Section 148 should not be issued for the said assessment year.

f. On 13/12/2024, reply was filed to the notice dated 25/10/2024, in respect of AY 2021-22 by the petitioner wherein Petitioner gave complete details of the payments made to the said companies indicated in the said notice and explained the transactions with them in detail.

g. By order dated 28/12/2024, issued under section 148A(d) of the Act, Respondent no 1 held that the case was fit for reopening of assessment under Section 147 of the Act in respect of AY 2021-2022 and accordingly notice under section 148 of the said act for AY 2021-2022 was issued.

ix. Impugned Order dated 24/12/2024 was passed by Respondent no. 1 holding that Petitioner has booked bogus expenses of Rs. 1,50,50000 of account of royalty and for charges for Ay 2020-2021 and income chargeable to tax has escaped assessment amount of 50 lakhs or more and the case falls within 149(1)(b) of the Act.

x. In furtherance to the same, a notice dated 29/12/2024 under section 148 of the said Act was issued to Petitioner for AY 2020-2021 calling upon petitioner to file a return in the prescribed form for ay 2020-2021 which notice is also the impugned notice.

5. Aggrieved by the said notice dated 29.12.2024 issued under Section 148 of the said Act for the assessment year 2020-2021, the Petitioner has preferred the present Writ Petition.

6. Arguments were canvassed by counsel for the Petitioner in line with the principle ground in the petition that the Impugned Order and Impugned Notice is barred by limitation since the income that has escaped assessment for AY 2020-2021 can at the highest be assessed to Rs. 1,00,00,000/-. The learned counsel has submitted that the Respondents have not adverted to the main issue that in AY 2020-2021, out of the total alleged amount of Rs.1,00,00,000/- which escaped assessment, the balance sheets clearly show that the amount of Rs.49,50,000/- paid to M/s Stellar and the same is claimed as expenditure in the next AY 2021-2022. It was further argued that out of the total amount of Rs.1,01,00,000/- paid to M/s Nexellence as Professional fees, an amount of Rs.1,00,000/- is claimed as expenditure in Profit and loss account in AY 2020-2021 and balance of Rs.1,00,00,000/- advance is claimed as expenditure and charged to profit and loss account for AY 2021-2022. It is submitted that only an amount of Rs.1,00,000/- paid to M/s Nexellence was claimed for AY 2020-2021. It is submitted that the said contention has not been addressed by Respondent no. 1 in the Impugned Order nor in the affidavit in reply filed before this court. The balance sheets placed on record clearly bear out that the amount of Rs.1,00,00,000/- for M/s Nexellence and Rs.49,50,000 for M/s Stellar was shown as advance in the Balance Sheets under the head "current asset". It is also submitted that expenditure of Rs.5,11,88,304/- claimed by the Petitioner is respect of AY 2020-2021 pertains to royalty paid to Big Tech Pvt Ltd. and not to M/s Stellar or M/s Nexellence.

7. The learned counsel for the petitioner has relied upon the following decisions in support of his contentions:

(i) Acropolis Realty (P.) Ltd. V/s. Income-tax Officer[1],

(ii) Nitin Nema V/s. Principal Chief Commissioner of Income-tax[2],

(iii) Sanath Kumar Murali V/s. Income-tax Officer[3],

(iv) Harbanslal Sahnia & Anr. V/s. Indian Oil Corporation Ltd. and Ors.[4],

(v) Red Chilli International Sales V/s. Income-tax Officer[5],

(vi) Sevnesa Vincom (P.) Ltd. V/s. Principal Commissioner of Income-tax[6],

(vii) 1-1 Identity Solutions Operating Company (P.) Ltd. V/s. Assistant Commissioner of Income-tax, Central Circle – 25[7],

(viii) Naresh Balchandrao Shinde V/s. Income-tax Officer[8],

(ix) Excel Commodity and Derivative (P.) Ltd. V/s. Union of India[9],

(x) U.S. Associates V/s. Principal Commissioner of Income Tax[10],

(xi) Carchy Prop-Build (P.) Ltd. V/s. Asst. Commr. Of Income-tax[11],

(xii) Classic Stripes (P.) Ltd. V/s. Dy. Commr. of Income Tax[12],

(xiii) Hindustan Lever Ltd. V/s. R.B. Wadkar[13]

8. The learned Standing Counsel for Respondent nos.1 and 2 has argued that the material on record unearthed at the time of survey including the statements clearly show that the agreements with M/s Stellar and M/s Nexellence are bogus and are only intended to reduce Profits and illegally evade taxes. It is submitted that no case is made out warranting interference under Article 226 and that Petitioner should substantiate their case before the Assessing Officer in the reassessment proceedings. It is further submitted that no prejudice shall be caused to Petitioner since it is only a prima facie observation and Petitioner shall get ample opportunity to respond to the allegations. Reliance is also placed on the judgments referred to in the Affidavit in reply which are indicated in the foregoing paras on the principle of interference Writ jurisdiction and nature and scope of proceedings under **section 148** and **148 A**. It is further contended that the order passed by Respondent No. 1 is a reasoned order with application of mind and **Section 149(1)** is applicable since the income that has escaped assessment is beyond 50 lakhs as indicated in the order.

9. The learned standing counsel has relied on the following decisions in support of her contentions:

(i) Dinesh Verma V/s. Income Tax Officer[14],

(ii) Dinesh Verma (Punjab & Haryana) V/s. Income Tax Officer[15],

(iii) Assistant Commissioner of Income Tax V/s. Rajesh Jhaveri Stock Brokers (P) Ltd.[16],

(iv) Anshul Jain V/s. Principal Commissioner of Income Tax[17],

(v) Anshul Jain V/s. Principal Commissioner of Income Tax[18],

(vi) ARB Hotels Resorts (P) Ltd. V/s. Anshul Jain V/s. Principal Commissioner of Income Tax[19],

(vii) Vivek Saran Agarwal V/s. Union of India[20],

(viii) Gulmohar Silk Pvt. Ltd. V/s. Income Tax Officer Ward[21],

(ix) Larsen & Toubro Ltd. V/s. State of Jharkhand and Ors.[22]

10. We have considered the rival contentions.

11. **Section 149** of the said Act imposes a jurisdictional bar on the tax authorities to issue notice under **section 148** of the said Act beyond a period of 3 years from the end of the relevant year but not more than 10 years unless the Assessing Officer has in his possession books of accounts of documents or evidence which reveal that income chargeable to tax in the form of

i. an asset,

ii. expenditure in respect of a transaction or in relation to an event or an occasion or

iii. an entry/entries in the books of account which has escaped assessment amounts to or is likely to amount to 50 lakhs rupees or more.

12. The instant case refers to notice dated 25/10/2024 under **Section 148A(b)** of the said Act being issued for AY 2020-2021 which is admittedly beyond 3 years from the end of the relevant Assessment Year. It is clarified that the end of the AY 2020-2021 is 31/03/2021 and 3 years from end of Assessment Year expired on 31/03/2024. The fundamental issue in the matter is whether the amount of Rs. 1,50,50,000/- can be construed as an income chargeable to tax which has escaped assessment in terms of Section 149(1)(b)(i)(ii)(iii). The threshold amount in terms of section 149(1)(b) is 50 lakhs or more which stands complied with subject to the said amount of Rs. 1,50,50,000 meeting the criteria of section 149(1)(b) as indicated above.

13. In this context, the show cause notice dated 25/10/2024 assumes importance. In the said show cause notice, the principle allegation against the petitioner is that for the AY 2020-2021 an amount of Rs.1,50,50,000/- is "amount to be added on account of bogus expense booked". In the said notice, it is stated that Petitioner has shown bogus expense for AY 2021-2022 in respect of M/s Stellar to the tune of Rs.49,50,000 and M/s Nexellence to the tune of Rs.1,01,00,000/-. The allegation in the show cause notice is that the agreements executed by Petitioner with M/s Stellar with regard to sharing of technology and research dated 09/04/2019 and with M/s Nexellence as technical/commercial consultants for central/state government tenders are bogus agreements and that there is no proof of these agreements being implemented and acted upon by the parties and they are only aimed at illegally reducing profits of the Petitioner and evade Income Tax. In the said show cause notice, it is stated that the information was unearthed in pursuance to a survey under **section 133A** of the said Act which was carried out in the case of the petitioner wherein the premises of the petitioner was covered under survey action under Section 133A of the IT Act on 11/03/2024.

14. The above show cause notice states that the proceedings under **section 148A(b)** of the Act have been initiated against the Petitioner on the premise that there is bogus/illegal expense booked which is relatable to **Section 149(1)(b)(2)** i.e expenditure in respect of a transaction or in relation to an event or occasion which has escaped assessment amount. In view of the same, the central issue is whether the amount of Rs.1,50,50,000/- can be termed as an "expenditure" in respect of transactions of petitioner with M/s Stellar and M/s Nexellence which has escaped assessment. In reply dated 13/12/2024, the first objection raised by the Petitioner is that amounts quoted in notice under 148A for AY 2020-2021 are incorrect. It is stated that an amount for Rs. 49,50,000/- has been paid to M/s Stellar during AY 2020-2021 as advance and no amount paid to M/s Stellar has been claimed as a deduction during AY 2020-2021. In the said reply, it is further stated that in respect of professional fees paid to M/s Nexellence that an amount of Rs.1,01,00,000/- has been shown as payment made for AY 2020-2021 and only an amount of Rs. 1,00,000/- has been booked as expenditure in AY 2020-2021 and the rest has been indicated as advance. It is further stated that in the balance sheet, the amount of Rs.49,50,000/- towards royalty paid towards Ms Stellar is shown as advance under the head "current asset" and that the amount of Rs.1,00,00,000/- paid to M/s Nexellence is also shown as advance under the head "current asset". In the reply, it is further stated that in view of the same, without prejudice, the proposed disallowance for AY 2020-2021 should be only Rs. 1,00,000/- which is below the threshold limit of 50 lakhs. There are other explanations given in the reply to justify the legality and genuineness of the agreements of Petitioner with M/s Stellar and M/s Nexellence. The

said explanations were given by the Petitioner in view of the nature of the allegations made in the notice 25/10/2024 under section 148A(b) of the said Act. Along with the said reply, ledger account of M/s Stellar, balance sheet, and profit and loss accounts as on 31/03/2020 was also furnished to Respondent no. 1.

Notes:

[1] (2024) 168 taxmann.com 406 (Delhi)

[2] (2023) 155 taxmann.com 276 (Madhya Pradesh)

[3] (2023) 152 taxmann.com 231 (Karnataka)

[4] AIR 2003 SC 2120

[5] (2023) 146 taxmann.com 224 (SC)

[6] (2024) 159 taxmann.com 500 (Jharkhand)

[7] (2025) 174 taxmann.com 969 (Delhi)

[8] (2023) 146 taxmann.com 66 (Bombay)

[9] (2023) 150 taxmann.com 94 (Calcutta)

[10] (2023) 149 taxmann.com 230 (Chhattisgarh)

[11] (2022) 145 taxmann.com 510 (Delhi)

[12] (2024) 162 taxmann.com 467 (Bombay)

[13] (2004) 137 taxman 479 (Bom)

[14] (2025) 302 Taxmann 367 (SC)

[15] (2022) 141 Taxmann.com (Punjab & Haryana)

[16] 2007 (161) Taxman 316 (SC)

[17] 2022 (289) Taxman 239 SC

[18] 2022 (143) Taxman.com 37 (Punjab & Har.)

[19] 2024 Taxman 419 (Allahabad)

[20] 2024 (296) Taxman 281 (Allahabad)

[21] 10(3) Delhi High Court dated 07.04.2022 in WP(C)No.5787/2022 & CM Appl.17297/2022

[22] Civil Appeal No.5390/2007 delivered by SC