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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.29400 OF 2026

Sanjay Nathalal Shah

.. Petitioner.

Vs.

The Assistant Commissioner of
Income Tax, Central Circle 5(2),
Mumbai & Ors.

.. Respondents.

...

Mr. Dharan V. Gandhi, Advocate with Ms. Vinita Nara for Petitioner.

Ms. Swapna Gokhale, Advocate for Respondents.

...

**CORAM : B.P. COLABAWALLA &
FARHAN P. DUBASH, JJ.**

DATE : 5th OCTOBER, 2026.

P.C. :

1) Rule. Rule made returnable forthwith. With the consent of the parties this matter is taken up for hearing and disposed of finally at this stage.

2) By this Writ Petition under Article 226 of the Constitution of India, the Petitioner has challenged the validity of the order dated 25th March 2026 directing a special audit to be conducted under Section 142(2A) of the Income-tax Act, 1961 ("**the Act**") and the consequent special audit report dated 21st July 2026. The Petitioner has also sought a prayer to the effect that since the time limit to complete the assessment under Section 153 of the

Act has expired, no assessment order can be passed and the returned income is deemed to have been accepted.

3) At the outset we must state that by an order dated 29th August 2026, we had granted liberty to the Petitioner to amend the Petition in order to incorporate a ground of challenge and to point out certain additional facts. The same has been duly carried out and the amended petition was duly served on the Respondents. The Respondents have filed an Affidavit-in-Reply of one Shri Shashank Shekhar, being the Deputy Commissioner of Income Tax, (Central), Circle -5(2), affirmed on 3rd September 2026.

4) One of the grounds raised in this Petition is that the proceedings have become time barred, and therefore, no valid order can be passed. It is also submitted that prior to the second order being passed directing a special audit to be carried out, the proceedings had become time barred and, therefore, even the order directing the special audit and the special audit report are also bad in law.

5) It is submitted by Mr. Gandhi, learned Counsel for the Petitioner, that the original time barring date is 31st March 2025 and the first special audit was directed on 10th February 2025. At such time, the balance time to complete the assessment was only 49 days. These facts are undisputed.

6) This Court quashed and set aside the order directing the special audit

vide order dated 8th January 2026 in WP(L) No. 19240 of 2025. The relevant paragraphs of the said order, are brought out later in this order. As per clause (iv) of Explanation 1 to Section 153 of the Act, the time from the date of directing special audit till the date on which the order setting aside the special audit is received by the Principal Commissioner of Income-tax (**‘Principal Commissioner’**) is to be excluded. Thus, if such time is excluded, the balance time left would be 49 days. As per the proviso below Explanation 1 to Section 153 of the Act, since, only 49 days were left, the time limit to complete the assessment was deemed to be extended to 60 days. It is contended that paragraph 17 of the order of this Court dated 8th January 2026, states that all concerned have to act when a digitally signed copy of the order is produced by email or fax.

7) Moreover, in Clause (iv) of Explanation 1 to Section 153 of the Act there is no requirement that a certified copy of the order has to be received. Therefore, it is the contention of Mr. Gandhi that the limitation period should be computed from 9th January 2026, that is the date when the order is uploaded, as it is that date from which the Principal Commissioner can be stated to have received the copy of the order. If such date is considered to be the date on which the copy of the order is received, and if the limitation is to start from such date, then the proceedings become time barred by 10th March 2026. Accordingly, it is submitted that the assessment proceedings had

become time barred and, therefore, the special audit order dated 25th March 2026 is bad in law, and that even today no assessment order can be passed.

8) To substantiate the above submission, Mr. Gandhi, the learned counsel for the Petitioner, has tendered a brief table bringing out certain dates and events. The same is reproduced as under:

Sr. No	Particulars	Year/Date/period
A	Assessment Year	2023-24
B	Last day to complete assessment in terms of fourth proviso to Section 153(1) – (12 months from the end of the AY)	31.03.2025
C	Direction for special audit for the first time	10.02.2025
D	Balance time left to complete the assessment from direction of special audit, i.e., (B-C)	49 days
E	Order of this Hon'ble Court setting aside the said direction	08.01.2026
F	Order uploaded on the website of the High Court	09.01.2026
G	Period to be excluded in terms of clause (iv)(b) of Explanation 1 to Section 153	From 10.2.2025 till 09.01.2026
H	Number of days of exclusion or extension (higher of 60 or 49 days in terms of first proviso to Section 153)	60 days

I	Time to complete the assessment after excluding/extending the period from 09.01.2026.	10.03.2026
J	Direction of second special audit	25.03.2026
K	Special audit due date	23.07.2026
L	Special audit report	21.07.2026

9) On the other hand, Ms. Swapna Gokhale, learned counsel for the Respondent, submitted that the certified true copy of the order of this Court in WP(L) No. 19240 of 2025 dated 8th January 2026, was submitted to the Principal Commissioner on 4th February 2026. Ms. Gokhale has produced an acknowledgement to this effect. She submitted that this Court in its order dated 8th January 2026 itself noted in paragraph 15 that the time excluded would be from the date of direction of special audit i.e., 10th February 2025 till the date of receipt of the order by the Principal Commissioner which is 4th February 2026. Further, she relied upon the Affidavit-in-Reply, particularly the time limit computation table as brought out on page 240 of the reply, to submit that the time barring date is only 20th September 2026 and, therefore, the proceedings have not become time barred.

10) In rejoinder, Mr. Gandhi submits that there is no need for the Revenue to wait for the certified copy of the order. He relies upon an Instruction No. 2/2022 dated 15th December 2022 issued by Central Board of Direct Taxes

(‘Board’) and submits that the Board has clarified that a Cell had to be constituted within the Income-tax Department to immediately track all the cases which are disposed of on a particular day, to download the copy of the order and make available the copy of the order to the Principal Commissioner immediately. He submitted that these were instructions issued by the Board in respect of all High Court orders, and as per their own instruction, the Revenue was not supposed to wait till the certified copy of the order was received by the Principal Commissioner.

11) When the Court inquired with Ms. Gokhale, learned Counsel for the Respondents, as to whether a copy of the digitally signed order was served prior to 4th February 2026, she submitted that on 10th January 2026, a copy of the said order was made available to the Deputy Commissioner of Income Tax, (Central) Circle-5/2, by way of a WhatsApp message. In respect of the reliance placed on the Instruction of 2022 (*supra*) by Mr. Gandhi, on our query, Ms. Gokhale, on instructions, stated that the digitally signed copy of the order was downloaded and sent by email to the Principal Commissioner by the concerned cell in-charge, i.e., ITO (Judicial), on 12th January 2026. The said email has been tendered to us in Court which is taken on record and marked ‘X’ for identification. However, she prayed that considering the peculiar facts of the present case, the assessment proceedings should be

allowed to be continued after considering 4th February 2026 to be the date on which the order is deemed to have been received by the Principal Commissioner.

12) We have heard the rival submissions and contentions of the parties, and the material produced before us. Though various contentions are raised in the petition, we find that the present petition can be disposed of by considering the argument of the Petitioner that the proceedings have become time barred.

13) This is the second round of challenge which is pending before us. The Petitioner originally challenged a special audit order dated 10th February 2025. The same was held to be bad in law for reasons given in the order dated 8th January 2026 passed in in WP(L) No. 19240 of 2025. For the sake of brevity, the same is not reproduced in toto. However, we feel it appropriate to reproduce paragraphs 13 to 17, which read as under:

“13. Applying the clear mandate of the Circular and the settled judicial position, the approval dated 06.02.2025 is invalid and non-est in law. Since, a valid prior approval is a mandatory condition for directing a special audit under Section 142(2A), the impugned Order dated 10.02.2025, which is based on this invalid approval, is without jurisdiction.

14. In view of the above, the impugned Order dated 10.02.2025 directing a special audit under Section 142(2A) of the Act, and the consequential special audit report dated 06.06.2025, are hereby quashed and set aside.

15. At this stage, the learned Counsel for the Respondent prayed for liberty to pass a fresh order. It is accordingly clarified that we have only quashed the Order dated 10.02.2025 directing a special audit under Section 142(2A) of the Act and the consequential special audit report dated 06.06.2025. Moreover, it appears that the period from 10.02.2025 till the date this order is received by the Principal Commissioner or Commissioner, is specifically excluded in terms of clause (iv) of Explanation 1 to Section 153. Hence, there is still time available to complete the assessment. In such a scenario, the Respondents can take steps in accordance with law.

16. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

17. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(emphasis supplied)

14) Thus, this Court had *prima facie* observed that time was still available to complete the assessment, though no categorical finding was given in that regard. Further, no liberty was granted except stating that the respondents were free to take steps in accordance with law. Moreover, the order also clarified that all concerned will act on production by fax or email of a digitally signed copy of this order.

15) We find that the Principal Commissioner (Respondent No. 2 in that matter) was duly represented by a Standing Counsel before us in the first round of litigation. When the order is either pronounced or dictated in open court, the same is within the knowledge of the learned counsel for the

Principal Commissioner and therefore, within the knowledge of the Principal Commissioner. It cannot be forgotten that the Respondents in that matter had specifically sought for a liberty to pass a fresh order and it was recorded in the order that they still have time to take steps in accordance with law. Therefore, the Respondents were all the more aware that steps, if any, were to be taken, and they ought to have acted immediately.

16) Most importantly, paragraph 17 of the order dated 8th January 2026 categorically stated that everyone concerned has to act on the digitally signed copy of the order, when produced by way of email or fax. In this era of electronic filing and electronic uploading, and in order to alleviate difficulties of the litigants before us, this is a practice which this Court has adopted. Instead of asking a litigant to apply for a certified copy of the order on payment of fees, a digitally signed copy of the order can be produced before a party, and such order has to be acted upon. Time and again, the Hon'ble Supreme Court has issued directions that orders passed should be uploaded on the website after digitally signing the same.

17) Thus, there was no need for the Department to wait for a certified copy of the order to be presented to the Principal Commissioner for the computation of the period of limitation to commence. Not only does our order say so, but even the provisions of the Act in this regard, are very clear.

We find substance in the argument of the Petitioner that Clause (ii) of Explanation 1 to Section 153 of the Act specifically refers to exclusion of the period from the date when the stay has been granted by a Court till the date when the certified copy of the order is received by the Principal Commissioner. In contrast, Clause (iv), on which reliance is placed by the Respondent in the present matter, only refers to the period up to the date on which the copy of the order is received. The same is reproduced hereunder for the sake of convenience:

Explanation 1.—For the purposes of this section, in computing the period of limitation—

...

*(ii) the period commencing on the date on which stay on the assessment proceeding was granted by an order or injunction of any court and ending on the date **on which certified copy of the order** vacating the stay was received by the jurisdictional Principal Commissioner or Commissioner; or*

.....

(iv) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited or inventory valued under sub-section (2A) of section 142 and—

(a) ending with the last date on which the assessee is required to furnish a report of such audit or inventory valuation under that sub-section; or

*(b) where such direction is challenged before a court, ending with the date **on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or***

....

shall be excluded:”

(emphasis supplied)

We are concerned with clause (iv) of Explanation 1 to section 153 of

the Act, where there is no mention of receipt of certified copy of the order by the Principal Commissioner. Therefore, the Respondents are not correct in contending that the limitation will start only after the certified copy of the order is received by the Commissioner.

18) Moreover, if this view is taken, then a person can choose not to apply for a certified copy of the order and then contend that the period of limitation starts only after he makes an application and gets the certified copy of the order. Such a view cannot be accepted, more so in the facts of the present case as the digitally signed copy of the order was received by the Principal Commissioner, latest by 12th January 2026.

19) We find that the digitally signed copy of this order was provided to the concerned Assessing Officer i.e., Deputy Commissioner of Income Tax, (Central), Circle-5(2) (subordinate to the concerned Principal Commissioner) on 10th January 2026 by the learned counsel for the Respondent by way of a WhatsApp message.

20) We also find the reliance placed on the Instruction of 2022 (supra) to be correct. The said instruction was issued by the Board in light of the frequent delays in filing of SLPs before the Supreme Court against the orders of High Court. The said Instruction is titled as *“Instruction Regarding Standard Operating Procedure On Filing Of Appeals/Special Leave Petition*

(SLPs) By Income Tax Department In Supreme Court And Related Matter”.

Paragraph 4 of the said instruction is reproduced hereunder:

"4. Institutional mechanism for processing proposals for appeals/ SLPs to the Supreme Court:

(i) The Pr. CCIT/CCIT having jurisdiction over the station having Bench of the High Court, shall ensure a proper institutional mechanism for timely dissemination of downloaded copy/certified copy of High Court's order/judgment, whichever is available first, to Pr.CsIT/CsIT having jurisdiction over respective cases.

(ii) The Pr. CCIT/CCIT, shall set-up a High Court Cell at each station within their jurisdiction where a Bench of the High Court is situated. Such cell shall be headed by a DCIT/ACIT/ITO (as decided by the Pr. CCIT/CCIT, depending upon availability of manpower and the work load) with adequate number of Inspectors and other support staff and appropriate infrastructural facilities to make it properly functional. Appropriate monitoring and supervision mechanism of the High Court Cell shall be prescribed by the Pr. CCIT/CCIT under intimation to the Pr. DGIT (L&R).

(iii) The High Court Cell shall obtain particulars of cases finally heard from Standing Counsels at the end of each working day and intimate particulars of the cases, such as the name of the case, Assessment Year, Name of the Standing Counsel etc. with a summary of the proceedings to the Pr. CIT/CIT concerned without any delay. For outstation Pr. CsIT/ CsIT, such information shall be sent through e-mail/Fax.

(iv) The Cell shall also track orders/judgments pronounced on daily basis. Such information should be compiled from the daily cause list, Senior Standing Counsels and from Court room/registry of the High Court. The information so compiled should be transmitted to Pr. CIT/CIT concerned immediately on a regular basis through personal delivery/e-mail/fax.

(v) The Administrative Pr. CsIT/CsIT shall also set up proper institutional mechanism in their respective charges

to access the website of the High Court to download orders/Judgments relating to their charge as soon as these are uploaded. The orders can be downloaded from websites such as www.indiancourts.nic.in or www.courtnic.nic.in where link of all High Courts is provided. An officer of the charge should be nominated for this purpose. Such officer shall access the website everyday and keep a log of the same. The nominated officer shall also maintain regular co-ordination with the High Court Cell(s) dealing with the cases of the charge."

(emphasis supplied)

21) From the above, it is categorical that strict instructions have been issued by the Board that the orders of the High Court, when uploaded on the website of the High Court, have to be immediately sent to the relevant Commissioner in-charge. In fact, the relevant Commissioner in-charge should also appoint an officer to track the orders passed by the High Court. In the facts of the present case, ITO (Judicial), which is a relevant authority, has emailed a copy of the digitally signed copy of the order to the Principal Commissioner on 12th January 2026 itself which was uploaded on the High Court Website on 9th January 2026.

22) Thus, from whichever angle one considers the matter, 4th February 2026 cannot be considered to be the date on which the Principal Commissioner can be said to have received the order in terms of paragraph 17 of this Court's order dated 8th January 2026 and in terms of Clause (iv) of Explanation 1 to Section 153. It will be pertinent to note that since the matter was on the verge of getting barred by limitation, Respondent No. 1

ought to have acted immediately. The first notice after the order dated 8th January 2026, was issued only on 7th March 2026. This is almost 60 days after the pronouncement of the order dated 8th January 2026. Moreover, even if 4th February 2026 is considered, still Respondent No. 1 has acted almost 30 days after such date.

23) Whether we consider 10th January 2026 to be the date on which the order was shared by the learned Counsel for the Respondent to the concerned Assessing Officer from the office of the Principal Commissioner by way of a WhatsApp message, or 12th January 2026, which is the date on which the digitally signed copy of the order was sent by email by the ITO(Judicial) to the concerned Principal Commissioner, the assessment proceedings would become time barred either on 11th March 2026 or 13th March 2026 respectively in terms of Section 153 of the Act.

24) It is settled law that the limitation period prescribed is to be strictly followed and any action done after the expiry of limitation period is rendered to be without jurisdiction. Since, the assessment proceedings had become time barred latest by 13th March 2026, the impugned order directing a special audit dated 25th March 2026 is without jurisdiction. Consequently, even the special audit report dated 21st July 2026 is without jurisdiction. Moreover, since no order was passed completing the assessment within the

due date specified under Section 153 of the Act, in light of the decision of the Hon'ble Supreme Court in case of **CIT v. Shelly Products [2003] 261 ITR 367 (SC)**, the returned income is deemed to be accepted. The relevant findings of the Hon'ble Supreme Court in this regard are reproduced hereunder :

“30. What then is the effect of the failure to make an order of assessment after the earlier assessment made is set aside or nullified in appropriate proceedings? If the assessing authority cannot make a fresh assessment in accordance with the provisions of the Act it amounts to deemed acceptance of the return of income furnished by the assessee. In such a case the assessing authority is denuded of its authority to verify the correctness and completeness of the return, which authority it has while framing a regular assessment. It must accept the return as furnished and shall not in any event raise a demand for payment of further taxes. Accepting the income as disclosed in the return of income furnished by the assessee, it must refund to the assessee any tax paid in excess of the liability incurred by him on the basis of income disclosed. Even if the tax paid is found to be less than that payable, no further demand can be made for recovery of the balance amount since a fresh assessment is barred. In other words, the tax paid by the assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the Constitution.”

25) In light of the above, we hereby quash and set aside the order directing a special audit dated 25th March 2026 and the consequential special audit report dated 21st July 2026. We also hold that the assessment proceedings have become time barred and that no valid assessment order can be passed in this case. As a result, the returned income is deemed to be accepted.

26) Since, we have disposed of the Petition on this ground, we leave all other contentions open to be argued in an appropriate case, should the need arise.

27) Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

28) All concerned parties to act on a digitally signed copy of this order when produced by way of email or fax.

[FARHAN P. DUBASH, J.]

[B.P. COLABAWALLA, J.]

