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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.142 OF 2025

Molbio Diagnostics Limited
(Formerly Molbio Diagnostics Private
Limited),
through its Director and
authorised representative
Mr. Sriram Natarajan,
Plot No. L, 46 Phase II D,
Verna Industrial Estate
Verna Salcete - 403722, Goa.
PAN: AACCM8275E ...Petitioners

Versus

1. Assistant Commissioner of Income Tax,
Central Circle, Pundalik Niwas,
Panaji, Goa 403001.

2. Additional Commissioner of Income
Tax, Central Circle, Pundalik Niwas,
Panaji, Goa - 403001.

3. Director General of Income Tax
(Investigation),
C.R. Building No.1, Queen's Road,
Bengaluru, Karnataka - 560 001.

4. Principal Commissioner of Income Tax,
Aayakar Bhavan, Panaji,
Goa -403 001. …Respondents

Mr Pramod Vaidhya with Mr Nigel Fernandes, Advocate for the Petitioners.
Ms Swati Kamat Wagh, Standing Counsel for the Respondents.

CORAM : **BHARATI DANGRE &**
NIVEDITA P. MEHTA, JJ.
Reserved on : **21st JULY 2025**
Pronounced on: **5th AUGUST 2025**

JUDGMENT: (*Per Nivedita P. Mehta, J.*)

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 28.12.2025 passed under Section 148-A(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 133(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 be not 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) Sevensea Vincom (P.) Ltd. V/s. Principal Commissioner of Income-tax[6],
(vii) L-1 Identity Solutions Operating Company (P.) Ltd. V/s. Assistant Commissioner of Income-tax, Central Circle - 25[7],
(viii) Naresh Balchandrarao 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) Catchy 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]

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[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)

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]*,

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

(ii) Dinesh Verma (Punjab & Hariyana) 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 Hotelks 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,

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[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

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 account as on 31/03/2020 was also furnished to Respondent no. 1.

15. The Balance Sheet, profit and loss account and the details of expenditure on account of royalty and legal and professional charges claimed during the year have been relied upon by the Petitioner to establish that an amount of Rs. 1,00,000/- paid to M/s Nexellence was shown as expenditure under the party-wise breakup of legal and professional fees for AY 2020-2021 and amount of Rs.5,11,88,304/- was claimed as expenditure which was an amount paid to Big Tech Pvt Ltd. in the party-wise break up of Royalty.

16. In the Impugned Order, although there is no specific reference to the amounts of Rs.49,50,000/- paid to M/s. Stellar and 1 crore paid to M/s Nexellence being shown as advances, we cannot ignore the fact that in the Impugned Order, Respondent no 1 has concluded on a prima facie basis that in the profit and loss account of the Petitioner, the total amount of Rs.5,11,88,304/- has been claimed by the Petitioner as royalty expenses under the category of other expenses in its profit and loss account for the year under consideration i.e AY 2020-2021. Even in the reply filed before us by the Respondents no 1 and 2, there is a reference made to the claim of the Petitioner that expenditure of Rs. 5,11,88,304/- is fully pertaining to Big Tech Pvt Ltd. and not to M/s Stellar and M/s Nexellence. The amount of expenditure is quite a large amount. Respondent no. 1 has given a reason, which according to them, is a reasonable belief for passing the Impugned Order.

17. The issue raised by the Respondents is a serious issue of bogus agreements and bogus expenses being indicated by Petitioner to reduce profit and evade taxes. In the balance sheet and profit and loss account, there is an expenditure of Rs.5,11,88,304 claimed which according to the Petitioner is relatable to Big Tech Pvt Ltd. No doubt the income was assessed at the time when the returns were filed, however, the entire scope of the matter changes in light of serious allegations made against the Petitioner.

18. In the judgments relied upon by the Respondents more particularly *CIT v. Rajesh Jhaveri Stock Brokers and Larson and Toubro* (supra), the Apex Court has held that reopening is valid if it is based on the formation of a reasonable belief at the initial stage even if the proof of escapement is not established at that time.

19. The gravity of the issue has attained significance in view of the survey under section 133A of the Act and the material that is unearthed under the survey including statements made by the concerned representatives of the companies which has changed the perspective of the matter. Considering the scope of the Petition and jurisdiction, it is not necessary to deal with the said statements and the said material. Suffice it to say, that the prima facie conclusion has been arrived at by Respondent no. 1, that the transaction with M/s Stellar, M/s Nexellence and M/s Global Enterprises are bogus and bogus expenditure/deductions are claimed which is a serious issue.

20. Section 149(1)(b) is a jurisdictional fact which requires to be established prior to reopening of assessment on the ground that income has escaped assessment. In the instant case, Petitioner has claimed that the expenditure is less than Rs.50,00,000/- in respect of M/s Stellar and M/s Nexellence. This claim of the petitioner cannot be considered and accepted outrightly which is the import of the Impugned Order. Impugned Order is based on formation of a reasonable belief at the initial stage based on survey under Section 133A of the Act. Petitioner has the necessary opportunity to establish its case by producing necessary material including the ledger accounts which have to be considered by the Respondent No.1. However, according to us it is not a fit case for exercise of extraordinary jurisdiction under Article 226 of the Constitution to confer benefit on the Petitioner of Section 149(1)(b) of the said Act more particularly when there are disputed questions which arise with regard to whether the amount of Rs.1,50,50,000/- is relatable to the advances or expenditure in AY 2020-2021. The petitioner can place all the necessary documents to justify the same in the pending inquiry and if the petitioner is able to establish the same, the question of adding the said amount of Rs.1,50,50,000/- would not arise. Therefore, no prejudice as such is caused to the Petitioner.

21. We have also taken note of the fact that inquiry with regard to AY 2021-2022 in relation to the bogus transaction of M/s Stellar and M/s Nexellence and M/s Global Enterprises is also pending before the authorities. The said reopening is within 3 years from the date of end of assessment year 2021-2022, therefore, Section 149(1)(b) is not attracted. The said proceedings are pending and are not subject matter of this petition. However, we cannot lose sight of the fact that the issues for AY 2020-2021 and AY 2021-2022 may be overlapping and requiring cross-reference in light of the serious allegations made against the Petitioner.

22. In the case of ***Red Chilli International Sales vs. Income Tax Officer*** (supra), the Hon'ble Apex Court observed as under:

> *"2. The provisions reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the notice under Section 148A (b) including the annexure thereto, the reply filed by the petitioner and the order under Section 148A(d) of the Income Tax Act, 1961."*

23. We are of the opinion that the jurisdictional pre-conditions contemplated under Section 148A(b) for reopening of the Assessment after 3 years have been met and the Impugned Order cannot be said to be without jurisdiction.

24. In the case of ***Anshul Jain v/s Principal Commissioner of Income Tax (supra)***, the Hon'ble Apex Court has held as under:

> *"Thus, the consistent view is that where the proceedings have not even been concluded by the statutory authority, the writ Court should not interfere at such a pre-mature stage. Moreover, it is not a case where from bare reading of notice it can be axiomatically held that the authority has clutched upon the jurisdiction not vested in it. The correctness of order*

under Section 148A(d) is being challenged on the factual premise contending that jurisdiction, though vested has been wrongly exercised. By now it is well settled that there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction. For rectification of errors statutory remedy has been provided."

25. In the impugned order, the reasons are given by the Assessing Officer, which are discussed in the foregoing paragraphs and we are of the opinion that there is no jurisdictional error in passing of the order dated 29.12.2024 under Section 148A(d), warranting interference under Article 226 of the Constitution of India. Article 226 cannot be exercised to correct errors of law/fact which are within jurisdiction and the said Act provides a remedy to rectify errors of law and fact, if any.

26. In light of the above, we do not deem it as appropriate case to exercise jurisdiction under Article 226 of Constitution of India and the Petition is accordingly dismissed. According to us, the Petition is premature and there is a remedy of appeal left to the Petitioner to participate in the proceedings.

NIVEDITA P. MEHTA, J. **BHARATI DANGRE, J.**