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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 6067/2016, CM APPL.24896/2016**

ALFA LAVAL LUND AB Petitioner

versus

COMMISSIONER OF INCOME TAX (TP/IT) Respondent

W.P. (C) 6069/2016, CM APPL.24899/2016

ALFA LAVAL TUMBA AB Petitioner

versus

COMMISSIONER OF INCOME TAX (TP/IT) Respondent

Appearance: Mr. Deepak Chopra with Mr. Harpreet Singh Ajmani,
Advocates for assessee in both appeals.

Mr. Dileep Shivpuri, Sr. Standing Counsel with Mr. Sanjay Kumar, Jr.
Standing Counsel for revenue in both appeals.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **17.11.2016**

1. The petitioner is aggrieved by the decision of the Authority for Advance Ruling, declining its application on the ground that the question was already pending before the Assessing Officer.

2. The petitioner/assessee has filed two applications for AY 2012-13 and 2013-14 after it filed returns for those years. The applications were filed before the Authority for Advance Ruling on 18.09.2014. Apparently, on 17.09.2014, the AO issued notice under Section 143 (2) in identical terms which were received by the assessee/petitioner on 19.09.2014. The notice for AY 2012-13 (which was virtually repeated in toto for the next year by an identical worded notice) issued on the same date, reads as follows: -

“Madam/Sir,

There are certain points in connection with the return of income submitted by you on 28th march 2014 for the assessment year 2012-13 on which I would like some further information.

2. *You are hereby required to attend my office on 24th September 2014 at 11:00 AM either in person or by a representative duly authorised in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.”*

3. It is urged on behalf of the assessee that the AO's order declining to entertain the application and rejecting it on the threshold is unsustainable. Learned counsel points out that Section 245R(2) is an exception to the general rule that when an applicant approaches the AAR for determination, it should proceed to do so. The exception embodied in the proviso is that if “question raised in the application is pending”, the Tribunal would desist from exercising jurisdiction. Learned counsel relied upon the rulings of this Court in *L.S. Cable & System Limited v. CIT* [W.P.(C)8799/2015, decided on 13.05.2016] and *Hyosung Corporation v. The Authority for Advance Rulings* 2016 (382) ITR 371 (Del.). Both these were noticed and followed in a subsequent order in *Sage Publications Ltd. U.K. v. DCIT (INT'L TAXATION) CIRCLE-II (2), N.DELHI*, 387 ITR 437 (Del). In *Sage Publications*, we notice the issue was in the following terms: -

“Sir/Madam,

There are certain points in connection with the return of income submitted by you for the assessment year 2012-13 on which I would like some further information.

2. *You are hereby required to attend my office on 29.08.2013 at 3.00 PM either in person or by a representative duly authorised in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.”*

4. Counsel for the revenue relies upon the judgment in *Commissioner of Income Tax v. Delhi Kalyan Samiti* (ITA 696/2015, decided on 22.03.2016) which states that if the AO does not accept the return filed by the assessee on its face he is obliged to issue notice under Section 143 (2) and provide opportunity to the assessee to produce necessary materials. It is urged that the amplitude of this power cannot be read down or undermined and to read in further requirements of specificity of notice in each case is unwarranted. Notice under Section 143 too itself is a pre-supposition that the assessee's return if not accepted *per se* would require further investigation. Learned counsel also submitted that *Delhi Kalyan Samiti (supra)* had relied upon an earlier decision in *Pr. CIT v. Silver Line and Anr.*, 283 CTR 148 (Del) and other decisions - all of which reiterate that the AO is under a statutory mandate to issue notice under Section 143 (2) for proceeding further in case he does not accept the return as it stands.

5. It is evident from the above discussion that the notice issued under Section 143 (2) in the present case which is identically phrased is a mere verbatim reproduction as is possible with what was in issue in *Sage Publication (supra)*. In that judgment this Court relied upon the extensive reasoning of *Hyosung Corporation* and *L.S. Cable (supra)* which had occasion to consider the precise issue of what can be said to be pending in the context of a notice under Section 143 (2). *L.S. Cable (supra)* stated as follows: -

“13. This Court in *Hyosung Corporation v. The Authority for Advance Rulings (supra)* held that mere issuance of a notice under Section 143(2)(ii) of the Act which merely stated that the AO would like some further information on certain points in connection with the return that was filed would not result in attracting the bar under clause (i) of the proviso to Section 245R (2) of the Act. In para 27 of the said judgment (as substituted by the order dated 6th April 2016 in Review Petition No. 143/2016), the Court observed as under:

“27. Turning to the notice issued in the instant case to the Petitioner under Section 143(2)(ii) of the Act, it is seen that it is in a standard

format which merely states that “there are certain points in connection with the returns of income on which the AO would like some further information.” In any event the question raised in the applications by the Petitioner before the AAR do not appear to be forming the subject matter of the said notice under Section 143(2)(ii) of the Act. Consequently, the mere fact that such a notice was issued prior to the filing of the application by the Petitioner before the AAR will not constitute a bar, in terms of clause (i) to the proviso to Section 245-R (2) of the Act, on the AAR entertaining and allowing the application.”

14. In Hyosung Corporation v. The Authority for Advance Rulings (supra) this Court also dealt with one of the notices under Section 142(1) which had been issued to the Assessee subsequent to the date of filing of the application before the AAR and had explained that the words “already pending” occurring in Section 245-R (2) “should be related to the date of filing of the application and not what happens subsequent to the filing of such application. In other words, it is only if on the date of filing of the application before the AAR the question raised therein was already the subject matter of proceedings before the income tax authorities that the bar in terms of the proviso to Section 245R(2) of the Act would apply. If such application is not already pending on the date of the application, and is the subject matter of a notice issued thereafter by the income tax authority, it cannot be said that such question is “already pending before such income tax authority”. What is relevant is not the date of consideration of the application by the AAR but the date of filing of such application before the AAR.”

15. For the above reasons, the impugned order dated 3rd August 2015 of the AAR rejecting the Petitioner’s four applications is unsustainable in law. The mere issuance of a notice under Section 143(2) of the Act to the Petitioner on 13th August 2013 in relation to the return filed for AY 2012-13 by merely stating that “there are certain points in connection with the return income submitted by you on 29th November 2012 for the assessment year 2012-13 on which I would like some other information” does not tantamount to the issues raised in the application filed by the Petitioner before the AAR on 20th September 2013 being already pending before the AAR.”

It is, therefore, evident that the decision in this case has to follow the same decision as in *Hyosung Corporation, Sage Publications and L.S. Cables (supra)*.

6. Now to deal with the Revenue's contentions that Section 143 (2) pre-supposes the requirement of the return *per se*, this Court is unpersuaded with the contention for the simple reason that the authorities - in the context of interpretation of Section 245 R(2) and its interface for Section 143 (2) have taken a particular view, i.e., that "pending" is not mere issuance of notice but something more. Unless there are strong and compelling reasons which the revenue can come up with, there is no rationale to depart from such reasoning. Consequently, the revenue's arguments are rejected.

7. In the light of the forgoing discussions, the impugned orders are quashed. The petitions pending before the authority shall now be proceeded with in accordance with law. Parties are directed to be present before the authority on 30.11.2016.

8. Writ Petitions are allowed in the above terms.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 17, 2016

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