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

+ W.P.(C) 5870/2016

SAGE PUBLICATIONS LTD. U.K. Petitioner

Through : Sh. Piyush Kaushik, Advocate.

versus

DCIT (INT'L TAXATION) CIRCLE-II (2), N. DELHI.... Respondent

Through : Sh. Rahul Chaudhary, Sr. Standing Counsel with
Sh. Raghvendra Singh, Jr. Standing Counsel' and Sh. Anup
Kumar Kesari, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **29.08.2016**

1. The assessee/petitioner is aggrieved by the rejection of its application under Section 245R(2) of the Income Tax Act, 1961 [hereafter "the Act"] on the ground that the questions for which reference was made, are part of a pending proceeding.

2. The facts to the extent they are necessary are that the petitioner, a Non-Resident Corporation had filed its return for AY 2012-13. It applied for an advance ruling under Section 245R of the Act, to the Advance Ruling Authority [hereafter "the Ruling Authority"], on 21.11.2013. When the application came up for consideration, the Ruling Authority rejected it citing the reason that the issue was "pending" – thereby invoking proviso to Article 245R(2). The Ruling Authority's order is as follows:

"PROCEEDINGS

There is a request for adjournment on the ground of unavailability of the counsel. However, the Department takes an objection to this request and points out that in this matter there is already a notice issued

under Section 143(2) on 13th of August, 2013. The representative Shri Chandrashekhar, however, seeks time for ascertaining whether such notice was issued or not. However, it is seen from the record that the concerned party applicant have acknowledged the notice under Section 143(2) on 29.8.2013 and had sought the details in connection with the captioned tax case. If that is so, there is nothing for the applicant to ascertain.

2. *We have seen the notice. The notice is in general terms, therefore, it is obvious that all the questions will be covered under the said notice under Section 143(2) including the questions raised before us. In that case, there is a complete bar for entertaining the application under Section 245R(2). In that view, we reject this application under Section 245R(2)."*

3. Learned counsel relies upon the judgment of this Court in *L.S. Cable & System Limited v. CIT* [W.P.(C) 8799/2015, decided on 13.05.2016] as well as the previous judgment in *Hyosung Corporation v. The Authority for Advance Rulings* 2016 (382) ITR 371 (Del). It is contended that when notice under Section 143(2) is issued in general terms, the Ruling Authority cannot reject the application summarily, invoking proviso to Section 245R(2) and observing that the questions are pending.

4. Learned counsel for the revenue urges that this Court should not interfere with the order of Ruling Authority. He submits that the notice under Section 143(2) was issued because the Assessing Officer (AO) was obliged under the scrutiny guidelines applicable under that provision to issue notice to all assesses who had reported income on international transactions exceeding ₹15 crores. This, it was

submitted, was the point of distinction between the previous authorities of the Court.

5. *Hyosung (supra)* was noticed in the subsequent ruling in *L.S. Cable (supra)* where it was held 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.”

6. In this case, the notice issued by the AO under Section 143(2) is as follows:

“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 authorized 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.”*

7. It is evident on a plain reading of the notice that it does not address itself to any specific question; it does not even disclose application of mind to the returns save and except the fact that they conform to the instructions which compelled the AO to issue a scrutiny notice on account of the international transaction reported by the assessee. The previous authority of this Court in *Hyosung (supra)* and *L.S. Cable (supra)* had the occasion to deal with identical notices. It was positively ruled that such notices *ipso facto* would be insufficient to attract the automatic rejection route under proviso to Section 245R(2) of the Act. Consequently, we have no hesitation in holding that the impugned order of the Ruling Authority in rejecting the application is untenable. Consequently, the order is quashed and set aside. The petitioner's application shall now be processed and independently dealt with on its merits in accordance with law by the Ruling Authority. The parties shall be present before the Advance Ruling Authority on 13.09.2016. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 29, 2016/ajk