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

5, 6, 7 & 13.

+ **W.P.(C) 8799/2015 & CM 19522/2015**

LS CABLE & SYSTEM LIMITED, KOREA THROUGH
MR. JEONG SUK LEE

..... Petitioner

Through: Mr. Deepak Chopra, Mr. Harpreet Singh
Ajmani and Mr. Rohan Khare, Advocates.

versus

THE COMMISSIONER OF INCOME TAX – II
& ANR.

.... Respondents

Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Raghvendra Singh, Advocate for
Income Tax Department.
Mr. Vikram Jetly, CGSC for UOI.

With

+ **W.P.(C) 9522/2015 & CM 22412/2015**

LS CABLE & SYSTEM LIMITED, KOREA

..... Petitioner

Through: Mr. Deepak Chopra, Mr. Harpreet Singh
Ajmani and Mr. Rohan Khare, Advocates.

versus

THE COMMISSIONER OF INCOME TAX – II
& ANR.

.... Respondents

Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Raghvendra Singh, Advocate for
Income Tax Department.
Mr. Kirtiman Singh, CGSC with Mr. Waize Ali
Noor and Mr. Pranav Agarwal, Advocates for
Respondent No.3.

With

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W.P.(C) 8840/2015 & CM 19735/2015

LS CABLE & SYSTEM LIMITED, KOREA THROUGH
MR.JEONG SUK LEE

..... Petitioner

Through: Mr. Deepak Chopra, Mr. Harpreet Singh
Ajmani and Mr. Rohan Khare, Advocates.

versus

THE COMMISSIONER OF INCOME TAX – II
& ANR.

.... Respondents

Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Raghvendra Singh, Advocate for
Income Tax Department.
Mr. Vikram Jetly, CGSC for UOI.

And

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W.P.(C) 8798/2015 & CM 19521/2015

LS CABLE & SYSTEM LIMITED, KOREA THROUGH
MR.JEONG SUK LEE

..... Petitioner

Through: Mr. Deepak Chopra, Mr. Harpreet Singh
Ajmani and Mr. Rohan Khare, Advocates.

versus

THE COMMISSIONER OF INCOME TAX – II
& ANR.

.... Respondents

Through: Mr. Rahul Chaudhary, Senior Standing
counsel with Mr. Raghvendra Singh, Advocate for
Income Tax Department.
Mr. Vikram Jetly, CGSC for UOI.

CORAM:

**JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU**

ORDER
13.05.2016

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Dr. S. Muralidhar, J.:

1. The challenge in these four petitions by L.S. Cable & System Ltd., Korea is to the common order dated 3rd August 2015 passed by the Authority for Advance Ruling (Income Tax), New Delhi ('AAR') in AAR No. 1513 to 1516 of 2013 filed by the Petitioner.

2. The brief facts are that the Petitioner, a company incorporated under the laws of South Korea, is engaged in the manufacture of electric wires and cables for power distribution. It is stated that the Petitioner has been executing several projects in India involving supply, laying, jointing, testing and commissioning of power cables. It is further stated that the Petitioner executes its onshore works through Project Offices in India established in accordance with the Regulations under the Foreign Exchange Management Act, 1999 ('FEMA'). The contract for offshore supplies is executed directly by its Head Office in South Korea.

3. It is stated that a dispute arose between the Petitioner and the Income Tax Department ('Department') regarding the taxability of profits arising on account of offshore supplies which the Petitioner has been claiming to be exempted from tax in India. It is stated that the first year in which the dispute arose was Assessment Year ('AY') 2002-03 which was settled in favour of the Petitioner by this Court in the decision in ***Director of Income Tax v. L.G. Cables (2011) 197 Taxman 100 (Del)*** (the Petitioner was earlier known as L G Cables). It is stated that the Department's appeal against the said order is pending before the Supreme Court.

4. It is further pointed out that the Petitioner had earlier filed four applications before the AAR being AAR No. 858 to 861 of 2009 for the *W.P.(C) Nos. 8799/2015, 9522/2015, 8840/2015 & 8798/2015*

determination of the taxability of offshore supplies for four transactions. The said applications were allowed by the AAR by an order dated 26th July 2011 reported in **(2011) 337 ITR 35 (AAR)** holding that the Petitioner was not liable to tax under the Income Tax Act, 1961 ('Act') in respect of offshore supplies.

5. It is stated that thereafter the appeals filed by the Revenue for AYs 2003-04 to 2005-06 being ITA Nos. 704, 706 and 707 of 2011 were dismissed by this Court by a judgment dated 30th September 2011. The Revenue's appeal before the Income Tax Appellate Tribunal ('ITAT') for AYs 2006-07 to 2008-09 have also been dismissed by the ITAT holding in favour of the Petitioner on the said issue of taxability of offshore supplies, by separate orders, following the decision of this Court for the earlier years.

6. The present petitions concern AYs 2012-13 and 2013-14. For AY 2012-13, the Petitioner filed its return of income on 29th November 2012. On 13th August 2013, the Assessing Officer ('AO') issued notice under Section 143 (2) of the Act for initiating assessment proceedings for the said AY. On 20th September 2013, the Assessee filed four applications before the AAR being AAR Nos. 1513 to 1516 of 2013 seeking determination of its tax liability in respect of amounts received towards the offshore supplies contract. This was with specific reference to the contracts with M/s. Power Grid Corporation of India Limited ('PGCIL') and Ms/ Andritz Hydro Private Limited ('AHPL'). Two months thereafter on 29th November 2013, the Petitioner filed its returns for AY 2013-14 but did not offer the revenues earned from offshore supplies in connection with three projects for PGCIL to tax as the Petitioner took the stand that no portion of the profits arising therefrom is taxable in

India.

7. Relevant to the returns AY 2013-14, the AO issued a notice under Section 143(2) of the Act to the Petitioner on 15th September 2014.

8. Thereafter on 3rd August 2015, the aforementioned four applications pertaining to the four different transactions came up for hearing before the AAR. AAR No. 1515/2013 pertaining to AY 2012-13 was with respect to the contract entered with AHPL for the Sawra Kuddu & Kashang Project in Himachal Pradesh. AAR Nos. 1513/2013, 1514/2013 and 1516/2013 pertaining to AY 2013-14 related to three different projects for PGCIL.

9. By the impugned order dated 3rd August 2015, the AAR rejected the applications since notice under Section 143(2) had already been issued by the Department earlier to the filing of the applications. When it was pointed out that the applications pertaining to AY 2013-14 had been filed even before the filing of the returns, the AAR observed that “if the issues are identical in all the four applications and if even in one of the applications, the notice is issued under Section 143(2), in our considered opinion, it will be a case of pending question before the Income Tax authorities”.

10. Notice was issued in these petitions on 14th/15th September 2015 and 6th October 2015. A short reply affidavit has been filed by the Respondents.

11. The question that arises in the present petitions is whether the AAR was justified in rejecting the application on the ground that the question referred to it was pending consideration before the Income Tax authorities, by virtue of notice having been issued on 13th August 2013 under Section 143 (2) of

the Act with reference to the return filed for AY 2012-13 thereby attracting the bar under clause (i) of the proviso to Section 245R (2) of the Act.

12. The said question stands answered in favour of the Petitioner and against the Department in the recent judgment of this Court in ***Hyosung Corporation v. The Authority for Advance Rulings (2016) 382 ITR 371 (Del)*** as further modified by the order dated 6th April 2016 in Review Petition No. 143/2016. In the said decision, this Court noticed that the earlier view taken by the Court in the decision in ***Net App BV and Sin Oceanic Shipping ASA v. The Authority for Advance Rulings (2013) 357 ITR 102 (Del)*** holding the above bar under clause (i) of the proviso to Section 245R(2) of the Act would be attracted once a return of income is filed, was set aside by the Supreme Court in ***Sin Oceanic Shipping ASA v. AAR (2014) 223 Taxman 102 (SC)***.

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.

16. As far as the three applications namely AAR Nos. 1513, 1514 and 1516 of 2013 for AY 2013-14 are concerned, the application before the AAR was filed even before the filing of the income tax returns and, therefore, much before the issuance of the notices under Sections 143(2) of the Act on 15th September 2014. Therefore, even in relation to the applications for AY 2013-14, it could not be said that on the date of filing of the said applications the issue raised therein was pending consideration before the income tax authorities. There was no statutory bar to the AAR considering the said application.

17. For the aforementioned reasons, the impugned order dated 3rd August 2015 of the AAR is hereby set aside. The four applications of the Petitioners are restored to the file of the AAR for a fresh decision on merits for which purpose they will be listed before the AAR on 25th July 2016.

18. The writ petitions are accordingly allowed but in the circumstances with no order as to costs. The applications are disposed of.

S. MURALIDHAR, J

VIBHU BAKHRU, J

MAY 13, 2016/dn