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

WRIT PETITION NO. 2077 OF 2022
WITH
WRIT PETITION NO. 2076 OF 2022

LKP Securities Ltd.
203, Embassy Centre,
Nariman Point, Mumbai-400 021. ...Petitioner
V/s.
1.The Deputy Commissioner of Income Tax
Circle-4(3) (1), Room No. 649,
6th Floor, Aayakar Bhavan, M. K. Road,
Mumbai-400 020.

2. The Joint Commissioner of Income Tax
Range-4(3), Room No 635,
6th Floor, Aayakar Bhavan, M. K. Road,
Mumbai-400 020.

3. Additional/Joint/Deputy/Assistant/
Commissioner of Income-tax/Income Tax
Officer National Faceless Assessment Centre,
Income Tax Department, Delhi

4. Union of India
2nd Floor, Aayakar Bhavan Annexe,
New Marine Lines, Mumbai-400 020. ...Respondents

Ms. Dinkle H. Hariya with Ms. Rashmi Vyas i/b Ms. Namrata S. Kasale, Advocates for Petitioner.
Mr. Suresh Kumar, Advocate for Respondents.

CORAM : DHIRAJ SINGH THAKUR &
ABHAY AHUJA, JJ.
DATE : 4th July, 2022

<u>**P.C.**</u> :

1. Writ Petition No. 2077 of 2022 for Assessment Year 2016-2017 filed under Article 226 of Constitution of India, seeking the following reliefs:-

> *"(a) that this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India a appropriate direction, order or a writ, including a writ in the nature of 'Certiorari', calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the notice dated 31.03.2021 issued by the First Respondent under section 148 of the Income tax Act, 1961, being Ex.- 'C' hereto;*
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> *(b) that this Hon'ble Court may be please to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorairi', calling for the records of the case and after satisfying itself as to the legality thereof quash and set aside the communication dated 16.12.2021 / 21.12.2021, Ex. - 'G' herein, issued by the First Respondent, purportedly dealing with the objections raised by the Petitioner; and the reassessment order, the notice of demand and the penalty notice dated 30.03.2022, Ex. - 'U' herein, passed by the Third Respondent as without jurisdiction.*
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> *(c) that this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Mandamus', directing the First Respondent to withdraw and cancel the impugned notice dated 31.03.2021 (being Ex.- 'C' hereto) and the impugned order disposing of the objections dated 16.12.2021 / 21.12.2021 (being Ex. - 'G' hereto); and impugned reassessment order, the notice of demand and the penalty notice dated 30.03.2022 (being Ex. - 'U' hereto);*
>
> *(d) that his Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of*

'Prohibition', directing the Respondents not to take any action in furtherance to the impugned notice and impugned order disposing of the objection and in furtherance to impugned reassessment order, including penalty action, and restraining the Respondent from proceeding further in any manner, including recovery proceeding, arising from the impugned reassessment order passed for A.Y. 2016-2017 against the Petitioner;"

2. Ms. Hariya, learned counsel for the Petitioner submits that on 23rd March, 2022, Petitioner sought to make further submissions and also submitted a request for personal hearing through video conferencing. It was found that e-proceedings had been closed on 21st March, 2022. The Petitioner informed the Respondent of this grievance vide communication dated 24th March, 2022 and also attached further submission dated 23rd March, 2022 with the said communication. Petitioner is aggrieved that despite the same Respondent No.3 has gone ahead and passed the assessment order dated 30th March, 2022 without considering the request for personal hearing or the further submissions. She submits that the matter be remanded back so that an assessment order can be passed after considering the further submissions and after hearing the Petitioner. Learned counsel further submits that since the facts in Writ Petition No. 2076 of 2022 for the A.Y. 2017-2018 and the reliefs sought therein are similar to the facts and reliefs sought in

Writ Petition No. 2077 of 2022 for A.Y. 2016-2017, similar orders be passed in both the Petitions.

3. We observe from paragraph 11 of the assessment order dated 30th March, 2022 for A. Y. 2016-2017 that since the case was getting time barred the assessment order came to be passed on the basis of material available with the department. Paragraph 11 of the said order is self-explanatory and is quoted as under:-

> *"11. Subsequently, the assessee opted for video conference through JAO, regarding which letter was uploaded by the JAO on 25.03.2022. In response, the VC was scheduled on 28.03.2022 at 2.30 p.m. However, during the VC conducted for the A.Y. 2017-18 scheduled at 12.45 p.m. in assessee's own case, the A/R of the assessee requested to take up the case for the A. Y. 2016-17 alongwith AY 2017-18 since the issue for both the years are similar and as such VC scheduled for 2016-17 was cancelled. In the course of Video conference, the A/r of the assessee requested to stay the proceeding for AY 2016-17 as they would be filing writ before the Hon'ble High Court. In response, the A/R of the assessee was asked to upload the interim order of the Hon'ble High Court on or before 29.03.2022 to stay the proceedings. However, the A/R of the assessee requested they would upload the interim order by 3.00 p.m. on 30.03.2022 but no such order was filed till 4.00 P.M. of 30.03.2022. Since the case is getting barred by limitation, the case is disposed off on the basis of material available with the department."*

As can be seen the assessment order has come to be passed without considering the further submissions or hearing the

Petitioner. We observe that similar assessment order has also been passed for A. Y. 2017-2018.

4. Mr. Suresh Kumar, learned counsel for the Revenue fairly submits that in several such matters, this Court has remanded the matters for fresh consideration in view of the provisions of Section 144B of the Income Tax Act, 1961.

5. Having heard learned counsel and after having considered the material on record, we deem it appropriate to set aside the assessment orders dated 30th March, 2022 for A. Ys. 2016-2017 and 2017-2018 and remand the matters back to the Respondent No. 3 for *de novo* consideration after granting an opportunity of personal hearing and after taking into account the further submissions that the Petitioner may make, pass appropriate orders in accordance with law, within a period of four weeks.

6. The Writ Petitions are disposed of in the above terms. No costs.

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR J.)**