IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1105 OF 2020

CIT (Exemptions), Pune	...	Appellant
Vs.		
Ashwini Sahakari Rugnalaya & Research Centre	...	Respondent

AND

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12965 OF 2019
WITH
WRIT PETITION NO.12966 OF 2019
WITH
WRIT PETITION NO.12967 OF 2019

Ashwini Sahakari Rugnalaya ani Sanshodhan Kendra Niyamit	...	Petitioner
Vs.		
Deputy Commissioner of Income Tax (Exemption) (HQ), Pune and another	...	Respondents

Mr. Mihir Naniwadekar a/w. Mr. Rohan Deshpande, Mr. Suyog Bhave i/b. Mr. Farzeen Khambatta for Petitioner in WP/12965/2019, WP/12966/ 2019, WP/12967/2019 and for Respondent in ITXA/1105/2020.

Mr. Sham Walve for Respondents in WP/12965/2019, WP/12966/ 2019, WP/12967/2019 and for Appellant in ITXA/1105/2020.

CORAM : K. R. SHRIRAM &
N. J. JAMADAR, JJ.

DATE : FEBRUARY 16, 2022

P.C. :-

Income Tax Appeal No.1105 of 2020 preferred by the Revenue impugns a decision of the Income Tax Appellate Tribunal, Pune, Bench ‘B’ (ITAT) in ITA No.714/PUN/2018 dated 24th May 2019. The impugned order sets aside an order of the CIT (Exemptions), Pune dated 28th March 2018 passed under Section 12AA(3) of the Income Tax Act, 1961 (the Act) cancelling the registration granted to respondent / assessee - Ashwini Sahakari Rugnalaya and Research Centre (hereinafter referred to as ‘assessee’).

2. Writ petitions preferred by the assessee challenge re-opening

proceedings initiated by Deputy Commissioner of Income Tax (Exemption) (HQ), Pune for Assessment Years 2012-13, 2014-15 and 2015-16 under Section 148 of the Act. On 18th December 2019, this Court granted ad-interim stay against the impugned re-opening notices and that order is still in force.

3. At the time of passing the impugned order, the pendency of a Special Leave Petition preferred by the assessee before the Hon'ble Supreme Court of India (*Ashwini Rugnalaya and Research Centre Vs. Chief Commissioner of Income Tax, Civil Appeal No.3453 of 2007)* was brought to the notice of the ITAT. The said civil appeal challenged judgment of this Court dated 5th December 2005, whereby this Court had upheld the denial of benefits to the assessee under Section 10(23C)(via) of the Act for Assessment Years 1999-2000 to 2002-2003.

4. Subsequent to the impugned order dated 24th May 2019 passed by the ITAT, the Hon'ble Supreme Court has finally decided Civil Appeal and confirmed the decision of this Court denying benefits under Section 10(23C)(via) to the assessee. This decision of the Hon'ble Supreme Court was, thus, not before the ITAT at the relevant time when the impugned order was passed.

5. In light of this subsequent development, we are of the view that the appeal of the assessee before the ITAT i.e., ITA No.714/PUN/2018, should be remanded for *de novo* consideration so as to enable the ITAT to consider the decision of the Hon'ble Supreme Court.

6. In these circumstances:-

a. The order dated 24th May 2019 passed by the ITAT is quashed and set aside. ITA No.714/PUN/2018 is remitted to the file of the ITAT for de novo consideration to decide the appeal on its own merits and in accordance with law and considering the decision of the Hon'ble Supreme Court in the Civil Appeal. The hearing of the said ITA No.714/PUN/2018 before the ITAT is expedited, to be disposed by 31st August 2022.

b. Insofar as the re-opening of assessment impugned in the petitions preferred by the assessee is concerned, the Assessing Officer can proceed with re-assessment under Section 143(3) read with Section 147 of the Act.

c. The interim order of this Court shall cease to operate, and the time spent between the filing of the writ petitions till the date of uploading of this order shall be excluded for the purpose of computing the limitation period under Section 153 of the Act for passing the final re-assessment orders.

d. If the final re-assessment orders passed by the Assessing Officer result in any demand/s or penalty/penalties being raised against the assessee, any such demand/s or further penalty proceeding/s shall remain in abeyance and shall not be enforced against the assessee till such time as the ITAT finally decides ITAT No.714/PUN/2018.

e. In the event ITAT decides against the assessee, the demand/s or further penalty proceeding/s may be enforced after a period of four weeks from the date of pronouncement of the ITAT order subject to the assessee's right to seek stay of demand in accordance with law from the Assessing Officer and CIT.

f. All contentions of both the parties on merits are expressly kept open.

g. Income Tax Appeal and Writ Petitions are disposed in the above terms.

(N. J. JAMADAR, J.) **(K. R. SHRIRAM, J.)**