

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11166 OF 2024

Rajan Pradeepkumar Dubey

...Petitioner

Versus

Income Tax Officer Ward 3-2, Kalyan & Ors.

...Respondents

Mr. Sham Walve i/b Mr. Sameer Dalal, for Petitioner.

Mr. Akhileshwar Sharma, for Respondents.

CORAM:

G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

DATE

12 AUGUST 2024

P.C.

1. We have heard Mr. Walve, learned counsel for the petitioner and Mr. Sharma, learned counsel for the respondents.
2. Reply affidavit on behalf of respondents is tendered.
3. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

“a) that this Hon'ble Court be pleased to issue an appropriate Writ, order or direction under Article 226 of the Constitution of India calling for all papers and records of the Petitioner's case leading to initiation of reassessment proceedings by Respondents and after going through the same and examining the validity, legality and propriety thereof quash, cancel and set aside the (i) Show Cause Notice dated 27.05.2022 issued u/s 148A(b) of the Act (Ex. F), (ii) Order dated 16.07.2022 passed u/s 148A(d) of the Act (Ex. G), (iii) Notice dated 18.07.2022 issued u/s 148 of the Act (Ex. H), (v) Assessment Order dated 22.05.2023 passed u/s 147 r.w.s 144B (Ex. J), and (vi) all consequential Notices/Orders.

b) that this Hon'ble Court may be pleased to issue a Writ of Prohibition or an appropriate Writ, Order or Direction under Article 226 of the Constitution of India prohibiting the Respondents, its agents or servants permanently from taking any steps whatsoever according to and/or in furtherance of the Impugned Notice dated 18.07.2022 issued u/s 148 of the Act (Ex. H) and Assessment Order dated 22.05.2023 passed u/s 147 r.w.s 144B (Ex. J).

c) that this Hon'ble Court may be pleased to issue any appropriate Writ, Order or Direction under Article 226 of the Constitution of India calling for record pertaining to Instruction No. 01 of 2022 (F. No. 279/ Misc./ M-51/2022 ITJ) dated 11.05.2022 issued by Respondent No. 3 after examining the validity, legality and propriety thereof, be pleased to declare the Impugned Instruction No. 01 of 2022 dated 11.05.2022 as ultra vires the Act and bad in law and hence the same be struck down;

d) that pending the hearing and final disposal of this Petition, this Hon'ble Court may be pleased to stay the operation and any action in furtherance of the Impugned Notice dated 18.07.2022 issued u/s 148 of the Act (Ex. H) and Assessment Order dated 22.05.2023 passed u/s 147 r.w.s 144B (Ex. J);

e) Ad-interim relief in terms of prayer Clause (d);

f) Such other and/or further relief as this Hon'ble Court may deem fit.”

4. At the outset, Mr. Walve would submit that the impugned assessment order dated 22 May 2023 as also the impugned notice under Section 148 dated 18 July 2022 would stand covered by the decision of this Court in Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & Ors. as also the decision of the division Bench in Siemens Financial Services Pvt. Ltd. Vs. Deputy Commissioner of Income Tax, Circle 8 (2)(1), Mumbai & Ors. (“*Siemens*”) in regard to the applicability of Section 151 of the

provisions of the Act as the sanction has not been granted by the appropriate authority as specified under the said provisions.

5. However, Mr. Walve has fairly submitted that the petitioner has come before the Court after the petitioner had already filed an appeal against the impugned assessment order, as also the petitioner has filed a Review Application before the Principal Chief Commissioner under Section 264 of the Income Tax Act. Mr. Walve has stated that both the proceedings are pending namely the appeal before the CIT(A), as also the Review proceedings before the Principal Chief Commissioner of Income Tax. He, however, submits that considering the decision of this Court being of the jurisdictional High Court in *Hexaware (supra)* and *Siemens (supra)*, the present petition has been filed despite the petitioner's appeal and revision remaining pending.

6. Mr. Sharma, learned counsel for revenue would submit that much prior to the decisions of this Court in *Hexaware* as also in *Siemens (supra)*, the petitioner in the present case has availed of an alternate remedy. It is hence submitted that in the facts of the case it would be appropriate that the statutory remedy which is already availed by the petitioner, be pursued by the petitioner and not invoke the extraordinary jurisdiction of this Court under Article 226 by filing this petition, merely because as the aforesaid decisions are rendered by this Court. In other words, Mr. Sharma's submission is that the decision of this Court in *Hexaware* and *Siemens (Supra)* are bound to be taken into

consideration by the Appellate Authority as also by the Revisional authority in the adjudication of the pending proceedings.

7. We find much substance in the contention as urged by Mr. Sharma on behalf of the revenue. Once the petitioner has availed of an alternate remedy as provided under the Income Tax Act, namely of a substantive appeal being filed, and if the assessment order as also the notices issued to the petitioner prior thereto under Section 148A and under Section 148 are contrary to the substantive provisions of Section 151A and Section 151 of the Act, as interpreted by this Court in *Hexaware* and *Siemens* (*supra*), the Appellate Authority as also the Revisionary Authority being bound by the said decisions of the jurisdictional High Court, need to consider such legal position. Thus, the petitioner is not precluded from raising all such contentions, as raised before us in the present proceedings, before the said authority.

8. Accordingly, we are of the opinion that the proceedings which are pending before the CIT(A) as also the Revisionary proceedings, be decided considering the contentions of the petitioner namely as to whether the impugned assessment order as also the notice under Section 148 of the Act is illegal when tested on the law as declared by this Court in the aforesaid decisions.

9. We are of the opinion that an approach ought not to be followed that when the appellate authority is already seized with the proceedings, we

entertain writ petitions to adjudicate, what can certainly be adjudicated by the appellate authority, considering the said decisions of this Court. As rightly pointed by Mr. Sharma an approach otherwise, would create a situation that all matters which are pending before the Appellate Authority and which are supposed to be decided in accordance with law involving issues on applicability of the decisions of this Court, in disposing of the proceedings would be required to be entertained by this Court. Certainly, such approach cannot be adopted by the Court. We are hence of the opinion that it would be appropriate that the assessee's pursues such pending proceedings as already filed before the appropriate Appellate Authority or Revisionary Authority.

10. Accordingly, we are not persuaded to entertain the present proceedings which assail the assessment order when appeal is already filed by the petitioner as also the revision proceedings are pending.

11. However, we find substance in Mr. Walve's contention that if *prima facie* the petitioner is correct that the impugned assessment order as also the notice issued under Section 148 if it is illegal and contrary to the law laid down by this Court in Hexaware and Siemens (*supra*), the same ought not to be given effect, till the appellate proceedings and revisionary proceedings are decided. In the aforesaid circumstances, we dispose of this petition by the following order:

ORDER

i) The petitioner shall pursue the proceedings before the CIT(A) against the impugned assessment order as also the proceedings before the Revisionary Authority.

It is open to the petitioner to raise contentions in regard to the illegality of the notice issued to the petitioner under Section 148, in the light of the decisions of this Court in Hexaware and Siemens (supra).

ii) Till the proceeding before the Appellate Authority or Revisionary Authority are decided, the impugned assessment order shall remain stayed.

iii) All contentions of the petitioner on the pending proceedings are expressly kept open.

12. Disposed of in the above terms. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)