IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11702 OF 2024

Nayan Co. Op. Housing Society ..Petitioner
Vs.
Income Tax Officer Ward 28 1 1 Mumbai & Ors. ...Respondents

Mr. Jitendra Singh with Ms. Shivali Mhatre for Petitioner.
Mr. Arjun Gupta for Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 21 OCTOBER 2024

P.C.

1. This petition under Article 226 of the Constitution has prayed for the following reliefs:

> "a. that this Hon'ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari or any Other appropriate Writ, order or direction under Article 226 of the Constitution of India calling for all papers and records of the Petitioner's case and after going through the same and examining the validity, legality and propriety thereof quash, cancel and set aside the impugned initial notice dated 19th March 2022 (Exhibit 'A'), impugned order dated 6th April 2022 (Exhibit 'B'), the impugned notice dated 6th April, 2022 (Exhibit 'C') issued by Respondent No.l and the assessment order dated 18th March, 2024 (Exhibit 'E') passed and consequential notices;
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> b. that this Hon'ble Court be pleased to issue a Writ Mandamus, or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, ordering and directing Respondent to withdraw and cancel the impugned initial notice dated 19th March 2022 (Exhibit 'A'), impugned order dated 6th April 2022 (Exhibit 'B'), the impugned notice dated 6th April, 2022 (Exhibit 'C') issued by Respondent No.l and the assessment order dated 18th March, 2024 (Exhibit 'E') passed and consequential notices;
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> c. that this Hon'ble Court be pleased to issue any appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents, its agents or servants from taking any steps whatsoever according to and/or in furtherance of the impugned initial notice dated 19th March 2022 (Exhibit 'A'), impugned order dated 6th April 2022 (Exhibit 'B'), the impugned notice dated 6th

April, 2022 (Exhibit 'C') issued by Respondent No.l and the assessment order dated 18th March, 2024 (Exhibit 'E') passed and consequential action thereunder;

d. that pending the hearing and final disposal of this petition the Respondents, their successors in office, subordinates, servants and agents be restrained by an order and injunction of this Hon'ble Court from taking any steps pursuant to the impugned order (Exhibit 'B') dated 6th April 2022 and the impugned notice (Exhibit 'C') dated 6th April 2022 and the assessment order (Exhibit 'E') dated I8th March 2024 passed till the final hearing and disposal of the writ petition;

e. for ad-interim reliefs in terms of prayers (d) above;

f. for costs of the Petition;

g. for such other and further reliefs as this Hon'ble Court may deem fit."

2. As fairly pointed out by Mr. Singh, learned counsel for the petitioner, the petitioner has already filed an appeal challenging the impugned assessment order. The appeal is stated to be pending.

3. In similar circumstances, the proceedings had arisen before this Court in the case of **Rajan Pradeepkumar Dubey vs. Income Tax Officer, Ward 3 (2), Kalyan & Ors.**[1] as also in **Astra Exim Pvt. Ltd. vs. The Income Tax Officer, Ward-9(1)(1), Mumbai & Ors.**[2], where in this Court had taken a view that it would be appropriate that the petitioner / assessee pursues the appeal as also make an interim application before the Appellate Authority praying that the appeals be disposed of in view of the decision of this Court in **Hexaware Technologies Limited vs. Assistant Commissioner of Income Tax & Ors.**[3]. For convenience, we note the operative order passed by this Court in Astra Exim Pvt. Ltd. (supra):-

"O R D E R

i) The petitioner shall pursue its appeals already filed before the Commissioner of Income-tax (Appeals), against the

1 Writ Petition No. 11166 of 2024 dated 12 August, 2024.
2 Writ Petition (L) No.23065 of 2024 &Writ Petition (L) No. 24718 of 2024 dated 02.09.2024
3 (2024) 464 ITR 430

> impugned assessment order. It is open to the petitioner to raise contentions on the impugned notice and the order having become untenable, in the light of the decision of this Court in Hexaware.
>
> ii) We also permit the petitioner to file an application before the appellate authority praying that the appeals be disposed of in view of the decision of this Court in Hexaware. If such an interim application is made, certainly the appellate authority shall expeditiously consider the petitioner's application and all contentions raised thereon.
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> iii) Until the proceedings before the appellate forum are decided, the impugned assessment shall not be acted upon.
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> iv) All contentions of the parties on the pending proceedings are expressly kept open."

4. As it is fairly conceded at the bar and considering the view taken by this Court in Rajan Pradeepkumar Dubey (supra) as also Astra Exim Pvt. Ltd. (supra), we dispose of this petition in terms of the following order:

O R D E R

(i) The petitioner shall pursue its appeal(s) already filed before the Commissioner of Income-tax (Appeals), against the impugned assessment order. It is open to the petitioner to raise contentions on the impugned notice and the order being invalid, in the light of the decision of this Court in Hexaware Technologies Limited (supra).

ii) We also permit the petitioner to file an application before the appellate authority praying that the appeal be disposed of in view of the decision of this Court in Hexaware Technologies Limited (supra). If such an interim application is made, certainly the appellate authority shall expeditiously consider the petitioner's application and all contentions raised thereon.

iii) Until the proceedings before the appellate forum are decided, the impugned assessment shall not be acted upon.

iv) All contentions of the parties on the pending proceedings are expressly kept open.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI, J.)