IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13404 OF 2024

Satish Hassanand Bachani ...Petitioner
Vs
The Principal Chief Commissioner of Income Tax & Ors. ...Respondents

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Mr. Sumedh Modak for Petitioner.
Mr. Akhileshwar Sharma for Respondents.

CORAM: G. S. KULKARNI & SOMASEKHAR SUNDARESAN, JJ.
DATE: 30 SEPTEMBER, 2024.

P.C.

1. We have heard Mr. Modak, 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) Rule be issued.
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> b) This Hon'ble Court may be pleased to issue writ of certiorari or any other writ, order or direction in the nature of writ of certiorari under Article 226 of the Constitution of India calling for the record and papers of the Petitioner's case and after examining the legality and validity thereof be pleased to quash and set aside the impugned show cause notice dated 06.03.2023 bearing DIN No. ITBA/AST/F/148A(SCN)/2022-3/1050422908(1) issued by Respondent No.2, order dated 29.03.2023 bearing DIN No. ITBA/AST/F/148A/2022-23/ 1051543956(1) passed u/s. 148A(d) by the Respondent No.2, notice dated 29.03.2023 bearing DIN No. ITBA/AST/S/148_1/2022-23/ 1051548518(1) issued u/s.148 by the Respondent No.2, show cause notice dated 10.01.2024 bearing DIN No. ITBA/AST/F/ 144(SCN)(F)/2023-24/1059543503(1) issued

u/s.144 by the Faceless Assessing Officer, demand notice dated 19.03.2024 bearing DIN No. ITBA/AST/S/ 156/2023-24/1063018468(1) issued u/s. 156 by the Faceless Assessing Officer and assessment order dated 19.03.2024 bearing DIN No. ITBA/AST/S/147/2023-24/ 1063018060(1) passed u/s.147, 144 r/w. 144B of the Income Tax Act, 1961 by Faceless Assessing Officer.

c. Pending the hearing and final disposal of the present Writ Petition, this Hon'ble High Court may be pleased to stay the effect, operation, execution and implementation of the impugned notice dated show cause notice dated 06.03.2023 bearing DIN No. ITBA/AST/F/148A (SCN)/ 2022-3/1050422908(1) issued by Respondent No. 2, order dated 29.03.2023 bearing DIN No. ITBA/AST/F/148A/ 2022-23/1051543956(1) passed u/s. 148A(d) by the Respondent No.2 and a notice dated 29.03.2023 bearing DIN No. ITBA/AST/S/148_1/2022-23/1051548518(1) issued u/s.148 by the Respondent No. 2, show cause notice dated 10.01.2024 bearing DIN No. ITBA/AST/F/ 144(SCN)(F)/2023-24/1059543503(1) issued u/s. 144 by the Faceless Assessing Officer, demand notice dated 19.03.2024 bearing DIN No. ITBA/AST/S/ 156/2023-24/1063018468(1) issued u/s.156 by the Faceless Assessing Officer and assessment order dated 19.03.2024 bearing DIN No.ITBA/AST/S/147/2023-24/1063018060(1) passed u/s. 147, 144 r/w. 144B of the Income Tax Act, 1961 by Faceless Assessing Officer."

4. At the outset, Mr. Modak would submit that the impugned show cause notice dated 06 March 2023, order dated 29 March 2023 passed under Section 148A(d) of the Income Tax Act, 1961 ("**the Act**"), notice dated 29 March 2023 issued under Section 148, show cause notice dated 10 January 2024 issued under Section 144, demand notice dated 19 March 2024 issued under Section 156 by the Faceless Assessing Officer and assessment order dated 19 March 2024 passed under Sections 147, 144 r/w. Section 144B of the Act 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 Act as the sanction has not been granted by the appropriate authority as specified under the said provision.

5. However, Mr. Modak 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 Act. Mr. Modak 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 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 petitioner-assessee pursues such pending proceedings as already filed before the appropriate Appellate Authority and Revisionary Authority.

10. Accordingly, we are not persuaded to entertain the present proceedings which assail the assessment order dated 19 March 2024 when appeal is already filed by the petitioner as also the revision proceedings are pending.

11. However, we find substance in Mr. Modak'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.)**