IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14350 OF 2024

DK Enterprises ..Petitioner
Vs
Income Tax Officer Ward 28(1)(1) Mumbai & Ors. ...Respondents

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Mr. Sham Walve with Mr. Sameer Dalal and Mr. Bhavik Chheda for Petitioner.
Mr. Arjun Gupta for Respondent Nos.1 to 4.

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) Issue a Writ of Certiorari or 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 records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the (i) Impugned Show Cause Notice dated 29.03.2023 issued u/s 148A(b) of the Act, (Ex. C) (ii) Impugned Notice dated 31.03.2023 u/s I 48 of the Act (Ex. D) and the (iii) Impugned Assessment Order dated 28.03.2024 passed u/s 147 r.w.s. 144B of the Act (Ex. G) along with the consequential notices/orders thereof;
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> b) Issue a Writ of Prohibition or any other appropriate Writ, Order, Direction in nature of Prohibition under Article 226 of the Constitution of India ordering the Respondents herein to permanently refrain from giving effect to and/or proceeding further by way of re-assessment or otherwise in any manner in respect of the (i) Impugned Notice dated 31.03.2023 u/s 148 of the Act (Ex. D) and the (ii) Impugned Assessment Order dated 28.03.2024 passed u/s 147 r.w.s. 144B of the Act (Ex. G) along with the consequential notices/orders thereof;
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> c) Pending the hearing and final disposal of this Petition, this Hon'ble Court may be pleased to restrain the Respondents from any steps whatsoever pursuant to the (i) Impugned Notice dated 31.03.2023 u/s 148 of the Act (Ex. DJ and the (ii) Impugned Assessment Order dated 28.03.2024 passed u/s 147 r.w.s. 144B of the Act (Ex. G) along with the consequential notices/orders thereof.;

> d) Grant ad-interim reliefs in terms of prayer clause "(c) pending the hearing and final disposal of this Writ Petition.
>
> e) Grant any other relief as may be deemed fit in the facts and circumstances of this case."

2. As fairly pointed out by Mr. Walve, 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 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.
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> 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.
>
> iii) Until the proceedings before the appellate forum are decided, the impugned assessment shall not be acted upon.

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

> 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.)**