IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14524 OF 2024

Dharamshi Devji Patel (Since Decd) Thr Lhr ..Petitioner
Vs
Income Tax Officer, Ward 28(1)(1), Mumbai & Ors. ..Respondents

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Ms. Radha Halbe 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 may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the notice dated 31.03.2023 issued under section 148 (Exhibit "C") and the assessment order dated 29.03.2024 passed under section 147 (Exhibit "H"), notice of demand dated 29.03.2024 issued under section 156 (Exhibit "I") and notice dated 29.03.2024 initiating proceedings for levying penalty under section 271AAC(1) (Exhibit "J");
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> (b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, directing the Respondents, its servants, subordinates, agents and successors in office to:
>
> > i) quash the notice dated 31.03.2023 issued under section 148 (Exhibit "C") and the assessment order dated 29.03.2024 passed under section 147 (Exhibit "H"), notice of demand dated 29.03.2024 issued under section 156 (Exhibit "I") and notice dated 29.03.2024 initiating proceedings for levying penalty under section 271AAC(1) (Exhibit "J").
> >
> > ii) forthwith forbear from taking any steps whatsoever, including issue further notices in furtherance of the assessment order dated 29.03.2024 passed under section 147 (Exhibit "H"), notice of demand dated 29.03.2024 issued under section 156 (Exhibit "I") and notice dated 29.03.2024

initiating proceedings for levying penalty under section 271AAC(1) (Exhibit "J");

(c) that this Hon'ble Court be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting Respondents from taking any steps in furtherance of the assessment order dated 29.03.2024 passed under section 147 (Exhibit "H"), notice of demand dated 29.03.2024 issued under section 156 (Exhibit "I") and notice dated 29.03.2024 initiating proceedings for levying penalty under section 271AAC(1) (Exhibit "J");

(d) that pending the hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay the operation of the assessment order dated 29.03.2024 passed under section 147 (Exhibit "H"), notice of demand dated 29.03.2024 issued under section 156 (Exhibit "I") and notice dated 29.03.2024 initiating proceedings for levying penalty under section 271AAC(1) (Exhibit "J");

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

(f) for costs of this Petition; and

(g) for such further and other reliefs as the nature and circumstances of the case may require."

2. As fairly pointed out by Ms. Halbe, 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**

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

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.
>
> 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

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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.)**