IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15088 OF 2024

Real Infrastructure Co., ...Petitioner

Versus

Income Tax Officer Ward 28 (1)(1) Navi Mumbai & Ors. …Respondents

----

Mr. T. M. Phadke, for the the Petitioner.
Mr. Arjun Gupta, for Respondents.

SMITA RAJNIKANT JOSHI

Digitally signed by SMITA RAJNIKANT JOSHI
Date: 2024.10.25 17:37:41 +0530

SMITA RAJNIKANT JOSHI
Digitally signed by SMITA RAJNIKANT JOSHI
Date: 2024.10.25 17:37:41 +0530

CORAM: **G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.**

DATE **24th OCTOBER, 2024**

P.C.

1. We have heard Mr. Phadke, the learned Counsel for the Petitioner and Mr. Gupta, the 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) Hold, adjudge and declare that the impugned order issued under section 148A(d) of the Act dated 06.04.2022 (Exhibit C), the impugned notice issued under Section 148 of the Act dated 07.04.2022 (Exhibit D) and the impugned assessment order passed under Section 147 read with Section 144 and 144B of the Act dated 09.02.2024 (Exhibit G) are wholly without jurisdiction, arbitrary and illegal;
>
> (b) Issue a writ of Certiorari or a writ in the nature of certiorari or any other writ, order or direction, quashing the impugned order

issued under section 148A (d) of the Act dated 06.04.2022 (Exhibit C), the impugned notice issued under Section 148 of the Act dated 07.04.2022 (Exhibit D) and the impugned Assessment Order passed under Section 147 read with Section 144 and Section 144B of the Act dated 09.02.2024 (Exhibit G) for the Assessment Year 2018-19;

(c) Issue a writ of Mandamus or a writ in the nature of mandamus or any other writ, order or direction, directing the respondents to withdraw the impugned order issued under section 148A(d) of the Act dated 06.04.2022 (Exhibit C), the impugned notice issued under Section 148 of the Act dated 07.04.2022 (Exhibit D) and the impugned assessment order passed under Section 147 read with Section 144 and 144B of the Act dated 09.02.2024 (Exhibit G) for the Assessment Year 2018-19;

(d) Issue a writ of Certiorari or Mandamus or a writ in the nature of certiorari, Mandamus or any other writ, order or direction, staying the operation of the impugned demand notice dated 09.02.2024 (Exhibit H) and the impugned penalty notice dated 09.02.2024 (Exhibit I) for the Assessment Year 2018-19;

(e) Pending the final hearing and disposal of the present petition, to stay the operation and implementation of the impugned order issued under Section 148A(d) of the Act dated 06.04.2022 (Exhibit C), the impugned notice issued under section 148 of the Act dated 07.04.2022 (Exhibit D) and the impugned assessment order passed under Section 147 read with Section 144 and 144B of the Act dated 09.02.2024 (Exhibit G) for the Assessment Year 2018-19;

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

(g) Direct the Respondents to bear the costs of the present petition;

(h) Pass such further orders and/or grant such other reliefs as this Hon'ble Court may deem fit in the interests of justice."

4. At the outset, Mr. Phadke, would submit that the impugned assessment order dated 9th February, 2024 as also the impugned notice under Section 148 dated 7th April, 2022 would stand covered by the decision of this Court in <u>**Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & Ors.**</u> as also the decision of the division Bench in <u>***Siemens***</u>

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. Phadke, 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. Phadke 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. Gupta, 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 the aforesaid decisions are rendered by

this Court. In other words, Mr. Gupta'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. Gupta 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. Gupta, 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 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. Phadke'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 proceedings 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.

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