IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

MISCELLANEOUS APPLICATION NO. 12 OF 2024

Asst. Commissioner of Income Tax (Intemational Taxation), Circle-2, Pune ...Applicant

Versus

TDK Electronics AG …Respondent

Mr. Suresh Kumar for Applicant.
None for Respondent.

CORAM: G. S. KULKARNI & SOMASEKHAR SUNDARESAN, JJ.

DATE 10 SEPTEMBER 2024

P.C.

1. This is an application filed by the revenue under Section 158A(b) of the Income Tax Act, 1961 read with Rule No.16 of the Income Tax Rules, 1962.

2. Mr. Suresh Kumar, learned counsel for the Applicant / Revenue would submit that Section 158AB is inserted by Finance Act, 2022 with effect from 1 April 2022, providing for a "*procedure where an identical question of law is pending before High Courts or the Supreme Court*". The object of this provision appears to be to avoid unnecessary litigation, when identical questions of law are involved either in the assessee's own case in respect of another assessment year or in the case of any other assessee for any assessment

year when such issue is pending before the High Court or Supreme Court. The provision stipulates a procedure under which, *inter alia,* on a consent being granted by the assessee as provided for under sub-section (3) of Section 158AB any legal proceedings are kept in abeyance and depending on the outcome of the pending proceedings, a decision appropriate to a case is permitted to be taken to initiate proceeding against the assessee as contemplated under sub-section (4) & (5). It would be appropriate to note the provisions of Section 158AB, which reads thus:

> **"[Procedure where an identical question of law is pending before High Courts or Supreme Court**.
>
> **158AB**. —(1) Notwithstanding anything contained in this Act, where the collegium is of the opinion that—
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> (a) any question of law arising in the case of an assessee for any assessment year (such case being herein referred to as the relevant case) is identical with a question of law arising,—
>
> (i) in his case for any other assessment year; or
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> (ii) in the case of any other assessee for any assessment year; and
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> (b) such question is pending before the jurisdictional High Court under Section 260-A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, which is in favour of such assessee (such case being herein referred to as the other case),
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> the collegium may, decide and inform the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under sub-section (2) of section 253 or to the jurisdictional High Court under sub-section (2) of Section 260-A in the relevant case against the order of 2[the Joint Commissioner (Appeals) or the Commissioner (Appeals)] or the Appellate Tribunal, as the case may be.
>
> (2) The Principal Commissioner or the Commissioner shall, on receipt of a communication from the collegium under sub-section (1),

notwithstanding anything contained in sub-section (3) of section 253 or clause (a) of sub-section (2) of Section 260-A, direct the Assessing Officer to make an application to the Appellate Tribunal or the jurisdictional High Court, as the case may be, in such form as may be prescribed within a period of one hundred and twenty days from the date of receipt of the order of the Commissioner (Appeals) or of the Appellate Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of law becomes final in the other case.

(3) The Principal Commissioner or Commissioner shall direct the Assessing Officer to make an application under sub-section (2) only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case; and in case no such acceptance is received, the Principal Commissioner or Commissioner shall, notwithstanding anything contained in sub-section (3) of section 253 or clause (a) of sub-section (2) of Section 260-A, proceed in accordance with the provisions contained in sub-section (2) of section 253 or in clause (c) of sub-section (2) of Section 260-A.

(4) Where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal, as the case may be, referred to in sub-section (1) is not in conformity with the final decision on the question of law in the other case, as and when such order is received, the Principal Commissioner or Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or the jurisdictional High Court, as the case may be, against such order and save as otherwise provided in this section all other provisions of Part B and Part CC of Chapter XX shall apply accordingly.

(5) Every appeal under sub-section (4) shall be filed within a period of sixty days to the Appellate Tribunal or one hundred and twenty days to the High Court, as the case may be, from the date on which the order of the jurisdictional High Court or the Supreme Court in the other case is communicated to the Principal Commissioner or the Commissioner (having jurisdiction over the relevant case), in accordance with the procedure specified by the Board in this behalf.

Explanation.—For the purposes of this section, "collegium" means a collegium comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners, as may be specified by the Board in this behalf."

(emphasis supplied)

3. The parties having taken recourse to the aforesaid provision, the present Miscellaneous Application has been filed.

4. The Revenue has contended that insofar as the assessee is concerned, there are proceedings filed by the Revenue which are pending in this Court in Income Tax Appeal No.2557 of 2011 for Assessment Year 2006-07, Income Tax Appeal No.1348 of 2015 for Assessment Year 2008-09, Income Tax Appeal No.1550 of 2017 for Assessment Year 2010-11, Income Tax Appeal No.286 of 2020 for Assessment Year 2011-12, Income Tax Appeal No.1024 of 2019 for Assessment Year 2012-13, Income Tax Appeal No.308 of 2020 for Assessment Year 2013-14, and Income Tax Appeal No.2524 of 2019 for Assessment Year 2014-15, on a similar question of law whereas the present case pertains to the assessment year 2020-21.

5. In this view of the matter, it is submitted that the collegium was of the opinion that as a similar question of law for the previous assessment year is the subject matter of proceedings before this Court (Assistant Commissioner of Income Tax (International Taxation) Circle – 2, Pune Vs. TDK Electronics AG), the Principal Commissioner, Pune has approached the Assessing Officer to file the present application, praying that this Court permit the applicant to file an appeal after the decision is passed in the said pending appeal. It is also stated that the respondent / assessee had issued a letter of acceptance to the

Applicant / Revenue that the question of law in the other case is identical to that arising in the present case. In this view of the matter, the application is filed praying for the following substantive reliefs (prayer clause a & b) which reads thus:

> a) This Hon'ble High Court be pleased to take on record the form no. 8A being Exhibit-A.
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> b) That this Hon'ble High Court be pleased to permit the applicant to file an appeal after the decision in appeal mentioned hereinabove as per Section 158AB of the Income Tax Act, 1961.

6. Having perused the provisions of Section 158AB as also Rule 16 of the Income Tax Rules, 1962, as also the record which annexes Form 8A which sets out all the necessary details qua the proceedings as noted hereinabove, in our opinion, the application needs to be accepted as consented by the respondent / assessee.

7. This Miscellaneous Application is accordingly allowed in terms of prayer clauses (a) & (b).

8. Disposed of in the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.) **(G. S. KULKARNI , J.)**