IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4227 OF 2024

Foce India Limited Formerly
Known as Heighten Trading ...Petitioner

Versus

Income Tax Officer Ward 10(1)(1), Mumbai & Ors. ...Respondents

---

Mr. Jitendra Singh a/w Ms. Shivali Mhatre for Petitioner.

Ms. Samiksha Kanani for Respondent.

CORAM: G. S. KULKARNI &
NIVEDITA P. MEHTA, JJ.

DATE: 25 OCTOBER 2024

P.C.

1. We have heard learned counsel for the parties.

2. Learned counsel for the petitioner fairly submits that the petitioner has filed an appeal challenging same impugned order and notice before the Commissioner of Income Tax (Appeal).

3. In similar circumstances, 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], wherein when an appeal was filed by the

---

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

assessee this Court had taken a view that it would be appropriate that the petitioner/assessee pursue the appeals 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. 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.***
>
> *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 that the view taken by this Court in ***Rajan Pradeepkumar Dubey*** *(supra)* as also ***Astra Exim Pvt. Ltd.*** *(supra)* would be applicable in the present case, we dispose of this petition in terms of the following order:

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.**

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**. 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.

(NIVEDITA P. MEHTA, J.) (G. S. KULKARNI , J.)