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

WRIT PETITION NO. 5135 OF 2024

Nesh Pharmatech Private Limited ...Petitioner
Versus
Union Of India ...Respondent

Mr. Shobhit Mishra i/b, Neha Anchlia, for the Petitioner.

CORAM : G. S. KULKARNI & ADVAIT M. SETHNA, JJ.

DATE : 9 DECEMBER 2024

P.C.:

1. This petition under Article 226 of the Constitution has prayed for the following reliefs:

"*a) That that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned instruction dated 11.05.2022 (being EXHIBIT 'B' hereto) and after going into the validity and legality thereof to quash and set aside the same to the extent it is contrary to section 149 of the Act and not in line with the decision of the Hon'ble Apex Court in UOI & Ors. vs. Ashish Agarwal (Supra);*

(b) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned notice dated 21.04.2021 issued u/s 148 of the un-amended Act for AY 2016-17, which is deemed as a notice issued u/s 148A(b) (being EXHIBIT "A " Hereto) and after going into the validity and legality thereof to quash and set aside the same.

(c) that this Hon'ble Court be pleased to issue a writ of Certiorari

or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the Impugned show cause notice dated 01.06.2022 (being EXHIBIT 'C' hereto) and after going into the validity and legality thereof to quash and set aside the same.

(d) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned order dated 31.07.2022 under section 148A(d) of the Act for the AY 2016-17 (being EXHIBIT ' D' hereto) and after going into the validity and legality thereof to quash and set aside the same."

(e) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned Notice issued u/s 148 of the Act on 31.07.2022 for AY @ 2016-17 (being EXHIBIT 'E' hereto) and after going into the validity and legality thereof to quash and set aside the same. that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned order issued u/s 147 read with 144B of the Act on 30.05.2023 for AY 2016-17 (being EXHIBIT 'L' hereto) and after going into the validity and legality thereof to quash and set aside the same.

(f) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned demand notice dated 30.05.2023 issued by Respondent No.4 (being EXHIBIT 'M ' hereto) and after going into the validity and legality thereof to quash and set aside the same.

(g) that pending the hearing and final disposal of this petition the Respondents, their successors in office, subordinates, servants and agents be restrained by an order and injunction of this Hon'ble Court be pleased to stay the execution, operation and implementation and from taking any steps pursuant to the impugned order dated 30.05.2023 for the AY 2016-17 (being

EXHIBIT 'L' hereto) and impugned demand notice u/s 156 of the Act dated 30.05.2023 (being EXHIBIT 'M' hereto) and consequential penalties".

2. As fairly pointed out by Mr. Mishra, 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.*** For convenience, we note the operative order passed by this Court in Astra Exim Pvt. Ltd. (supra).

ORDER

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

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 dt. 02.09.2024

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:

ORDER

(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.

[ADVAIT M. SETHNA, J.] [G. S. KULKARNI, J.]