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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 4331/2019

PR.COMMISSIONER OF INCOME TAX-4 ..... Petitioner

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel along with Ms. Deeksha Gupta, Adv.

versus

M/S HCIL COMTEL LTD. ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aniket D. Agrawal, Advs.

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\+ W.P.(C) 4392/2019

PR. COMMISSIONER OF INCOME TAX-4 ..... Petitioner

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel along with Ms. Deeksha Gupta, Adv.

versus

M/S HUGHES NETWORK SYSTEMS INDIA LTD. ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aniket D. Agrawal, Advs.

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\+ W.P.(C) 4799/2019

PR. COMMISSIONER OF INCOME TAX-4 ..... Petitioner

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel along with Ms. Deeksha Gupta, Adv.

versus

M/S HUGHES COMMUNICATION INDIA LTD ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aniket D. Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **13.02.2024**

1. These three writ petitions impugn the order dated 11 May 2018 pursuant to which the **Board for Advance Ruling**[1] **[**the erstwhile **Authority for Advance Ruling]** has negatived a preliminary objection which was raised on behalf of the writ petitioner with respect to the maintainability of the applications for an advanced ruling and has admitted the applications preferred by the respondents.

2. The writ petitioners had principally asserted that since notices under Section 143(2) of the **Income Tax Act, 1961**[2] had come to be issued prior to the filing of the applications before the Board, the bar as raised in terms of the First Proviso to Section 245R(2) of the Act would stand attracted and consequently it would denuded the Board of the jurisdiction and authority to render an advanced ruling.

3. The skeletal facts which would merit notice are as follows. The assessment years with which we are concerned as well as the details of the notices under Section 143(2) of the Act have been set forth by the respondents in the shape of a chart along with their written submissions which is extracted hereinbelow:-

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[1] Board
[2] Act

WP(C) No.	Name of Respondent	Asst. Year	Date of Notice u/s 143(2)	Date of filing application before AAR
4331/2019	M/s. HCIL Comtel Ltd. (now M/s. HCIL Comtel Pvt. Ltd.)	2015-16	**13.09.2016** (Limited Scrutiny) [refer: Annex 'P-2' @ pp.30-32]	21.12.2016
		2016-17	13.07.2017	
4392/2019	M/s. Hughes Network Systems India Ltd.	2015-16	**07.04.2016** (Limited scrutiny under CASS) [refer: Annex 'P-2' @ pg.31] **11.08.2016**	21.12.2016
		2016-17	12.07.2017	
4799/2019	M/s. Hughes Communication India Ltd.	2015-16	**23.09.2016** (Scrutiny – Manual Selection) [refer: Annex 'P-2' @ pp. 30-31]	21.12.2016
		2016-17	12.07.2017	

4. The application before the Board was with respect to the supply of satellite equipment and whether the remittances made in connection therewith could be said to be taxable in India.

5. Before proceeding further, we also deem it apposite to take note of the Section 143(2) notices which had been issued to the respondents and which are reproduced hereinbelow:-

W.P.(C) 4331/2019

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 11(1), DELHI

To, HCIL COMTEL LIMITED 1 Shivji Marg, 1 Shivji Marg, Westend Greens National Highway No 08 110037, Delhi India	

PAN	AY	Notice No: 768	Dated
AACCH0293H	**2015-16**	**ITBA/AST/S/143(2)2016-17/1000302786(2)**	**13/09/2016**

Notice under section 143(2) of the Income Tax Act, 1961

Limited Scrutiny

Sir/Madam/Ms,

This is for your kind information that the return of income for Assessment Year **2015-16** filed vide ack. no. **896020591301115** on **30/11/2015** has been selected for Scrutiny. Following issues have been identified for examination:

i. Stock valuation
ii. Amount disallowable u/s 40A mismatch
iii. Custom Duty Payment Mismatch
iv. Outward Foreign Remittance
v. Other expenses claimed in the Profit & Loss a/c
vi. Payment to related persons mismatch
vii. Loans/advances to related persons

2. In view of the above, we would like to give you an opportunity to produce, or cause to be produced, any evidence which you feel is necessary in support of the said return of income on **19/09/2016** at **11:01 AM** in the office of the undersigned.

3. Sending a communication to the undersigned in this regard shall also be treated as sufficient compliance in case no evidence is sought to be produced as required in Para 2 above.

4. Specific questionnaire/show cause notice shall be sent giving you another opportunity in case any adverse view is contemplated.

5. (#) The assessment proceeding in your case is proposed to be conducted through email based communication. The email provided in the said return of income shall be used for communication for this purpose. In case you wish to communicate through any other alternate email, the same may kindly be informed. A brief note regarding benefits of this facility and procedure is enclosed overleaf. In case you do not wish to participate in this taxpayer friendly initiative, you may convey your refusal to the undersigned by the above mentioned date. In case, your wish to opt out from this scheme at any subsequent stage due to any technical difficulties faced by you, the same can be done with prior intimation to the undersigned.

(#) applicable only in case of taxpayers whose Income-tax jurisdiction falls in the cities of Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata or Mumbai

Yours faithfully,

SHELENDRA SRIVASTAVA
CIRCLE 11(1), DELHI”

W.P.(C) 4392/2019

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE 11(2), DELHI

NOTICE UNDER SECTION 143(2) OF THE INCOME TAX ACT, 1961

To, HUGHES NETWORK SYSTEMS INDIA LIMITED 1 Shivji Marg, Westend Greens National Highway No 08 110037, Delhi (UT) India	

PAN	AY	Dated:	Document No :
AAACH3025R	2015-16	07/04/2016	ITBA/AST/S/143(2)/ 2016- 17/1000062389(1)

Limited Scrutiny
Selected Under Computer Assisted Scrutiny Selection (CASS)

Sir/ Madam/ M/s,

There are certain points in connection with the return of income submitted by you on **29/11/2015** for the Assessment Year **2015-16** on which I would like some further information.

You are hereby required to attend my office on **28/04/2016 at 01:00 PM** either in person or through a representative duly authorized in writing in this behalf or produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.

DIWAKAR SINGH
CIRCLE 11(2), DELHI"

W.P.(C) 4799/2019

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE 11(2), DELHI

To,	
HUGHES COMMUNICATIONS INDIA LIMITED 1 Shivji Marg, Westend Greens N H-08, NEW DELHI- 110038, INDIA	

PAN	AY:	Notice No :	Dated :
AAACH0765L	**2015-16**	**ITBA/AST/M/143(2)/2016-17/1000427645(1)/469**	**23/09/2016**

Notice under section 143(2) of the Income Tax Act, 1961
Manual Selection

Sir/Madam/M/s.

This is for your kind information that the return of income for Assessment Year **2015-16** filed vide ack. No. **896039741301115** on **30/11/2015** has been selected for scrutiny.

2. In view of the above, we would like to give you an opportunity to produce, or cause to be produced, any evidence which you feel is necessary in support of the said return of income on **29/09/2016** at **11:30** AM in the office of the undersigned.

3. Sending a communication to the undersigned in this regard shall also be treated as sufficient compliance in case no evidence is sought to be produced as required in Para 2 above.

4. Specific questionnaire/ show-cause notice shall be sent giving you another opportunity in case any adverse view is contemplated.

5. (#) The assessment proceeding in your case is proposed to be conducted through email based communication. The email provided in the said return of income shall be used for communication for this purpose. In case you wish to communicate through any other alternate email, the same may kindly be informed. A brief note regarding benefits of this facility and procedure is enclosed overleaf. In case you do not wish to participate in this taxpayer friendly initiative, you may convey your refusal to the undersigned by the above mentioned date. In case, you wish to opt out from this scheme at any subsequent stage due to any technical difficulties faced by you, the same can be done with prior intimation to the undersigned.

(#) applicable only in case of taxpayers whose Income-tax jurisdiction falls in the cities of Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata or Mumbai

Yours faithfully,

SHELENDRA SRIVASTAVA
CIRCLE 11(2), DELHI"

6. The Board has principally come to the conclusion that the notices in question were standardized and formatted and would thus not qualify the requirements of the First Proviso to Section 245R(2) of the Act. It has in this connection rested its decision on the judgment rendered by this Court in **Hyosung Corporation vs. Authority for Advance Rulings and Ors.**[3] and **Sage Publication Ltd vs. Deputy Commissioner of Income Tax (International Taxation)**[4] to hold as follows: -

> "5.1. A perusal of the table placed at para 2 of this order shows the position of the dates when the Returns of Income were filed, the dates of issue of various notices, and the dates of filing of the applications in question. We find from the details of each of the applications and assessment years involved, that in all cases; prior to filing of these applications, only notices under section 143(2) of the IT Act 1961 had been issued. Copies of these notices have been filed and perused by us. <u>These show that these are standard notices issued by the assessing officers in the printed format, which by and large contain the provisions of this section, and fix a date for hearing. None of them are accompanied by any specific query or any questionnaire that could indicate that the questions posed before us for a ruling were actually under examination and hence pending before the AO. A case picked up for scrutiny does not automatically indicate the issue before the AO, unless the same is specifically asked for. Hence, issue of standard notices under section 143(2) do not constitute a bar in terms of clause (i) to proviso to section 245R(2).</u> The specific notices issued under section 142(1) are all after the applications had been filed before this Authority, and hence these also do not jeopardise the case of the Applicant for admission.
>
> 5.2. The above position has been laid down in the decisions of Hon'ble High Court of Delhi in Hyosung Corporation (382 ITR 371) and Sage Publications Ltd. UK (387 ITR 371). Referring to the issue of a standard notice, it was held that "the mere fact that

[3] 2016 SCC OnLine Del 912
[4] 2016 SCC OnLine 6637

such a notice was issued prior to the filing of the application by the petitioner before the AAR will not constitute a bar, in terms of clause (i) to proviso to Section 245R(2) of the Act on the AAR entertaining and allowing the applications."

7. As is manifest from the notices which concern W.P.(C) 4392/2019 and W.P.(C) 4799/2019, they carry no specific requirements of disclosure and are merely an intimation of the assessee being required to appear before the **Assessing Officer**[5]. While those notices are ex facie routine and fail to establish that the AO was in seisin of the issue which formed the subject matter of the applications before the Board, according to Mr. Bhatia the notice dated 13 September 2016 insofar as M/s HCIL Comptel Ltd. is concerned cannot be placed in the same category. This, according to him, in light of the said notice also requiring that respondent to provide details of outward foreign remittances.

8. We, however, find ourselves unable to sustain that argument bearing in mind the following observations as were rendered by the Board and appear in paragraph 3 of the order impugned:-

> "3.1 The Revenue has raised objection on the admissibility of the applications and stated that the assessment in. the Applicants' cases have already been completed under section 143(3) for Assessment Year 2013-14 & Assessment Year 2014-15, It is stated that the assessee (Applicant in the present case), namely Hughes Network Systems India Ltd., filed its return of income for AY 2015-16 on 30.11.2015 and the notice under section 143(2) of the Act specifying the issues identified for examination was. issued on 07.04.2016 and the assessment proceedings in the Applicant's case is underway. The Applicant filed its return of income for AY. 2016-17 also on 30.11.2016 for which notice u/s 143(2) of the Act has also been issued and duly served upon to the assessee on 12.07.2017. Similarly for both these assessment years, the notices under section 143(2) in respect of the other two Applicants were issued prior to the filing of the application before the AAR.

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[5] AO

3.2 It is contended by the Revenue that the first Applicant (AAR/48/2016) has filed the present application before this Authority on 21.12.2016, relating to the transaction in pursuance to Master Reseller Contract between Hughes Network Systems LLC USA and HCIL Comtel Ltd. for the purchase and sale of satellite communication equipment, after issuance of notice dated 07,04.2016 under section 143(2) of the Act for AY 2015-16. Hence, the application is just an eye-wash as the assessment proceedings are going on in the Applicant's case on the issues raised before this Authority by way of filing the present application. It is stated that the issue is already being, considered for examination, implying thereby that the issue is pending before income-tax authority before the date of filing of application before this Authority and hence the application be rejected under section 245R(2)(i) of the Act.

3.3 It is also contended by the Revenue that the claims involved in the present application are similar to the applications filed by M/s HCIL Comtel Ltd. (AAR/49/2016) and M/s Hughes Network Systems Limited (AAR/50/2016) and all three applications are on the basis of Master Reseller Agreements signed with Hughes Network Systems, LLC USA and the language used in all three contracts is exactly similar and in substance they are the same.

3.4 The Revenue submits that there is concept of 'mutual exclusion' in exercise of the functions between the Department and the AAR as by virtue of clause (i) to the first proviso to section 245 R (2) of the Act, AAR is precluded from admitting any application, the questions raised wherein are already pending before an Income Tax Authority, appellate tribunal or a Court. Correspondingly, by virtue of section 245RR of the Act, an income-tax authority or appellate tribunal is prevented from proceeding to decide any issue which is pending before the AAR and the two authorities, AAR on the one hand and appellate tribunal/income tax authority on the other hand, do not sit over the decisions of the other. Hence there is a 'mutual exclusion' as
far as simultaneous proceeding over a common issue is concerned. In support of their contentions, the Revenue has relied upon the case of this Authority in Microsoft Operations Pte Ltd. (AAR No. 781 of 2008) and Foster Pty Ltd. (AAR No. 976 of 2009)."

9. Additionally, we find merit in the submission addressed by Mr. Vohra, learned senior counsel appearing for the respondents, who submits that a broad and vague requirement of providing general details with respect to outward foreign remittances as was embodied

in that notice cannot possibly be read as pertaining to the subject in respect of which the Board had been moved. We, consequently, find no merit in the challenge as raised.

10. The writ petitions fail and shall stand dismissed. We consequently leave it open to the respondents to move the Board for expeditious consideration of the pending applications.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 13, 2024/RW