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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 5818/2013**

HYOSUNG CORPORATION ..... Petitioner

Through Mr Deepak Chopra, Mr Amit Shrivastava and Mr Manasvini Bajapai, Advocates.

versus

THE AUTHORITY FOR ADVANCE RULINGS & ANR ..... Respondents

Through Mr Ashok K. Manchanda, Senior Standing Counsel with Ms Vibhooti Malhotra, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **06.04.2016**

REVIEW PET. 143/2016

1. This is an application by the Petitioner seeking a limited review of the judgment dated 11th February, 2016.

2. This Court has heard the learned counsel for the parties.

3. The challenge in the main petition was to an order dated 7th August 2013, passed by the Authority for Advance Rulings ('AAR') whereby the Petitioner's application for determination of the question regarding taxability of its profits arising from offshore supplies was rejected on the ground that the bar under clause (i) below the proviso to Section 245R (2) of the Income

Tax Act, 1961 ('Act') to the AAR allowing the application stood attracted. It was held that once notice was issued to the Petitioner under Section 143(2) of the Act, it should be construed that the question raised in the application was a question that was 'pending' adjudication and therefore the aforementioned bar in terms of clause (i) below the proviso to Section 245 R (2) of the Act could apply.

4. One of the questions considered by this Court was whether the AAR was justified in coming to the above conclusion. In that context the Court examined the issue as to when a question can be said to be pending for the purposes of clause (i) of the proviso to Section 245R(2) of the Act. In that process this Court in para 27 of its judgment dated 11th February 2016 observed as under:

> "As far as the notice under Section 143(2) of the Act is concerned, that provision itself stipulates that such notice will be issued by the AO where he has reason to believe that any claim of such exemption, deduction, allowance or relief made in return is inadmissible. It mandates that the notice should specify the particulars of such claim, loss, exemption, deduction or relief. Turning to the notice issued in the instant case to the Petitioner under Section 143(2) of the Act, it is seen that it is in a standard pre-printed format which merely states that "there are certain points in connection with the return of income on which the AO would like some further information". The said notice fails to satisfy the particulars of claim of loss, exemption, deduction, allowance or relief as mandated by Section 143(2)(i) of the Act. In any event the question raised in the applications by the Petitioner before the AAR do not appear to be forming the subject matter of the notices under Section 143(2) of the Act. Consequently, the mere fact that 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."

5. It is now pointed out by the Petitioner, and rightly, that as far as Section 143 (2) (i) is concerned, a notice issued thereunder was required to specify 'particulars of such claim of such exemption, deduction, allowance or relief made in return is inadmissible' which according to the AO was inadmissible. The AO would then call upon the Assessee to produce evidence of particulars that the Assessee sought to rely upon in support of such claim. However, the proviso to Section 143 (2) (i) clarifies that the said provision was applicable only up to 1st June, 2003. In other words after 1st June 2003 no notice in terms of Section 143 (2) (i) could be issued. Therefore, in the present case, the notice that was issued to the Petitioner was a notice under Section 143 (2) (ii) of the Act and not Section 143 (2) (i) as was observed in para 27 of the judgment dated 11th February 2016. However, for the reasons explained hereunder, this does not make any difference to the conclusion reached by the Court in the judgment under review.

6. Under Section 143 (2) (ii) of the Act, an AO can serve on the Assessee a notice requiring him to attend his office and produce any evidence on which the Assessee seeks to rely in support of return if the AO "considers it necessary or expedient to ensure that the Assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner'. Therefore, the scope of the enquiry that an AO can undertake in terms of Section 143 (2) (ii) is a wide ranging one. What is relevant for the present case is that prior to issuance of the notice under Section 143 (2)

(ii) the AO has to form an opinion that it is 'necessary or expedient' to ensure that an Assessee has not (i) understated the income or (ii) has not computed excessive loss, or (iii) has not underpaid the tax in any manner. The AO is, therefore, not expected to issue a notice under Section 143 (2) (ii) in a routine or casual or mechanical manner.

7. In the present case, the notice issued under Section 143(2) by the AO on 25th August, 2011 in relation to the return filed for the Assessment Year (AY) 2010-11 merely reproduces the language of Section 143 (2) (ii) of the Act. It merely states that the authorized representative of the Petitioner is required to attend the office of the AO "or produce or cause to be produced any documents the accounts and any other evidence" sought to be relied upon by the Petitioner in support of its return. There appears to be no prescribed format for issuance of the notice under Section 143 (2)(ii) of the Act. This notice, in any event, does not set out the opinion of the AO that he considers it necessary or expedient to issue such notice for any of the reasons specified in Section 143(2)(ii). Therefore, the conclusion drawn by this Court in its judgment dated 11th February, 2016 that the issuance of the said notice under Section 143(2) in the present case will not constitute a bar in terms of clause (i) to the proviso under Section 245R(2) of the Act requires no change inasmuch as the said notice does not refer to any particular 'question' which can be stated to be pending consideration. In particular, this Court finds no reason to review or recall its conclusion in para 27 of its order dated 11th February, 2016 that: "In any event the question raised in the applications by the Petitioner before the AAR do not appear to be forming the subject matter of the notices under Section 143(2)

of the Act."

8. Consequently, the Court considers it appropriate to modify para 27 of its judgment dated 11th February 2016 and substitute it as under:

> "27. Turning to the notice issued in the instant case to the Petitioner under Section 143(2) (ii) of the Act, it is seen that it is in a standard format which merely states that "there are certain points in connection with the return of income on which the AO would like some further information." In any event the question raised in the applications by the Petitioner before the AAR do not appear to be forming the subject matter of the said notice under Section 143 (2) (ii) of the Act. Consequently, the mere fact that 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 the proviso to Section 245-R (2) of the Act, on the AAR entertaining and allowing the application."

9. The review petition is disposed of. Order *dasti*.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 06, 2016
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