

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 2nd day of September, 2015

Present

THE HON'BLE MR JUSTICE VINEET SARAN

&

THE HON'BLE MR JUSTICE B MANOHAR

Writ Appeal 1614 / 2015 (T IT)

Between

- 1 Joint Commissioner of Income Tax
Large Tax Payers Unit (LTU)
- 2 Commissioner of Income Tax - II
Large Tax Payers Unit (LTU)

Both at JSS Towers
100 ft. Ring Road
BSK III Stage, Bangalore 85

Appellants

(By Sri K V Aravind, Adv.)

And

M/s Dell India Pvt Ltd
Divyashree Greens
12/1, 12/1A
Koramangala Inner Ring Road
Domlur, Bangalore 71
By its Tax Director – Mr Amit Gupta

Respondent

(By Sri Percy Pardiwalla, Sr.Adv.
For Sri T Suryanaraayana, Adv.)

Writ Appeal is filed under S.4 of the High Court Act praying to set aside the order of the learned Single Judge in WP 8901/2015 dated 23.3.2015 to the extent of rejection of the Revenue's contention on alternative remedy.

Appeal coming on for Orders this day, **Vineet Saran J.**, delivered the following:

JUDGMENT

Challenging the notice issued under section 148 of the Income Tax Act as well as reopening of assessment for the assessment year 2009-10 of the respondent company, respondent had filed WP 8901/2015. By judgment and order dated 23.3.2015, writ petition filed by the respondent company was dismissed on merits but the question of maintainability of the writ petition was decided in favour of the respondent/writ petitioner and against the Revenue. Challenging the latter part of the judgment dated 23.3.2015 passed in WP 8901/2015, this intra court appeal has been filed.

Having heard Sri K V Aravind, learned counsel for the appellant as well as Sri Percy Pardiwalla, learned senior counsel along with Sri T Suryanarayana, learned counsel

for the respondent company, we are of the opinion that there is no merit in this appeal. We say so as the learned Single Judge has not accepted the contention of the Department on the ground that *“in a catena of judgments, this court as well as the Hon’ble Apex Court has held that exercise of extraordinary jurisdiction is available where the petitioner assails action of the authorities on the following grounds:*

- i) without jurisdiction*
- ii) violation of principles of natural justice*
- iii) without authority of law*
- iv) validity or vires of the statutory provision being under challenge.*

This view is also fortified by law laid down by Apex Court in the case of Whirlpool Corporation Vs Registrar Trade Marks, Mumbai & Ors reported in 1998 (8) SCC 1. In fact the Division Bench of this Court in the case of T T Pvt Ltd Vs Income Tax Officer, Company Circle III, Bangalore reported in (1980) 121 ITR 551 has held that availability of alternate remedy under the Act would not be a bar for this

Court to examine the notice issued under section 148 of the Income Tax Act, 1961, if it is challenged on the ground of jurisdictional error. In that view of the matter, the contention raised by Sri K V Aravind cannot be accepted with regard to maintainability of the writ petition and same stands rejected.”

The Division Bench of this Court in the case of ***N Govindaraju Vs Income Tax Officer – ITA 504/2013*** decided on **1.7.2015**, has held that the notice under section 148 is justiciable, meaning thereby that the same can be challenged independently. The merits of the case have been considered by the writ court which is subject matter of appeal separately.

In the facts of the present case, where the jurisdiction of issuance of notice under section 148 of the Income Tax Act was itself under challenge, we are of the opinion that the learned Single Judge has rightly held that the writ petition, in the said circumstances, would be maintainable.

No interference is called for with such part of the order of the writ court challenged in this appeal.

Appeal is accordingly, dismissed.

Sd/-
Judge

An

Sd/-
Judge