

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

WRIT PETITION NO. 1476 OF 2022

Greatship (India) Limited
One International Centre,
Tower 3, 23rd floor, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai-400 013

....Petitioner

V/s

1. Assistant Commissioner Of Income
Tax -5(1)(1), Mumbai,
Room No. 568, 5th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400 001.

2. Centralised Processing Centre,
Income Tax Department,
Bengaluru,
Karnataka – 560 500

3. The Central Board of Direct Taxes,
Department of Revenue, Ministry of Finance,
Government of India, North Block,
New Delhi – 110 001.

4. Union of India,
Through the Joint Secretary & Legal Adviser,
Branch Secretariat,
Department of Legal Affairs,
Ministry of Law and Justice,
2nd Floor, Aayakar Bhavan, M.K. Marg,
New Marine Lines, Mumbai-400 020

....Respondents

Mr. Jeet Kamdar i/b Mr.Atul K Jasani for petitioner.

Mr Akhileshwar Sharma for the respondents-revenue

**CORAM : DHIRAJ SINGH THAKUR AND
ABHAY AHUJA, JJ.**

Judgment reserved on : 20th June 2022

Judgment pronounced on : 18th July 2022

PER DHIRAJ SINGH THAKUR, J. :

1. By this petition, the petitioner challenges the action of respondent No.2 of adjusting the refund of Rs.2,22,89,942/- for the assessment year 2008-09 arising as consequence and effect of the order of the Income Tax Appellate Tribunal ('The Tribunal') against the alleged outstanding demands for assessment years 2014-15 and 2015-16.

2. The case set up is that an amount of Rs.61,64,649/- as refund for assessment year 2008-09 came to be adjusted for assessment year 2014-15 which came to the knowledge of the petitioner on November 17, 2021, when the petitioner downloaded the Form 26AS for the assessment year 2014-15, where 'Part C' of Form No.26AS provided details of tax paid (other than TDS or TCS).

3. The petitioner's case further is that an amount of

Rs.1,61,25,293/- came to be adjusted illegally by the respondent No.2 from the refund determined in favour of the petitioner upon giving effect to the tribunal's order for assessment year 2008-09 against the alleged outstanding demand for the assessment year 2015-16. Knowledge of this illegal adjustment was also stated to have been acquired by the petitioner on November 17, 2021 when the petitioner downloaded the Form No.26AS.

4. Learned counsel for the petitioner urged that the action of respondent No.2 in making adjustments of refund due was illegal inasmuch as no intimation was given to the petitioner as was the requirement in terms of section 245 of the Income Tax Act, 1961 ('the Act, 1961').

5. Reliance was placed upon the judgments of this Court in the case of *A.N. Shaikh, Sixteen Income-Tax Officer Vs. Suresh B. Jain*¹ and *Hindustan Unilever Ltd. Vs. Deputy Commissioner of Income-Tax and Others*² and a judgment of Delhi High Court in the case of *Maruti Suzuki India Limited Vs. Deputy Commissioner of Income Tax & Ors.*³.

1 [1987] 165 ITR 86 (Bom.)

2 [2015] 377 ITR 281 (Bom.)

3 [2012] 347 ITR 43, Delhi

6. Reply affidavit has been filed in which a general statement has been made that the requirements of section 245 of the Act, 1961 have been complied with. However, the reply affidavit does not specifically state as to whether before making such an adjustment, the petitioner had been given prior intimation about the proposed adjustment in terms of section 245 of the Act, 1961.

7. Section 245 of the Act, 1961 envisages that when a refund is found to be due to any person under any of the provisions of the Act, 1961, the Revenue can set off/adjust the amount to be refunded or any part of that amount, against the sum which remains payable under the Act, 1961 by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

8. This Court in ***Suresh B. Jain*** (supra) held that giving of prior intimation under section 245 of the Act was mandatory. In ***Hindustan Unilever Ltd.*** (supra), it was held that the the purpose of giving prior intimation under section 245 of the Act, 1961 was to enable a party to point out factual errors or some further developments for example that there was a stay of the demand, or

that there was a Supreme Court's decision covering the demand, which is the subject matter of a pending appeal which would not warrant an adjustment of the refund against the pending demand. It was also held that where a party raises such issues in response to the intimation, the officer of the Revenue exercising powers under section 245 of the Act, 1961 must record reasons why the objection was not sustainable and also communicate it to the said party and that this would ensure that the power of adjustment under section 245 of the Act is not exercised arbitrarily.

9. In the present case, it can be seen that the allegation that there was no prior intimation under section 245 of the Act has remained un rebutted as no proof of any such prior intimation was placed on record by the Revenue.

Following the decisions (supra), we have no hesitation in holding that the impugned action of respondent No.2 in making adjustments of the amount of Rs.61,64,649/- and Rs.2,22,89,942/- for assessment year 2008-09 against the alleged outstanding demands for assessment years 2014-15 and 2015-16 is bad and illegal and is accordingly quashed.

10. Notwithstanding what has been observed hereinabove, it would be open to respondent No.2 to exercise its discretion of

making an adjustment in terms of section 245 of the Act, after giving prior intimation and considering all the issues and objections which the petitioner may raise pursuant to such an intimation. Needful may be done in eight weeks failing, which the case of the petitioner will be processed for grant of refund as determined for the assessment year 2008-09.

11. With these observations, the petition stands disposed of.

[ABHAY AHUJA, J.]

[DHIRAJ SINGH THAKUR, J.]