IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1809 OF 2019

Bombay Dyeing and Manufacturing Co. Ltd. ... Petitioner

versus

Deputy Commissioner of Income Tax, TDS-2(3) and Ors. ... Respondents

Mr. Madhur Agarwal I/by Mr. Atul Jasani, for Petitioner.

Mr. P.C.Chhotaray, for Respondents.

CORAM: AKIL KURESHI & S.J. KATHAWALLA, JJ.
DATE: 15th JULY, 2019

P.C.:

1. The Petitioner is facing a demand of short deduction of tax at source, for which the Officer has passed an order on 28th March, 2019. Against this order, the Petitioner has filed an Appeal which is pending. Pending such appeal, the department insists that the Petitioner must deposit 20% of the disputed amount subject to which remaining recovery would be stayed. The case of the Petitioner is that for an earlier assessment year 1994-95, pursuant to the Judgment of the Income Tax Appellate Tribunal, the Petitioner has to receive sizeable amount of refund which far exceeds the 20% of the TDS demand. In a communication dated 3rd May, 2019, the Petitioner conveyed to the Deputy Commissioner of Income Tax (TDS) and showed willingness for adjustment of the refund to the extent the TDS demand (20% of the full) was being

pressed by the department. Since the department did not accept this formula, this Petition has been filed.

2. Learned Counsel Shri Chhotarary appearing for the Department stated on instructions that prima facie the Petitioner is correct in pointing out that in relation to the assessment for the assessment year 1994-95, the Petitioner has to receive certain refund. He however, submitted that unless directed by this Court, such refund cannot be adjusted against the TDS demand.

3. In the present case, when the Petitioner had showed willingness for adjustment of the part of the refund towards its ad-hoc TDS liable pending appeal, we see no reason why the department should not adjust the same and release the rest of the refund if otherwise payable. The Petitioner has already showed willingness for such adjustment under the said letter dated 3rd May, 2019. The Respondents shall act accordingly on such consent of the Petitioner, adjust to the extent necessary for meeting the requirement of 20% of the TDS demand out of the refund payable. This would comply with the requirement of depositing 20% of the TDS pending appeal to enjoy stay against further recovery. We expect the department even otherwise to process the refund and release the balance if any that may become due and payable to the Petitioner.

4. The Writ Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**