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

WRIT PETITION NO. 1384 OF 2022

Taurus Lines Private Limited ...Petitioner
V/s.
Assistant Commissioner of Income Tax
Circle 8(3)(1), Mumbai and Ors. ...Respondents

Ms. Fereshte Sethna a/w Ms. Mrunal Parekh a/w Mr. Hasmukh Ravaria i/b DMD Advocates for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 30th MARCH, 2022

P.C. :

1. Petitioner filed its return of income for A.Y. 2017-18 declaring a total loss of Rs.1,21,44,387/- and sought refund of Rs.24,32,310/- of excess tax paid. In the assessment order passed under Section 143(3) of the Income Tax Act, 1961 (the Act) on 29th December, 2019 certain disallowance were made and petitioner’s income was assessed at Rs.1,63,03,460/-. Respondent No.1 raised tax demand of Rs.67,80,082/-.

2. On 2nd January, 2020 petitioner filed application under Section 154 of the Act for rectification of mistakes apparent on record in relation to the assessment order dated 29th December, 2019. According to petitioner on said rectification, the tax demand of Rs.67,80,082/- would get reduced to Rs.57,34,405/-. Ms.Sethna on instructions states that rectification

application has now been disposed by an order dated 26th March, 2022 by which the revised total income assessed is Rs.1,41,92,812/-, based on which there was short fall of Rs.27,500/- that petitioner had to pay, which amount Ms. Sethna states has been paid. Therefore, according to petitioner 20% of the disputed tax demand has been deposited and petitioner having filed an appeal disputing the outstanding demand for A.Y. 2017-18, and there being a stay of demand in force, petitioner cannot be considered assessee in default. Petitioner relied upon Office Memorandum [F. No.404/72/93-ITCC] issued on 29th February, 2016 amended by another Office Memorandum dated 25th August, 2017 which provides that the Assessing Officer shall grant stay of demand where the outstanding demand is disputed on assessee paying 20% of the disputed amount.

3. In the affidavit in reply it is not disputed that petitioner has deposited 20% of disputed demand. In fact in affidavit in reply at paragraph no.5.2(x) it is stated that demand is stayed by the Income Tax Authorities.

4. Therefore, as held by this court in ***Jet Privilege (P) Ltd. vs. Deputy Commissioner of Income Tax 5(2)(1), Mumbai[1],*** the effect of this deposit would mean that the time to make the payment stands extended and petitioner is not deemed to be an assessee in default for the recovery provisions to be set in motion.

1 [2021] 131 taxmann.com 119 (Bombay)

5. Paragraph no.10 of ***Jet Privilege (P) Ltd.,*** *(supra)* reads as under

> *10. As per the Office Memorandum [F. No. 404/72/93 – ITCC] issued dated 29th February, 2016, amended by another Office Memorandum dated 25th August, 2017 the assessing officer shall grant stay of demand where the outstanding demand is disputed on assessee paying 20% of the disputed demand. Admittedly, petitioner has filed an appeal disputing the outstanding demand for A.Y. 2015-16 and A.Y. 2016-17 and have deposited 20% of the amount demanded. Therefore, there is a stay of demand in force. The effect of this deposit would mean that the time to make the payment stands extended and petitioner is not deemed to be an assessee in default for the recovery provisions to be set in motion [(Hindustan Unilever (supra)].*

6. In the circumstances, petitioner will be entitled to refund of tax for A.Y. 2019-20. Respondent No.1 shall determine the amount and refund the amount to petitioner with interest there on as per law within a period of four weeks from the date of receipt of this order.

7. Petition disposed.

(N. R. BORKAR, J.) **(K.R. SHRIRAM, J.)**