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

WRIT PETITION NO.4155 OF 2022

Bajaj Electricals Limited ….. Petitioner

Vs.

Assistant Commissioner of Income-Tax-
Circle 2(1)(1), Mumbai & Ors. ….. Respondents

Mr.P.J. Pardiwalla, Sr.Advocate a/w Ms.Vasanti Patel for Petitioner
Mr.Suresh Kumar for Respondents

CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : 31st JULY 2023

P.C.

1. Petitioner is aggrieved by an order dated 3rd June 2022 passed by Respondent no.1 refusing to accept Petitioner's manual revised returns for Assessment Year 2014-15 to Assessment Year 2021-22. Petitioner is seeking a writ of Mandamus to direct Respondent no.1 to accept and process Petitioner's manual revised returns for Assessment Year 2014-15 to Assessment Year 2021-22 and treat the same as valid for all purposes under the Act and to deal with the same including all claims made therein in accordance with law.

2. Petitioner is a listed company and has vast business portfolio that

spans Consumer Products and EPC. Petitioner's business includes manufacturing and marketing of electrical goods.

3. Petitioner entered into a scheme of arrangement with Hind Lamps Limited ("Hind Lamps") which was an unlisted company engaged in the business of manufacturing of Glass bulbs, High Intensity Discharge bulbs etc. Hind Lamps also has a trading business in India. Prior to the effective date of the scheme of arrangement, in 2002, Hind Lamps was declared as a sick industrial company within the meaning of section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA") by the Board of Industrial and Financial Reconstruction ("BIFR"). The Board of Directors of Petitioner and Hind Lamps at their respective board meetings decided to demerge the manufacturing business of Hind Lamps into Petitioner with cut off date of 31st March 2014. Since Hind Lamps was declared as a sick industrial company by BIFR, the scheme of arrangement was required to be filed only with BIFR for its approval. The scheme was filed with BIFR on 22nd April 2016. By a notification dated 25th November 2016 the Central Government brought the provisions of SICA Repeal Act into force with effect from 1st December 2016, thereby repealing SICA. Section 4(b) of SICA Repeal Act provided that any proceedings of whatever nature pending before the BIFR shall stand abated and accordingly Hind Lamps' case stood abated on 1st December 2016. After the above notification the provisions of Regulation 37 of the Securities and Exchange

Board of India ('SEBI') Listing Obligations and Disclosure Requirements ("LODR") and SEBI circulars became applicable to the companies and the scheme of arrangement was required to be filed with NCLT. The scheme of arrangement was entered into for the transfer of the manufacturing undertaking of Hind Lamps on a going concern basis to Petitioner by way of demerger in compliance with the conditions specified in section 2(19AA) of the Income Tax Act, 1961 (the Act). The scheme of arrangement was filed with the Mumbai and Allahabad benches of the NCLT. The scheme provided an appointed date of 31st March 2014 and the effective date to be the last date on which the certified copies of the orders of the respective NCLTs are filed with the Registrar of Companies at Mumbai and Allahabad. Various SEBI circulars had to be complied with by Petitioner and the scheme was also filed with the stock exchanges. NCLT at Mumbai, vide order dated 2nd November 2018 (read with a corrigendum order dated 26th December 2018), and NCLT at Allahabad, vide order dated 30th April 2019, respectively, directed to convene a meeting of equity shareholders, secured creditors and unsecured creditors for the purpose of considering and approving the scheme of arrangement. After Petitioner complied with all the legal requirements and the requirements of the Companies Act, 2013 including issuance of notice and holding meetings, the order of NCLT Mumbai admitting the scheme petitions, was filed with Respondent no.1 vide letter dated 13th December 2019.

4. Petitioner also filed copies of orders passed by BIFR and the opinion obtained from Justice S.N.Variava, Former Judge of Supreme Court of India confirming the validity of the scheme approved by the Board which was sought for by Respondent no.1. NCLT finally approved the scheme of arrangement and passed orders on 18th December 2019 (Allahabad) and 21st May 2020 (Mumbai).

5. The scheme of arrangement approved by NCLT required Petitioner and Hind Lamps to file revised returns of income-tax, sales tax, value added tax, turnover tax, excise duty, service tax, customs and any other returns including revised returns to claim advance tax or withholding tax refunds and credits giving effect to the demerger. The scheme of arrangement also provided that all profit / income earned or accrued and expenses / losses incurred by the manufacturing undertaking of Hind Lamps for the period between the appointed date and the effective date shall be deemed to be treated as the profits / income earned or accrued and expenses / losses incurred by Petitioner. Further, the taxes deducted / tax paid in relation to the income of the demerged undertaking of Hind Lamps shall also belong to Petitioner. The scheme of arrangement provided that the accounting treatment for tax purposes will be incorporated in the books and in the financials drawn up which shall be approved by the board of directors of Petitioner and Hind Lamps and furnished to the authorities after audit. The drawn-up financials was to be

furnished along with returns / filings to be made with the tax authorities and was to form the basis of tax assessments and tax compliances.

6. As per the scheme of demerger and as per the directions of the NCLT, both petitioner and Hind Lamps have prepared the special purpose financial statements and obtained revised tax audit reports for each of the years. The preparation, however, got delayed due to the unprecedented lockdown caused by Covid-19 pandemic as the offices of Petitioner and Hind Lamps were closed and different geographic locations of both the companies added to the hardship on the management of the companies in preparation and filing of these documents.

7. Therefore, based on the above, Petitioner was required to file a revised return of income giving effect to the scheme of demerger from the appointed date, i.e., March 31, 2014, i.e., for AY 2014-15 to AY 2021-22. The Petitioner prepared and filed manual revised returns of income as the due date to file the revised return of income under section 139(5) of the Act had expired for each of the years. Further, Hind Lamps also filed manual revised returns of income for AY 2014-15 to AY 2021-22 with the assessing officer having jurisdiction over Hind Lamps and also paid the amount of tax liability arising out of the revised returns of income.

8. Petitioner filed a letter dated January 18, 2022 with Respondent No.1 for filing of revised returns of income for AY 2014-15 to AY 2020-21 as directed by the NCLTs vide its orders dated December 18, 2019 (Form

CAA-7 dated January 7, 2020) and May 21, 2020 approving the scheme of arrangement between Petitioner and Hind Lamps and their respective shareholders and creditors under section 230-232 of the Companies Act, 2013 for the demerger of the manufacturing business of Hind Lamps into Petitioner. Petitioner pointed out the factual background and the circumstances necessitating the demerger of the manufacturing business of Hind Lamps with Petitioner. Petitioner pointed out that it will file revised income-tax returns in manual / physical form as there is no option to upload these revised income-tax returns electronically on the portal. Petitioner also placed reliance on the decision of the Hon'ble Supreme Court in the case of Dalmia Power Limited v. ACIT (420 ITR 339)(SC) and of the Gujarat High Court in the case of Deep Industries Limited (ITA No. 11916 of 2021) (Guj HC). Petitioner filed (i) revised computation of total income; (ii) notes to computation of total income; (iii) revised special purpose financial statements; (iv) revised Form 3CB and form 3CD and; (v) revised Income-tax returns for AY 2014-15 to AY 2016-17. Petitioner pointed out that similar revised income-tax returns for AY 2017-18 to AY 2020-21 were under preparation and would be filed soon. Petitioner requested Respondent No.1 to take the revised income-tax returns for AY 2014-15 to AY 2016-17 on record and process them at the earliest.

9. Petitioner filed another letter dated February 3, 2022 with Respondent No.1 for filing of revised returns of income for AY 2017-18 to

AY 2019-20. Petitioner filed (i) revised computation of total income; (ii) notes to computation of total income; (iii) revised special purpose purpose financial statements; (iv) revised Form 3CB and Form 3CD and; (v) revised Income-tax returns for AY 2017-18 to AY 2019-20 and requested Respondent No.1 to take the revised income-tax returns for AY 2017-18 to AY 2019-20 on record and process them at the earliest.

10. Petitioner filed another letter dated February 24, 2022 with Respondent No.1 for filing of revised return of income for AY 2020-21. Petitioner filed (i) revised computation of total income; (ii) notes to computation of total income; (iii) revised special purpose financial statements; (iv) revised Form 3CB and Form 3CD and; (v) revised Income-tax return for AY 2020-21 and requested Respondent No.1 to take the revised income-tax return for AY 2020-21 on record and process it at the earliest.

11. Petitioner filed another letter dated April 28, 2022 with Respondent No. 1 pointing out that it has already filed the original return of income for AY 2021-22 on March 14, 2022 and filed a revised return of income online on March 31, 2022. Petitioner pointed out that at the time of filing the revised return of income, the tax audit of the company after giving effect to the scheme of demerger as per the directions of the NCLT was not finalized and the same was finalized only on April 20, 2022. Petitioner pointed out that after finalization of the tax audit report it was observed that for the

year ended March 31, 2020 after giving effect to the scheme of demerger Petitioner was eligible for carry forward and set off of the business loss aggregating to Rs.22,30,60,283/- as detailed in clause no. 32 of the tax audit report. In order to claim set off of the business loss of AY 2020-21 amounting to Rs. 22,30,60,283/- Petitioner filed a manual return of income. Post set off of business loss, the refund due to Petitioner increased from Rs. 4,86,19,710/- to Rs. 10,47,57,307/-. Petitioner pointed out that as the time to file the revised return of income under section 139(5) of the Act had lapsed and hence, Petitioner filed a manual return of income along with (I) revised computation of total income; (ii) revised special purpose financial statements and; (ii) revised Form 3CB and Form 3CD after giving effect to the scheme of demerger and requested Respondent No.1 to take the revised income-tax return for AY 2021-22 on record and process it at the earliest.

12. Respondent no.1 passed the impugned order dated 3rd June 2022 rejecting the revised returns of income to be processed manually on the ground that Petitioner has not followed the provisions of section 119 of the Act. Respondent no.1 accepted the submissions of Petitioner that there is no income-tax portal functional as the due date to file the revised return has elapsed and hence, Petitioner could not file returns electronically. Respondent no.1 relied on section 119(2)(b) read with Circular No.9 of 2015 dated 9th June 2015 to state that Petitioner can file

its application before the respective authority in granting relief. Petitioner was advised to file revised returns before CBDT since the amount of refund claimed exceeded Rs.50 lakhs. Respondent no.1 referred to board's instructions. Respondent no.1 accepted that the Apex Court judgment in the case of **Dalmia Power Ltd. vs. Assistant Commissioner of Income Tax, Circle-1, Trichy**[1] was applicable but according to Respondent no.1 he was bound by CBDT instructions. In the impugned order, Respondent no1 states as under:

> "*Without resorting to such procedure by placing the reliance on the Apex Court has filed the application before the undersinged. It is important to mention here that the undersinged has not been authorized to accept the manual returns relating to the company as such returns have to be filed 'electornically', whose control vests with the Centralized Processing Centre, Bangalore under the administrative control of Principal Director General of Income-tax)System) or Director General of Income-tax (System). Therefore, the undersigned has no role in accepting such manual returns. Though the Apex Court decided the issue against the Department, however, considering the Board's Instruction No.9 of 2015 and section 119(2)(b) of the Act the undersigned has left with no option just to reject the application on the ground that the undersigned has not been empowered to accept the manual returns as per Rule 12(3) of the Act.*
>
> *It is again imperative to state that in the present scheme of the Income-tax Act, only returns electronically filed by the assessee is processed by the Central Processing Centre-ITR, Bangalore. Therefore, there is no scope under the provisions of the Act to process any manual return of income by this office. There is no other mechanism available with the office of the undersigned to allow the assessee to file such return of income electronically on the income-tax portal."*

13. We are surprised that Respondent no.1 is relying on Board Circular

1 (2019) 112 taxmann.com 252 (SC)

which has been considered by the Apex Court in the case of *Dalmia Power Ltd.* (Supra) and still states that he will be bound only by the Board Circular and not the Apex Court Judgment.

14. In fact even in the affidavit in reply filed through one P.K.Vinod Kumar, Assistant Commissioner of Income Tax – 2(1)(1) affirmed on 26th July 2023, Respondents are relying on section 170A which has been inserted in the statute by the Finance Act, 2022, w.e.f., 1st April 2022. Respondent no.1 states that in view of this provision read with CBDT notification dated 19th September 2022 since six months period in the case of Petitioner from NCLT orders has already lapsed, Petitioner to take recourse by making an application before CBDT for consideration of its application based on the facts of the case. This ground of defence is totally unacceptable to us since Petitioner had filed a revised returns dated 18th January 2022, 3rd February 2022, 24th February 2022 and 28th April 2022. Since the Finance Act, 2022 will be applicable only for Assessment Year 2022-23 whereas Petitioner's case is for Assessment Year 2014-15 and 2021-22, therefore newly inserted section 170A read with CBDT Circular 19th September 2022 will not be applicable in the case of Petitioner.

15. In the case of *Dalmia Power Ltd.* (Supra), the issue before the Apex Court was whether the Income Tax Department ought to have permitted the Assessee to file revised Income-tax returns for the Assessment Year 2016-17 after the expiry of the due date prescribed under section 139(5) of

the Act on account of the pendency of proceedings for amalgamation of the Assessee companies with other companies under section 230-232 of the Companies Act 2013. In that case the scheme of amalgamation was approved and sanctioned by NCLT after the due date of filing revised return for Assessment Year 2016-17. The Apex Court referred to section 139(5) of the Act that the said provision would not be applicable in a case where revised return could not be filed on account of the time taken to grant sanction of the Schemes of Arrangement and Amalgamation by NCLT and section 139(5) of the Act only deals with filing of revised return within a period of one year upon discovery of an omission or wrong statement made in the initial return of income.

In the facts and circumstances of that case, Apex Court directed Income-tax department to receive the revised return of income for Assessment Year 2016-17 filed by appellants therein and to complete assessment for the said Assessment Year after taking into account scheme of amalgamation as sanctioned by NCLT.

16. We are also of the view that the decision of the Apex Court in the case of *Dalmia Power Ltd.* (Supra) would be applicable to the facts and circumstances of the present case. In fact in the impugned order, Respondent no.1 also accepts this but states that he is bound by CBDT Circular. In the circumstances, we set aside the impugned order dated 3rd June 2022 and direct Respondents to accept and process Petitioner's

manual revised return of income for Assessment Year 2014-15 to Assessment Year 2021-22 and pass within 12 weeks an Assessment Order in accordance with law.

17. If the jurisdictional AO requires any clarification, he may give notice to Petitioner and if he proposes to make any variation which is prejudicial to the case of Petitioner he may give notice and also give a personal hearing to Petitioner notice whereof shall be communicated atleast 7 working days in advance.

18. Petition disposed.

19. We hasten to add that we have not made any observation on the merits of the revised returns being filed.

(FIRDOSH P.POONIWALLA, J.) **(K.R. SHRIRAM, J.)**