IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 474 OF 2024

OmniActive Health Technologies Limited,
T-8b, 5th Floor, Phoenix House, A Wing, Phoenix Mill Compound, 462, Senapati Bapat Marg, Lower Parel, Mumbai 400 013, PAN: AADCP2914Q. **...Petitioners**

Versus

1. **Assessment Unit, Income Tax Department National Faceless Assessment Centre,**
   Jawaharlal Nehru Stadium, Delhi 110 003.
2. **Deputy Commissioner of Income Tax-Circle-8(2)(1), Mumbai,**
   having address at Aayakar Bhavan, Maharishi Karve Road, Mujmbai 400 020.
3. **Dispute Resolution Panel,**
   Through the Secretary, Ministry of Finance, Government of India, North Block, New Delhi 110 001. **...Respondents**

Mr. Paras Savla, with Mr. Pratik Poddar & Ms. Akshita Bhandari, for Petitioner.
Mr. P. A. Narayanan, for Respondents-Revenue.

CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 4th March 2024

ORAL JUDGMENT: (*Per K.R.Shriram, J.)*

1. **Rule**. Rule made returnable forthwith. By consent of parties, taken up for final hearing.

2. Petitioner is impugning the assessment order dated 21st November 2023 passed by Respondent No.1 under Section 143(3)

read with Section 144C(3) read with 144B of the Income Tax act, 1961 ("**the Act**") along with consequential notice of demand under Section 156 of the Act and penalty notice under Section 270A of the Act.

3. Petitioner's case is that Section 144C(2) of the Act, *inter alia,* requires Assessee, should he to choose to file reference before the Dispute Resolution Panel (DRP) to file such objection within 30 days from the receipt of Draft Assessment Order. The section also requires Assessee to file a copy of the reference with the Assessing Officer ("**AO**") within the time limit prescribed. Section 144C(4) of the Act requires AO to pass a final order within one month from the end of the month in which the period of filing of objections before DRP and AO expires.

4. According to Petitioner, though Section 144C of the Act requires Petitioner to communicate the objection filed before the DRP to the AO, due to oversight/inadvertence Petitioner did not inform the AO within 30 days period prescribed under Sub-section (2) of Section 144C of the Act that it had filed objection by way of an email dated 23rd October 2023. The AO unaware of Petitioner having filed objection before the DRP after expiry of prescribed period of 30 days proceeded to pass the assessment order dated 21st November 2023. Petitioner informed the AO only on 28th November 2023 about having filed objections with the DRP. Mr. Savla states by then time the

damage was done and the assessment order was passed. Mr. Savla also is very fair and candid in stating that the AO cannot be blamed for having passed the assessment order.

5. In our view, since Petitioner had already filed a reference raising its objections to the DRP within the 30 days period and Section 144C(4) of the Act requires the AO to pass a final order including the view expressed by the DRP, we set aside the order dated 21st November 2023 of the AO impugned in this petition. We find support for this view in ***Sulzer Pumps India Pvt. Ltd. v Deputy Commissioner of Income Tax, Circle 15(3)(2) & Ors.***[1] We shall also observe that the AO cannot be faulted for passing the impugned order. At the same time, the AO will also have the benefits of considering the views of the DRP while passing a fresh assessment order.

6. The undertaking of Mr. Savla on behalf of Petitioner to withdraw within two weeks from today the appeal filed before the Commissioner of Income Tax (Appeals) impugning the assessment order is accepted.

7. Accordingly, Rule made absolute in terms of prayer clause (a), which reads as under:

> "a. that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in

1 Writ Petition(L) No.15811 of 2021, dtd. 27th October 2021 (unreported).

> the nature of certiorari under Article 226 of the Constitution of India calling for records of the Petitioner's case pertaining to Assessment Year 2020-21, and after examining the validity, legality and propriety thereof,
>
> > (i) quash and set aside the Final assessment order dated 21.11.2023 passed by Respondent no. 1 under section 143(3) r.w.s 144C(3) r.w.s 144B of the Act (Exhibit D1) along with consequential notice of demand under section 156 of the Act (Exhibit D2) and penalty notice under section 270A of the Act (Exhibit D3);
> >
> > (ii) remit the matter to Respondent no. 3 i.e. the DRP to consider objections raised by the Petitioner and issue Directions as per law."

8. The AO shall take further steps in the matter after the DRP passes its order on the objection filed by Petitioner, in accordance with law.

9. Petition disposed.

(DR. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**