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

WRIT PETITION NO.4891 OF 2024

Sulzer Pumps India Private Limited .. Petitioner
Versus
Assistant Commissioner of Income Tax,
Circle (15)(3)(2), Mumbai .. Respondent

WITH
WRIT PETITION NO.4892 OF 2024

Sulzer Pumps India Private Limited .. Petitioner
Versus
Assistant Commissioner of Income Tax,
Circle (15)(3)(2), Mumbai .. Respondent

WITH
WRIT PETITION NO.4879 OF 2024

Sulzer Pumps India Private Limited .. Petitioner
Versus
Assistant Commissioner of Income Tax,
Circle (15)(3)(2), Mumbai .. Respondent

Mr. Ravi Sawana a/w Ms. Neha Sharma for the petitioners.
Mr. Akhileshwar Sharma for the respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATE : 20 January 2025

P.C.:-

1. Heard learned counsel for the parties.

2. Learned counsel for the parties agreed that the common order can dispose of these petitions because there is substantially similar issue of law and facts. Accordingly, we issue Rule in these petitions. The Rule is

made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. Writ Petition No.4891 of 2024 concerns the assessment year 2012-13, Writ Petition No.4892 of 2024 concerns the assessment year 2013-14 and Writ Petition No.4879 of 2024 concerns the assessment year 2014-15.

4. In all these petitions, the petitioners challenge the orders for adjustments of the refund amount due to the petitioners by resorting to the provisions in Section 245 of the Income Tax Act, 1961.

5. In Writ Petition No.4892 of 2024, the affidavit filed on behalf of the respondents admits that no intimation as contemplated by Section 245 of the Income Tax Act was given to the petitioners before making the adjustments. It explains that notice was prepared but remained to be issued to the petitioners.

6. Considering the above admission and the law laid down by this Court in ***Hindustan Unilever Ltd. Vs. DCIT*** [1]***, Jet Privilege (P) Ltd. Vs. DCIT*** [2] and ***Greatship (India) Ltd. Vs. ACIT***[3]***,*** the impugned order of adjustments dated 5 June 2023 is set aside. However, liberty is granted to the respondents to issue fresh notice to the petitioners and to proceed in accordance with the law.

7. As a consequence of setting aside of the order dated 5 June 2023, the respondents would be duty bound to refund the amounts to the petitioners. However, Mr. Sharma submits that the department has a case for making adjustments. Mr. Ravi Samant, learned counsel for the petitioners disputes this position.

8. In the peculiar facts of this case, we think that interest of justice would be met if the respondents are directed to deposit the amount

1 (2015) 233 Taxmann 353 (Bom.)
2 (2021) 131 taxmann.com 119 (Bom.)
3 (2022) 289 Taxmann 334 (Bom.)

otherwise refundable to the petitioners as a consequence of setting aside the order dated 5 June 2023 in this Court within two weeks from today. The amount shall be invested in a nationalised bank and shall abide by the orders that shall be made by the respondents under Section 245 of the Income Tax Act. Such orders, after following law, must be made within two months from today, failing which the petitioners would be entitled to apply for withdrawal of such amount.

9. The orders under Section 245 of the Income Tax Act must be made having due regard to the above decisions of this Court, including, the decision in *Hindustan Unilever Ltd. (supra)*. All parties' contentions in this regard, however, are kept open.

10. Insofar as Writ Petition Nos.4891 of 2024 and 4879 of 2024 are concerned, the petitioners have alleged that they received no intimation under Section 245 of the Income Tax Act. The respondents have filed affidavits in which they claimed that a communication was sent on 13 January 2023. No proof of service was, however, produced. Inability is expressed in the affidavits to produce proof on the ground that Centralized Processing Cell (CPC) - TDS 1.0 systems are temporarily closed.

11. Thus, as against the categorical assertion by the petitioners that no intimation as contemplated under Section 245 of the Income Tax Act was ever served upon the petitioners, before passing the impugned orders dated 8 May 2023 in Writ Petition No.4891 of 2024 and 5 June 2023 in Writ Petition No.4879 of 2024, the respondents have vaguely asserted service. There is no clarity as regards proof of service.

12. Considering the law laid down in the above decisions, we accept the petitioners' case about them not being served with any intimation as contemplated under Section 245 of the Income Tax Act or granted any

opportunity as contemplated by the above-referred decisions.

13. On the above grounds, we set aside the orders dated 8 May 2023 in Writ Petition No.4891 of 2024 and 5 June 2023 in Writ Petition No.4879 of 2024 and for reason as applied in Writ Petition No.4892 of 2024, direct the respondents to deposit the refundable amounts claimed by the petitioners in this Court within two weeks from today. The amount should be deposited in a nationalised bank and will abide by the orders that the respondents may make under Section 245 of the Income Tax Act. Such orders must be made within two months by following the law and the decisions of this Court including, the decision in *Hindustan Unilever Ltd. (supra).*

14. If no orders are made within two months from the date of uploading of this order or the orders accepting or rejecting the petitioner's case regarding refunds, the petitioners would be entitled to apply for withdrawal of this amount together with interest, if any, that shall be accrued on such amount. Otherwise, the deposit shall abide by the orders that shall be made by the respondents under Section 245 of the Income Tax Act.

15. Rule is made absolute in the above terms in all these petitions. No costs.

16. All concerned to act on the authenticated copy of this order. All contentions of all parties are kept open.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**