

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 5272 OF 2024**

Zarah Rafique Malik

Aged 50 years, Occupation Investor

401, Zillino, LBS Marg & CST

Junction Road, Kurla (West),

Mumbai – 400 070

(PAN: ADCPM8960G)

...Petitioner

Versus

1. Income Tax Officer IT Ward-3(2)(1)

Mumbai

Room No. 1627, 16th Floor,

AIR India Building, Nariman Point,

Mumbai – 400 021

mumbai.ito.it3.2.1.@incometax.gov.in

2. Commissioner of Income Tax,

(International Tax) Circle – 3

Mumbai,

Room No.1601, 16th Floor,

AIR India Building, Nariman Point,

Mumbai – 400 021

mumbai.cit.it3@incometax.gov.in

3. Dispute Resolution Panel 2 WZ

World Trade Centre-1

Cuffee Parade, Mumbai – 400 005

mumbai.ito.hq.drp2@incometax.gov.in ...Respondents

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Mr K Gopal, with Jitendra Singh, Neha Paranjpe & Shivali

Mhatre, for the Petitioner.

Ms Shilpa Goel, for the Respondent.

CORAM M.S. Sonak &
 Jitendra Jain, JJ.
DATED: 03 March 2025

ORAL JUDGMENT *per M S Sonak, J*

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioner challenges the final assessment order dated 28 May 2024 under Section 143(3) read with Section 144C (3) of the Income Tax Act, 1961 (IT Act), along with consequential notices of demand dated 28 May 2024 and seeks remission of the matter to the Dispute Resolution Panel (DRP) for consideration following the law.
4. This Petition concerns the assessment year 2022-23.
5. The Petitioner's returns dated 30 December 2022 were selected for scrutiny assessment, and necessary notice under Section 143(2) was issued to the Petitioner. On 28 March 2024, the first Respondent issued the Petitioner a show cause notice seeking justification of certain expenses and claims. The Petitioner responded on 29 March 2024. On 29 March 2024, the first Respondent passed a draft order in terms of Section 144C (1) of the Act.

6. The Petitioner lodged her objections to the draft order on 24 April 2024. However, the Petitioner inadvertently failed to inform the assessing officer about the objections being filed before the DRP and the pendency of such objections before the DRP. As a result, the first Respondent made the impugned final assessment order dated 28 May 2024. Based on this impugned assessment order, notices under Sections 156, 270A and 274 were also issued to the Petitioner.

7. Mr K Gopal the learned Counsel for the Petitioner fairly admitted that there was an omission on the part of the Petitioner in forming the first Respondent about the pendency of objections before the DRP. However, relying on **Sulzer Pumps India Private Limited Vs Dy. Commissioner of Income Tax Circle-15(3) (2) & Ors¹** and **OmniActive Health Technologies Limited Vs Assessment Unit, Income Tax Department National Faceless Assessment Centre²** Mr Gopal submitted that this lapse may be condoned since, factually, the objections were pending before the DRP. He pointed out that due to some communication gap between the Petitioner and her tax consultant, this fact remained to be intimated to the first Respondent.

8. Ms Shilpa Goel, learned Counsel for the Respondent, submitted that the assessing officer was not entirely at fault in this matter. She also submitted that once the final assessment order is made, even the DRP will be rendered *functus officio*. To support her contentions, she relies on **Undercarriage and Tractor Parts (P) Ltd vs. Dispute Resolution Panel-3³**.

¹ WPL/15811/2011 decided on 27 October 2021

² WP/474/2024 decided on 4 March 2024

³ (2023) 156 taxmann.com 79 (Bombay)

9. We have considered the rival contentions and perused the material on record.

10. In the peculiar facts of this case, we are inclined to set aside the impugned order and remit the matter to the DRP. The facts, in this case, are comparable in *Sulzer Pumps India Private Limited* (supra) where, a Coordinate Bench of this Court, after recording that the assessing officer was not at fault still, granted the assessee in the same matter an additional opportunity since factually, objections had been filed with DRP, and such objections were pending. The relief in *Sulzer Pumps* (supra) was granted based on facts like those in the present case. Therefore, it is not as if the *Sulzer Pumps* (supra) or this order is a precedent for exercising discretion in every matter of this nature, irrespective of the factual position.

11. The facts in *Undercarriage and Tractor Parts* (supra) were significantly different and not comparable to the present matter. There, apart from the failure to inform the assessing officer about the pendency of objections before the DRP, the assessee challenged the assessing officer's final assessment order before the Commissioner of Income Tax (Appeals). While this Appeal was pending, the DRP issued the impugned directions and passed a second assessment order dated 31 October 2019. It was this second assessment order which was under challenge. In the context of such facts, this Court held that once the final assessment order was made by the assessing officer and the same was the subject matter of Appeal before the Commissioner of Income Tax (Appeals), the DRP would become *functus officio* and have no powers to issue directions for making yet another assessment order.

12. At the same time, we agree with Ms Goel that the assessing officer who made the impugned assessment order in this case was not at fault because there was no intimation by the Petitioner about the pendency of objections before the DRP. Though, in the peculiar facts of the present case, which are quite similar to those in *Sulzer Pumps* (supra) we are indulging the Petitioner, it is only appropriate that the Petitioner, for her lapse, she pays costs of Rs.10,000/- favouring the High Court employees medical welfare fund at Mumbai.

Charitable Trust Bank Account Details:

Account Name	The High Court Employees Medical Welfare Fund at Mumbai
Account Number	000120110001337
Bank Name	Bank of India
Branch	Mumbai Main
IFSC Code	BKID0000001

13. Such costs must be paid within two weeks of uploading this order. Subject to payment of such costs, the impugned assessment order shall stand set aside, and the matter shall stand remitted to the DRP to proceed following the law. The necessary receipt must be filed in this matter, along with a return intimation to the learned Counsel for the Respondent backed with proof of payment.

14. The rule is made absolute in terms of prayer clause (a), subject to payment of the above-referred cost within two weeks from the date of uploading this order. All parties'

contentions on merits are expressly left open. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)