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

**WRIT PETITION NO. 1441 OF 2025**

UDAY SHIVAJI JAGTAP
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Rajeshwar Bullion Trading .. Petitioner
Versus

The Assistant Commissioner of Income Tax Circle 19(3), Mumbai & Ors. .. Respondents

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***Mr. Dharan Gandhi,*** *Advocate for the Petitioner*

***Ms. Mamta Omle****, Advocate for the Respondents*

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**CORAM: B. P. COLABAWALLA &**
**FIRDOSH P. POONIWALLA, JJ.**

**DATE: JUNE 17, 2025.**

**P. C.**

1. Rule. Respondents waive service. With the consent of the parties, rule is made returnable forthwith and heard finally.

2. The challenge in the present petition is to adjustment of refunds of the Petitioner of Rs. 40,55,540/- of the AY 2021-22 and of Rs. 1,28,61,270/- of the AY 2024-25 by Respondent Nos. 1 and 3 against the outstanding demands for the AY 2017-18.

3. There are two demands for the AY 2017-18. A normal scrutiny

assessment of the Petitioner was completed vide order under Section 143(3) r/w Section 144 of the Act dated 28th December 2019. Vide such order, Respondent No. 1 computed the total income of the Petitioner at Rs.83,08,012/- after making addition of Rs.38,92,692/-. Further, notice of demand under Section 156 of the Act was issued on 28th December 2019 for a demand of Rs. 38,99,645/-. An appeal against the said order of assessment has been filed on 20th Janaury 2020 which is pending before the Commissioner (Appeals)-NFAC, Respondent No. 5. Further, the Petitioner had filed an application for stay of demand before Respondent No. 1 vide letter dated 25th January 2020 filed on 28th January 2020. On the same day, on the very same application, Respondent No. 1 rejected the application and directed the Petitioner to pay 20% of the demand. The Petitioner, accordingly, made a payment of Rs.7,80,000/- i.e., 20% of the demand on 30th January 2020. The same was intimated to Respondent No. 1 vide letter dated 31st January 2020, filed on 3rd February 2020. Respondent No. 1 was requested to keep the balance demand in abeyance.

4. Thereafter, an intimation under Section 143(1) of the Act dated 28th July 2022 for the AY 2021-22 was issued by Respondent No.3 wherien the returned income was accepted and refund of Rs.46,41,066/- was determined. Of the above amount of refund, a sum of Rs.31,19,650/- was

adjusted against the outstanding demand for AY 2017-18 arising out of the original assessment order. This was despite the payment of 20% of the outstanding demand, earlier. Further, a sum of Rs.9,35,880/- was adjusted against the interest under Section 220 arising out of the same assessment proceeding for AY 2017-18. The Petitioner objected to the said adjustment vide letter dated 2nd January 2023. However, there was no response from the Respondents.

5. As per the Instruction of the Board bearing number CBDT O.M. in F. No. 404/72/93-ITCC dated 29th February 2016, as modified by Board instruction dated 31st July 2017, the Revenue can seek recovery of 20% of the demand and stay the balance demand. Since, the Petitioner had already paid 20% of the demand arising out of the assessment order under Section 143(3) r/w Section 144 of the Act dated 28th December 2019, therefore, no further amount was required to be paid/adjusted. As a result, amount of refund adjusted in excess of 20% of the demand has to be refunded to the Petitioner with interest. This Court has already taken this view in similar cases in ***Andrew Telecommunications India Pvt Ltd vs. PCIT, Goa [(2017) reported in 77 Taxmann.com 312 (Bombay)], Fastlink Connection Private Limited vs. DCIT 6(1)(2) and Ors. [in WP No. (L) 11265 of 2024]*** and other cases.

6. The matter does not end here. During the pendency of the appeal, Respondent No. 1 for AY 2017-18 initiated reassessment proceeding vide notice under Section 148 of the Act dated 31st July 2022. The National Faceless Assessment Centre ('NFAC') completed the reassessment proceeding vide order under Section 147 r/w Section 144B of the Act dated 30th May 2023. Vide such order, the total income of the Petitioner was computed at Rs.2,31,26,420/- after making an addition of Rs.1,87,11,100/-. Also, a notice of demand under Section 156 of the Act was issued on 30th May 2023 for a demand of Rs.1,99,97,631/-. An Appeal against the said order of reassessment has been filed on 26th June 2023 which is pending before the Commissioner (Appeals)- NFAC, Respondent No. 5. Further, the Petitioner had filed an application for stay of demand before Respondent No. 1 vide letter dated 29th June 2023 filed on 3rd July 2023. Such application of the Petitioner is not yet disposed of.

7. Subsequently, an intimation under Section 143(1) of the Act dated 17th January 2025 for the AY 2024-25 was issued by Respondent No. 3 wherein the returned income was accepted and refund of Rs. 1,28,61,270/- was determined. Along with the said intimation, the Petitioner received a proposal for adjustment of the refund against the outstanding demand for the

AY 2017-18 arising out of the reassessment proceeding. On 21st January 2025, the Petitioner filed an online reply objecting to the said adjustment. It was, *inter alia*, contended that the stay application has been filed with Respondent No. 1 and the same is yet to be disposed of. However, without considering the reply of the Petitioner and without dealing with the same, Respondent No. 3, adjusted a sum of Rs.1,28,61,270/- against the pending demand arising out of the reassessment proceeding for the AY 2017-18. This was vide email dated 28th February 2025 issued by Respondent No. 3.

8. The Petitioner has challenged the reassessment proceeding for AY 2017-18, and one of the grounds raised is that the reassessment proceedings initiated vide notice under Section 148 of the Act is without jurisdiction. This is, *inter alia*, because the notice under Section 148 has been issued by the Jurisdictional Assessing Officer in place of the Faceless Assessing Officer, in violation of the provisions of Section 151A of the Act read with the Scheme notified on 29th March 2022 vide Notification dated 18/2022. We find that this issue is squarely covered by the decision of this Court in case of ***Hexaware Technologies Ltd. v. Asstt. CIT reported in [(2024) 464 ITR 430 (Bombay)]***. Further, in similar circumstances, this Court in case of ***Mahindra and Mahindra Ltd v. ACIT reported in [(2024) 169 taxmann.com 333 (Bombay)]*** and ***Dennischarles***

***John Das vs. ITO reported in [(2024) 168 Taxmann.Com 123 (Bombay)]*** has stayed the assessment order till the proceeding before the Appellate Authority or Revisionary Authority are decided. Thus, this Court has granted a complete stay on the demand, in light of the fact that the issue on merits is covered by the judgment of this Court.

9. In light of the above, the demand of Rs. 1,99,97,631/- arising out of the reassessment proceeding vide order under Section 147 r/w Section 144B of the Act dated 30th May 2023 ought to be stayed, till the disposal of appeal by the Commissioner (Appeals). Thus, the adjustment of refund of Rs.1,28,61,270/- for the AY 2024-25 against the outstanding demand for the AY 2017-18 is bad in law.

10. In light of the aforesaid discussion, Respondent No. 1 and Respondent No. 3 are therefore, directed to reverse the adjustment of refund of Rs.40,55,530/- for the AY 2021-22 against the outstanding demand for AY 2017-18 and refund the same along with interest, in accordance with law, on or before 30th July 2025.

11. Similarly, Respondent No. 1 and Respondent No. 3 are directed to reverse the adjustment of refund of Rs.1,28,61,270/- for the AY 2024-25

against the outstanding demand for AY 2017-18 and refund the same along with interest, in accordance with law, on or before 30th July 2025.

12. Balance demand arising out of the order under Section 143(3) r/w Section 144 of the Act dated 28th December 2019 and order under Section 147 r/w Section 144B of the Act dated 30th May 2023 both for AY 2017-18 are hereby stayed till the disposal of the Appeals by Respondent No. 5.

13. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

14. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[FIRDOSH P. POONIWALLA, J.]** **[B. P. COLABAWALLA, J.]**



*Uday S. Jagtap*