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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3327/2026, CM APPLs. 16080/2026, 16081/2026 & 16101/2026

MITSUBISHI ELECTRIC INDIA PRIVATE LIMITEDPetitioner

Through: Mr. Manuj Sabharwal, Adv.

versus

**DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE 16(1),
DELHI & ORS.**Respondents

Through: Mr. Abhishek Maratha, SSC with Mr.
Apoorv Agarwal, JSC.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

% **16.03.2026**

REPORTABLE

DINESH MEHTA, J. (ORAL)

1. By way of the present writ petition, the petitioner has challenged the order dated 03.03.2026 passed under Section 142(1) of Income Tax Act, 1961 (*hereinafter referred to as 'Act of 1961'*) and notice dated 09.03.2026, whereby the respondent No.2-Assessing Officer (*hereinafter referred to as 'AO'*) has decided to go ahead with the assessment proceedings which were initiated pursuant to the notices dated 19.06.2024 and 18.11.2024 issued under Section 143(2) and 142(1) of the Act of 1961 respectively, for Assessment Year 2023-24.

2. Mr. Sabharwal, learned counsel for the petitioner informed the Court that the petitioner had initially applied before the Authority for Advance Ruling (*hereinafter referred to as 'AAR'*) vide application dated 10.10.2018 under Section 245Q(1) of the Act of 1961 seeking a ruling on the following question:-



“Whether on facts and circumstances of the case, Section 43B of the Income-tax Act, 1961 (“the Act”) allows deduction of custom duty paid under protest to the custom authorities for clearance of goods, pursuant to the order passed by the Commissioner of Customs rejecting duty exemption benefit by the applicant and thereby loading the invoice with 5%/ 10% duty.”

3. During the course of regular assessment proceedings under Section 143(3) of the Act of 1961, the AO issued various notices, raising certain queries.

4. The petitioner moved another application dated 27.05.2024 under Section 245Q(1) before the Board for Advance Rulings (*hereinafter referred to as ‘BFAR’*) in relation to whether the fee for technical services paid to expatriate employees reimbursed by it to its holding company namely, Mitsubishi Electric Corporation, Japan (MELCO) qualifies as fee for technical services as per Section 9(1)(vii) of the Act of 1961 by referring the following questions:-

“1. On the facts and in the circumstances of the case, whether the amounts (representing salary and benefits payable by MELCO to expatriate employees) reimbursed by the Applicant to MELCO qualifies as fees for technical services in the hands of MELCO under the provisions of Section 9(1)(vii) of the Income-tax Act, 1961 ('the Act')?

2. On the facts and in the circumstances of the case, whether the amounts (representing salary and benefits payable by MELCO to expatriate employees reimbursed by the Applicant to MELCO qualifies as Fees for Technical Services in the hands of MELCO under Article 12(4) of the India-Japan Double Taxation Avoidance Agreement (India-Japan Tax Treaty)?

3. Is there a permanent establishment of MELCO in India by presence of seconded employees of MELCO under the Article 5 of the DAA and if so, is the amount (representing salary and benefits payable by MELCO to expatriate employees) received by MELCO from the Applicant in the nature of 'business profits' attributable to such permanent establishment in India under Article 7 of the DTAA?

4. If the answer to question No. 3 is in the affirmative, is the amount of taxable income NIL, inasmuch as the reimbursements are on actual basis?

5. If the answer to question no.1 to 4 above is in the affirmative, whether the



tax is liable to be deducted at source by the applicant under the provision of Section 195 of the Income-tax Act, 1961? If yes, then at what rate?"

5. On 02.07.2024, the petitioner filed a reply/representation and requested the AO to keep the proceedings in abeyance in view of the provisions contained in Section 245RR of the Act of 1961 as the matter was pending before the BFAR.

6. It is noteworthy to mention that all pending applications before the AAR have now been transferred to BFAR consequent to the relevant amendment introduced in the Act of 1961 by way of Finance Act, 2021 which led to constitution of BFAR.

7. It is admitted case of both the parties that the matter has been transferred to and is now pending consideration before the Board for Advance Rulings (earlier AAR).

8. The AO passed the impugned order dated 03.03.2026, *inter alia*, observing that the issues which are pending before the BFAR are only in respect of (i) reimbursement of salary and benefits paid to expatriate employees, and (ii) deductibility of customs duty paid under protest, whereas, a host of other issues are to be considered by him while completing the assessment proceedings. While turning down petitioner's request for deferring the assessment proceedings, the AO has observed in the present case thus:

"...In the present case, the issues under examination in the assessment proceedings include, inter alia, verification of relief claimed under section 90/91, reconciliation of disallowance under section 40(a)(ia), examination of substantial deduction claimed under the head "any other amount allowable", verification of ICDS adjustments, allowability of depreciation and additional depreciation, reconciliation of receipts as per Form 26AS/TDS statements, and matters arising pursuant to reference made under section 92CA(1) and order passed under section 92CA(3) etc.. These issues are independent and distinct from the matters stated to be pending



before the Hon'ble BFAR.

It is further observed that the issue relating to reimbursement of expatriate salary does not explicitly and specifically arise from the queries presently under consideration in the assessment proceedings. Even in respect of customs duty paid under protest, the present examination pertains to allowability of deduction claimed in the return of income, which necessarily involves verification of the nature of payment, year of crystallisation of liability and applicability of relevant provisions of the Act...

9. Mr. Sabharwal, learned counsel for the petitioner took the Court through the relevant provisions, more particularly Sections 245R and 245RR read with Clauses (viii) and (ix) of Explanation 1 to Section 153 of the Act of 1961 and argued that as per the scheme of the Act of 1961, the AO cannot continue with the assessment proceedings, as the matter is admittedly pending before BFAR.

10. He argued that if the AO is allowed to complete the proceedings and pass assessment order, it will seriously prejudice petitioner's rights on the one hand and will lead to an anomaly on the other hand in the sense that in case he decides those very issues, it will breach the mandate of Section 245RR of the Act of 1961 and in case he passes the order without touching upon these issues, he shall have to pass two assessment orders which shall be contrary to the scheme of the Act of 1961. Because, the Act does not envisage two assessment orders to be passed for one assessment year. In support of his contention, learned counsel for the petitioner relied upon the following judgments of Allahabad High Court and Gujarat High Court :

- (i) ***Debi Prasad Malviya v. Commissioner of Income-tax***, reported in [1952] 22 ITR 539 (Allahabad);
- (ii) ***Commissioner of Income-tax v. Himatlal Bhagubhai***, reported in [1972] 86 ITR 481 (Gujarat)

11. Apart from the aforesaid judgments, learned counsel for the petitioner



placed heavy reliance upon the order dated 13.03.2024 passed by a Coordinate Bench of this Court in W.P.(C) 3723/2024 being ***Mother Dairy Fruit and Vegetable Private limited v. The Assessment Unit, National Faceless Assessment Centre, New Delhi & Others*** so also the order dated 12.03.2024 in W.P.(C) 13121/2019 being ***HLS Asia Limited v. Assistant Commissioner of Income Tax, Circle-II(1) Delhi*** and argued that in light of aforesaid judgments of this Court, the action of the AO to choose to proceed with the matter is liable to be quashed and assessment proceedings are required to be stalled unless the matter is finally decided by the BFAR.

12. Mr. Maratha, learned senior standing counsel for the respondents, on the other hand argued that the submissions of the petitioner-assessee cannot be accepted inasmuch as the assessment proceedings need not be stalled for an indefinite period. He added that the provisions contained in Section 245RR is only in relation to “**the issue**” and not in relation to the “entire assessment proceedings”. He argued that a correct interpretation of provision contained in Section 245RR would mean that the AO has to stay the proceedings of the assessment in relation to the issue(s) which are pending before the AAR or BFAR, as the case may be, and not the proceedings in whole as such.

13. He argued that out of various issues which are pending before the AO, the assessee may *bonafidely* or intentionally take one or more issues out of them before the BFAR. The provision under Section 245RR may require the assessment proceedings of the revenue department to be stalled, but the revenue cannot be made to suffer until the matter is finally decided by the BFAR. He argued that the order dated 03.03.2026 passed by the AO and his decision to continue with the proceedings is strictly within the four corners



of the law and does not warrant interference.

14. Heard learned counsel for the parties.

15. Before advertng to the case in hand, we deem it appropriate to keep relevant provisions handy for which, they are reproduced hereunder:

Section 245Q

“Application for advance ruling.

(1) An applicant desirous of obtaining an advance ruling under this Chapter or under Chapter V of the Customs Act, 1962 (52 of 1962) or under Chapter IIIA of the Central Excise Act, 1944 (1 of 1944) or under Chapter VA of the Finance Act, 1994 (32 of 1994) may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The application shall be made in quadruplicate and be accompanied by a fee of ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher.

(3) An applicant may withdraw an application within thirty days from the date of the application.

(4) Where an application for advance ruling under this Chapter is made before such date as the Central Government may, by notification in the Official Gazette appoint, and in respect of which no order under sub-section (2) of section 245R has been passed or no advance ruling under sub-section (4) of section 245R has been pronounced before such date, such application along with all the relevant records, documents or material, by whatever name called, on the file of the Authority shall be transferred to the Board for Advance Rulings and shall be deemed to be the records before the Board for Advance Rulings for all purposes:

[Provided that the applicant may, on or before the 31st day of October, 2024, request the Board for Advance Rulings in writing that the application so transferred may not be proceeded with, if up to the date of such request, the Board for Advance Rulings has not passed an order under sub-section (2) of section 245R.]”

Section 245RR

Appellate authority not to proceed in certain cases.

245RR. No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of section 245Q.

(emphasis supplied)

Clause (viii) & (ix) of Explanation 1 to Section 153

“Time limit for completion of assessment, reassessment and recomputation.



153.....

...(viii) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or

(ix) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or...”

16. True it is, that Section 245Q provides for application for advance ruling or adjudication of the issue(s) which the assessee deems appropriate to be adjudicated before culmination of the transaction or assessment proceedings. Section 245RR has been enacted in order to give effect to the provisions of Section 245Q. A careful reading of Section 245RR makes it abundantly clear that it talks of **“any issue in respect to which an application has been made by the applicant”**. In this expression, the above highlighted portion of provision of Section 245RR clearly suggests that the AO is required to keep his hands off only in relation to the issue(s) which are pending before the AAR or BFAR, as the case may be.

17. The legislature was conscious while enacting Section 245RR - its intent and purport is very clear. It provides that the assessment shall be kept in abeyance only in relation to the issue(s) which are pending consideration pursuant to an application under Section 245Q. The entire assessment proceedings, *per-se*, in our considered opinion, cannot be and need not be deferred or kept in abeyance, awaiting the decision of the application under Section 245Q. Clauses (viii) and (ix) of the Explanation 1 to Section 153, no doubt gives an impression at the first blush that the period during which the



application(s) remain(s) pending before the BFAR is required to be excluded, however, such provision cannot be read in isolation or in ignorance rather *de hors* the provisions of Section 245RR of the Act of 1961 and being oblivious of its contextual interpretation.

18. Needless to mention that Section 245RR comes after Explanation 1 to Section 153. In case two provisions appear to be contrary to each other, the rule of interpretation suggests that a provision which has been enacted subsequently or later in point of time (in order of number) shall prevail. The reason for such view is that when two provisions of same enactment have some contradiction amongst them, it shall be presumed that each section has been inserted or introduced one after another. In other words, since Section 153 is prior in point of time and Section 245RR is later, the provisions of Section 153 of the Act of 1961 shall have to concede to Section 245RR or in other words in case of doubt or even conflict between the provisions of Section 153 vis-a-vis the provision of Section 245RR, what is contained in Section 245RR shall prevail.

19. Accordingly, maybe, there is some room of doubt in the provisions in clauses (viii) and (ix) of Explanation 1 to Section 153 if read in isolation, but such doubt wanes rather vanishes, when we look at Section 245RR of the Act of 1961, which clearly mandates that the proceedings shall be kept in abeyance in relation to the issues which are pending before the BFAR. Therefore, the harmonious interpretation of clauses (viii) and (ix) of Explanation 1 to Section 153 vis-a-vis Section 245RR of the Act of 1961 would mean that the proceedings shall be kept in abeyance in relation to the issues which are pending before the BFAR. Meaning thereby, the AO can proceed with the assessment, but he cannot touch the issue(s) which are



pending before the BFAR, as a result of the application filed under Section 245Q.

20. The question then crops up is that how the AO shall pass an order in piecemeal and how will he pass another assessment order in case the pending issue is decided by the BFAR at a subsequent stage. The answer is not difficult to find; and the same lies in Section 150 of the Act of 1961, which enables the AO to give effect to the order of the BFAR.

21. For the purpose of ready reference, Section 150 of the Act of 1961 is reproduced herein-below:

“150. Provision for cases where assessment is in pursuance of an order on appeal, etc.

(1)Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2)The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.”

22. A simple look at the above noted provision reveals that it is not only an order in appeal but also an order passed by any authority pursuant to an application under Section 245Q of the Act of 1961, which shall give the AO a right to issue notice for assessment, reassessment order or recomputation. The nature of adjudication by the Authority for Advance Ruling is akin to ‘reference’, because it decides the question of law on set of facts or with



respect to a transaction. The answer *per-se* is not an order but maybe a finding on the assessee and the authorities as enumerated under Clause (a) to (c) of Section 245S(i) of the Act of 1961. In common parlance also, it is said to be a 'reference' before the AAR or BFAR. That apart, the application under Section 245Q is covered under the ambit of any proceedings as mentioned in Section 150 of the Act of 1961.

23. Accordingly, if the BFAR decides the issues as raised by the petitioner in its favour, then there is no question of passing a re-assessment order or an order giving effect to the order of the BFAR, but in case the issue(s) is/are decided against the assessee, the AO may issue a notice under Section 148/150 of the Act of 1961.

24. Moving onto the judgments which Mr. Sabharwal, learned counsel for the petitioner has cited - the judgments rendered in the cases of ***Debi Prasad Malviya (supra)*** and ***Himatlal Bhagubhai (supra)*** of Allahabad High Court and Gujarat High Court, respectively simply deal with the fragmented assessment orders, which obviously, the Act of 1961 does not envisage. Having gone through both the judgments, we find that the question of pending application under Section 245Q was not at all involved in those cases. We may mention here that Section 245Q by such time was not even introduced.

25. So far as the judgment rendered in the case of ***HLS Asia Ltd. (supra)*** is concerned, it appears to be in favour of the petitioner-assessee, but if the facts noted therein are carefully examined, it transpires that no question or plea was raised by the respondent that the issues which are pending before the AAR or BFAR as the case may be are exactly the same issues which are being sought to be adjudicated by the AO. In the absence of such facts or



pleadings, we are of the view that the aforesaid judgment is not the authority precisely on the issues which are before us.

26. So far as decision of a coordinate bench of this Court in the case of ***Mother Dairy (supra)*** is concerned, it takes almost the same view which we have taken in the instant judgment.

27. The writ petition is, therefore, dismissed. It is hereby ordered that the AO shall frame the assessment order in accordance with law, leaving the issue(s) which are pending before BFAR pursuant to the petitioner's applications dated 10.10.2018 and 27.05.2024. He shall be free to pass assessment order on all other issues and as and when pending issues before the BFAR are decided, he shall pass appropriate order in accordance with law.

28. We are conscious of this fact that Section 245RR uses the expression "resident". An application under Section 245Q may be filed by non-resident as well, and, therefore, the applicability of the law which we have laid down shall be obviously confined to the assesseees who are residents of India and not to the non-residents of India. In case of non-residents of India, the Court may take an independent view as and when occasion so arises.

29. The writ petition stands dismissed alongwith pending applications.

DINESH MEHTA, J.

VINOD KUMAR, J.

MARCH 16, 2026/ ck