

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

WRIT PETITION NO. 3064 OF 2017

Vodafone India Ltd.

.. Petitioner

v/s.

Deputy Commissioner of Income Tax,
Circle 8(3)(2) and Anr.

.. Respondents

Mr. Percy Pardiwalla, Senior Counsel a/w Mrunal Parekh, Adhiraj Malhotra, Divya Hirawat i/b DMD advocates for the petitioner
Mr. N.C. Mohanty for respondent – Revenue

**CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.**

DATED : 10th APRIL, 2018.

PC.

1. The learned Counsel for the petitioner seeks to amend the petition by adding Principal of Commissioner of Income Tax-8 as respondent no.3 to the petition. Besides, seeking to add the challenge to the computation of income annexed to / accompanying the order dated 14th August, 2017 of the Assessing Officer (Exhibit 'A'), letter dated 15th September, 2017 of the Assessing Officer to Bank and the approval of the proposed adjustment of the Commissioner of Income Tax, as done by endorsement on order sheet dated 8th September, 2018 in the prayer clause and also add them as Exhibit 'T' collectively. Amendment to be carried out forthwith. Re-

verification dispensed with.

2. At the request of the Counsel, the petition is disposed of finally at the stage of admission.

3. This petition under Article 226 of the Constitution of India challenges the action on the part of the respondent no.1 (Assessing Officer) in having adjusted the refund available to the petitioner from the Revenue for the Assessment Year 2005-06 against the outstanding demands payable to the Revenue for Assessment Years 2004-05, 2006-07 and 2008-09. This adjustment according to the petitioner is purported to be done under Section 245 of the Income Tax Act, 1961 (the Act).

4. On 14th August, 2017, the respondent no.1 passed an order giving effect to the order under Section 250 of the Act passed by the Commissioner of Income Tax (Appeals) [CIT(A)] relating to Assessment Year 2005-06 resulting in refund of Rs.128.16 crores. The Income Tax computation form served upon the petitioner along with the above order dated 14th August, 2017 as an annexure thereto. The Income Tax computation stated that refund of Rs.128.16 crores for the

Assessment Year 2005-06 is being adjusted against the demands for the Assessment Years 2004-05, 2006-07 and 2008-09.

5. On 22nd August, 2017 the respondent no.1 issued an intimation under Section 245 of the Act informing the petitioner that the refund of Rs.128.16 crores available for Assessment Year 2005-06 is being adjusted against the demands for Assessment Years 2004-05, 2006-07 and 2008-09. The petitioner was called upon to reply within a period of three days. The petitioner by its letter dated 12th September, 2017 pointed out that notice dated 22nd August, 2017 was received only on 8th September, 2018 and made a grievance of the short time of three days to respond. It also opposed the adjustment of refund due to it by specifically inviting attention to the decision of this Court in *Hindustan Unilever Ltd. Vs. Deputy Commissioner of Income Tax-1(1) & Ors., 377 ITR 281* wherein the manner and procedure to be followed for making any adjustments under Section 245 of the Act is set out i.e. after considering the petitioner's objections to the proposed adjustments by a speaking order, so as to avoid arbitrary exercise of powers under Section 245 of the Act. Besides, the petitioner also made submissions on merits of the demands for the Assessment Years 2004-05, 2006-07 and 2008-09 being covered in its favour. Further,

reliance was also placed upon the stay order granted in respect of the demand for certain years which is being adjusted against the refund of Rs.128.16 crores due to the petitioner for the Assessment Year 2005-06 is being adjusted under Section 245 of the Act.

6. It is the petitioner's grievance that inspite of the above, no order considering the petitioner's objections has been passed. Nor has the refund of Rs.128.16 crores due to it for Assessment Year 2005-06 been given to it. Thus, the petition.

7. In response to the petition, the Revenue has filed an affidavit-in-reply dated 15th December, 2017 of the respondent no.1. The affidavit-in-reply states that refund due to the petitioner for the Assessment Year 2005-06 has already been adjusted against the arrears of tax for Assessment Years 2004-05, 2006-07 and 2008-09 by communication to the Bank. It further states that the assessee's reply dated 12th September, 2017 to the proposed adjustment under Section 245 of the Act was duly considered but not accepted. The affidavit-in-reply also placed reliance upon the approval of the Commissioner of Income Tax to adjust the refund due for Assessment Year 2005-06 with the tax arrears for Assessment Years 2004-05, 2006-07 and 2008-09 as

endorsed on the order sheet dated 8th September, 2017.

8. The aforesaid documents annexed to affidavit-in-reply dated 15th December, 2017 led to the petition being amended to challenge the same.

9. We specifically asked Mr. Mohanty, learned Counsel for the Revenue whether the adjustment of the refund with the arrears of tax was by a speaking order. In response, he stated that it is mere noting in the file and no detailed order has been passed. We also note that adjustment was done according to the respondent no.1 on 15th September 2017 only after having received the petitioner's objections to the adjustment on 12th September, 2017. This in the background of the fact that the notice dated 22nd August, 2017 issued under Section 245 of the Act was received by the petitioner only on 8th September, 2017. Thus, neither the Assessing Officer or the approval of the Commissioner of Income Tax as endorsed on order sheet dated 8th September, 2017 at all consider the petitioner's objections. We further find that the petitioner had specifically invited the attention of the respondent no.1 to the decision of this Court in Hindustan Leaver Ltd. (supra) setting out the manner and procedure by

which the refunds are to be adjusted against the pending demands under Section 245 of the Act. However, the respondent no.1 chose to completely ignore the binding decision of this Court and proceeded to adjust the refund due for Assessment Year 2005-06 with the demands payable for the Assessment Years 2004-05, 2006-07 and 2008-09 without considering the petitioner's contentions.

10. In these circumstances, the approval obtained by the respondent no.1 from the Commissioner of Income Tax so as to adjust the refund as recorded in the order sheet dated 8th September, 2017 is premature. Therefore, the action of the respondent no.1 adjusting the refund due against the tax arrears as is evidenced from the computation of income accompanying the order dated 14th August, 2017 and as evidenced by the communication dated 15th September, 2017 addressed to the Bank are set aside. So also, the endorsement of the Commissioner of Income Tax approving the adjustment as found in the order sheet dated 8th September, 2017 are quashed and set aside. This for the reason that they are in defiance of the directions of this Court in Hindustan Unilever Ltd. (supra).

11. It would only be appropriate that the Revenue examines and

considers the petitioner's response dated 12th September, 2017 to the intimation dated 22nd August, 2017 by a speaking order before refund is adjusted against the demands of tax outstanding. However, the manner in which the respondent no.1 has dealt with the petitioner's refund claim by having it adjusted against the arrears of tax without having followed the due process of law as reiterated by the binding decision of this Court in Hindustan Unilever Ltd. (supra), the apprehension of the petitioner that it would get no justice at her hands in this case, seems justified. Therefore, we asked Mr. Mohanty, learned Counsel appearing for the Revenue to suggest / nominate any other Officer of the Revenue who would consider the petitioner's response dated 12th September, 2017 to the intimation dated 22nd August, 2017 in accordance with the decision of this Court in Hindustan Unilever Ltd. (supra). On instructions, Mr. Mohanty, states that the entire issue of adjustment in terms of Section 245 of the Act as called upon the petitioner to show cause by letter dated 22nd August, 2017 would be considered by the Additional Commissioner of Income Tax, Range 8(3). The petitioner is granted one week's time to file a further submission before him. Needless to state that the Additional Commissioner of Income Tax will dispose of the petitioner's responses to the intimation dated 22nd August, 2017 in accordance with principles of natural justice as

expeditiously as possible and preferably within five weeks from today.

12. The Petition is disposed of in above terms. No order as to costs.

(SANDEEP K. SHINDE, J.)

(M.S. SANKLECHA, J.)