



## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION (L) NO. 5119 of 2023

Bharat Petroleum Corporation Limited, ]  
Taxation Section, ]  
Bharat Bhavan - I, 4<sup>th</sup> Floor, ]  
4 & 6 Currimbhoy Road, ]  
Ballard Estate, ]  
Mumbai - 400001 ] ...Petitioner

Versus

1. Assistant Director of Income Tax, CPC, ]  
Centralized Processing Centre, ]  
Post Bag No.1, ]  
Electronic City Post Office, ]  
Banglore-560500 ]

2. Assessment Unit, ]  
Income Tax Department, ]  
National Faceless Assessment Centre, ]  
New Delhi ]

3. Assistant Commissioner of Income-tax, ]  
Circle - 2(1)(1), Mumbai, ]  
Room No. 575, 5<sup>th</sup> Floor, ]  
Aayakar Bhavan, M. K. Road, ]  
Mumbai - 400020 ]

4. Principal Commissioner of Income-tax, ]  
Mumbai -2, ]  
Room No. 344, 3<sup>rd</sup> Floor, ]  
Aayakar Bhavan, M. K. Road, ]  
Mumbai - 400 020 ]

5. Union of India, ]  
Through Joint Secretary & Legal Adviser, ]  
Branch Secretariat, ]  
Department of Legal Affairs, ]

Ministry of Law and Justice, ]  
2<sup>nd</sup> Floor, Aayakar Bhavan, M. K. Road, ]  
New Marine Lines, Mumbai - 400 020 ] ...Respondents

...  
Mr. J. D. Mistri, Senior Advocate a/w. Mr. Atul K. Jasani for the  
petitioner

Mr. N. C. Mohanty for the respondents.

...  
**CORAM : DHIRAJ SINGH THAKUR AND  
KAMAL KHATA, JJ.**

**PRONOUNCED ON : 27TH JUNE, 2023**

**J U D G M E N T**

**[PER: KAMAL KHATA, J.]**

1. By this Petition under Article 226 of the Constitution, the  
Petitioner has raised a grievance that the Respondents have  
unlawfully adjusted a refund admittedly due in the sum of (i) ₹  
1,66,84,74,041 for Assessment Year (AY) 2021-22 against the  
demand for AY 2015-16 and 2016-17 and (ii) ₹ 44,58,24,745 for  
AY 2017-18 against the demand for AY 2016-17 without prior  
intimation u/s 254 of the ITA (Income-tax Act 1961).

2. Learned Senior Counsel Mr. Mistri submitted that by a  
notice u/s (under section) 156 of the ITA Respondent No. 2

granted refund of ₹ 166,84,74,041/-. However, by a show cause notice u/s 220 of the ITA dated 29<sup>th</sup> December 2022 the Respondent No. 3 sought to treat the Petitioner as an 'assessee in default' for non-payment of outstanding demands. It is submitted that these demands for AY 2015-16 and 2016-17 were stayed by Respondent No.2's orders dated 29<sup>th</sup> December 2021 and 27<sup>th</sup> April 2022 upon payment of 20% of the demand by the Petitioner. Besides, the Tribunal by orders dated 23<sup>rd</sup> March 2022 for AY 2015-16 and 5<sup>th</sup> September 2022 for AY 2016-17 decided in favour of the Petitioner in an appeal against the order u/s 263 of ITA passed by Respondent No. 4. It is submitted that the CBDT Circulars also mandate stay in such cases till the disposal of the first Appeal.

3. Learned Sr. Counsel submits that by an order dated 27<sup>th</sup> January 2023 u/s 254 of the ITAT a refund of ₹ 44,58,24,745/- was determined. The same was adjusted against the demand for AY 2016-17 without prior intimation u/s 245. It is submitted that the law mandates an intimation and a speaking order after considering the Petitioner's objections to such adjustment which was not followed.

4. In defence Mr. Mohanty learned counsel for the Respondent submitted that the order u/s 220 (6) of the ITA for AY 2015-16 was stayed for a period of six months or till the Appellate Authority's Order whichever is earlier and consequently since the stay expired on 28<sup>th</sup> June 2022, the said demand of ₹ 68,71,84,411/- was justified. However, he further submitted that by giving effect to the ITAT order for AY 2015-16 on 27<sup>th</sup> January 2023, the computation has resulted in a refund of ₹.93,52,63,810/- which is not effected on account of a technical issue in the ITBA System that indicates a comment "Error while reading by CPC-ITR." He further admitted that on account of procedural lapse the refund for AY 2017-18 has been adjusted against the demand for AY 2016-17 without giving prior intimation u/s 245 of the Act as stated in paragraph 'M' of Affidavit in Reply dated 30<sup>th</sup> March 2023. He submitted that a procedural lapse did not vitiate the adjustment as there was an outstanding demand for AY 2016-17 on 7<sup>th</sup> February 2023 being the date of adjustment for refund.

5. We are unable to agree with the Respondents Counsel on both counts on account of settled law. Firstly, when stay is granted it would continue till the disposal of the Appeal and not only for a period of six months u/s 220(6) of the ITA. This Court in the case

of *Hindustan Unilever Ltd. v DCIT - 1(1)*<sup>1</sup> held that in view of the stay u/s 220(6) of the Act, the time to make the payment stands extended till the disposal of the appeal by CIT (Appeals). With regard to the second contention, non-giving of intimation in writing prior to setting off the amount payable against the amount to be refunded is fatal. This Court in *Jet Privilege (P) Ltd. v Dy CIT*<sup>2</sup> and *BPCL v ADIT*<sup>3</sup> held that the requirement of prior intimation u/s 245 of the ITA was a mandatory requirement and failure to comply with this mandatory requirement of prior intimation would make the entire adjustment wholly illegal.

6. In view thereof, we pass the following order-

*i.* The adjustment of ₹ 166,84,74,041 for AY 2021-22 against the demand for AY 2015-16 & 2016-17 and adjustment of ₹ 44,58,24,745/- for AY 2017-18 against the demand for AY 2016-17 are quashed and set aside and refund of ₹ 211,42,98,781/- or such additional amount as may have been determined be paid to the Petitioner within two weeks from the receipt of the order along with interest thereon u/s 244A up to the date that payment is received;

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<sup>1</sup> [2015] 60 taxmann.com 326

<sup>2</sup> [2021] 131 taxmann.com119

<sup>3</sup> [2021] 133 taxmann.com 320

*ii.* Rule made absolute in above terms. No costs.

*iii.* All parties to act on the authenticated copy of this Order.

(KAMAL KHATA, J.)

(DHIRAJ SINGH THAKUR, J.)