IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6755 OF 2021

SAI BALAJI EXTRACTION AND ALLOYS PVT LTD THROUGH
ITS AUTHORIZED PERSON MANAGING DIRECTOR
VERSUS
UNION OF INDIA AND OTHERS

...

Advocate for the Petitioners : Shri P.S. Namboodri
ASGI for Respondent 1 : Shri Ajay G. Talhar
Advocate for Respondents 2 and 3 : Shri Alok M. Sharma

...

CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.

DATE :- 04th August, 2021

Per Court :-

1. The petitioner has put forth prayer clauses A, B, C and D as under :-

"A) That the Hon'ble Court may be pleased to issue a writ of certiorari/ mandamus or writ in the nature of mandamus or any other appropriate writ/ order/ directions against the Respondents in the matter of the Petitioner's Income Tax assessment for the A.V. 2018-19.

B) That the Hon'ble Court may be pleased to issue a writ of certiorari/ mandamus or writ in the nature of mandamus or any other appropriate writ/ order/ directions quashing the impugned Assessment Order dated 08.04.2021 and the consequential Notice of Demand dated 08.04.2021 and Notice for Penalty dated 08.04.2021 by declaring the same as violative of the principles of natural justice and hence *unconstitutional.*

C) That the Hon'ble Court may pending hearing and final disposal of the petition, restrain the Respondents, their officers, employees or anybody claiming through them, from initiating coercive action for recovery of the amount of Income Tax confirmed in the impugned order in terms of the Notice of Demand dated 08.04.2021 or otherwise.

D) That the Hon'ble Court may pending hearing and final disposal of the petition, restrain the Respondents, their officers, employees or anybody claiming through them, from initiating coercive action in the form of penalty in terms of the Notice for Penalty dated 08.04.2021 or otherwise."

2. We have considered the extensive submissions of the learned counsel for the respective parties. Considering the order that we intend to pass, we are not required to advert to the entire submissions of the learned counsel. Suffice it to say that the impugned order of assessment of levying income tax liability upon the petitioner to the tune of Rs.19,92,35,778/-, is without issuing the show cause notice to the petitioner. So also, the draft assessment order was also not served upon the petitioner. This is violative of Section 144B(1) (xvi)(a) and (b) of the Income Tax Act, 1961.

3. Reliance is placed upon several orders passed by the different High Courts and the Honourable Supreme Court, in

support of the contention that though the petitioner has a statutory remedy available, it has directly approached this Court since the principles of natural justice have been violated and the impugned order of assessment has been passed without even affording an opportunity of hearing to the petitioner.

4. Shri Sharma, the learned counsel representing respondent Nos.2 and 3, has strenuously opposed this petition. He submits that the petitioner has avoided the statutory appeal since 20% of the assessed amount has to be deposited as a pre-condition for the Appellate Authority to entertain such an appeal. In order to rescue the petitioner from depositing such amount, the petitioner has directly approached this Court. Insofar as the compliance of Section 144B(1)(xvi) is concerned, Shri Sharma refers to the record available and in particular to the statement made below paragraph 8 on page 198, which reads as under :-

> *"That, before passing the final order, the draft assessment order was generated and sent by the NAFAC on 01.04.2021 to review unit. That, the review unit confirmed the stand taken by the FAO vide their report dated 07.04.2021.*
>
> *However, due to over site the draft assessment order was not given to the assessee. That, the same is due to human error. That, the petitioner can avail the alternate remedy and raise all such grounds."*

5. Shri Sharma, therefore, canvasses that the Faceless Assessment Officer (FAO) had taken a particular stand and the Review Unit has confirmed the said stand. The draft assessment was sent by the National Faceless Assessment Centre (NFAC) to the Review Unit.

6. We do find that the prescription of law mandating the issuance of show cause notice to the assessee and tendering the draft assessment order to him so as to respond to the same, has not been followed. As such, the impugned order is passed without affording an opportunity of hearing to the petitioner.

7. We have consistently deprecated the practice of litigants by-passing a statutory remedy and approaching this Court directly, more so when the recourse to the statutory remedy mandates depositing of a particular percentage of the amount to be recovered. We have rejected such petitions so as to deprecate the tendency of the litigants in approaching this Court only to avoid the depositing of amounts. We could have dismissed this petition for the same reason. However, as we find it to be glaring that neither a show cause notice was issued to the petitioner, nor the draft assessment order was served on it, that we are entertaining this petition with the rider that after the legal

procedure is followed and the concerned authorities issue the assessment order, the petitioner would not approach this Court by -passing the statutory remedy available, notwithstanding the grounds that may be raised to assail the impugned order.

8. The learned advocate for the petitioner submits, on instructions, that the petitioner undertakes to approach the statutory authority if it is aggrieved by the order of assessment that would be passed after hearing the petitioner and the petitioner would not approach this Court directly.

9. In view of the above, having recorded the statement of the petitioner as a statement made to this Court, this Writ Petition is partly allowed with the following directions :-

(a) The impugned assessment order dated 08.04.2021, consequent notice of demand dated 08.04.2021 and notice of penalty dated 08.04.2021, shall stand quashed and set aside.

(b) Respondent No.3 shall issue a show cause notice to the petitioner and would also supply the draft assessment order along with the notice, on or before 21.08.2021. The petitioner would be allotted time to reply to the said notice till 15.09.2021. Thereafter, the respondent authorities would be at liberty to pass a reasoned order.

(c) If the petitioner is aggrieved by the said order, it would be at liberty to assail the same before the statutory authority as is prescribed in law and a writ petition before this Court would not be entertained in view of the statement made before us.

10. This order is passed in the peculiar facts of this case and shall not be cited as a precedent by any litigant in any Court.

kps **(S.G. MEHARE, J.)** **(RAVINDRA V. GHUGE, J.)**