

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 342 OF 2021

Goa Industrial Development Corporation
through its Managing Director, age 33 years,
Mekala Chaityan, having office at Plot
NO.13A-2, EDC Complex, Next to Passport
Office, Patto Plaza, Panaji, Goa 403 001. ...Petitioner.

Versus

1) Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/Income Tax
Officer, National Faceless Assessment Centre,
Delhi.

2) Union of India,
through the Finance Secretary, New Delhi. ...Respondents.

Mr. Pramod Vaidya with Mr. Hanumant Naik, Advocates
for the Petitioner.

Mr. Y.V. Raviraj, Senior Central Government Standing
Counsel *for the Respondents.*

CORAM : SMT. SADHANA S. JADHAV &
REVATI MOHITE DERE, JJ.

Reserved on : 20/12/2021

Pronounced on 23/12/2021

JUDGMENT : (SMT. SADHANA S. JADHAV)

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final hearing.
3. The Petitioner-Goa Industrial Development Corporation (for the sake of brevity, referred to as the 'GSIDC'), seeks to challenge the notice of demand under Section 156 of the Income Tax Act, 1961 (for short 'IT Act') dated 17/8/2021 issued by the Income Tax, National Faceless Assessment Centre, Delhi, whereby a notice was issued to the Petitioner for the Assessment Year 2018-19, seeking a demand of ₹ 18,92,96,072/-. The notice contemplated that if the amount of the tax was not paid within 30 days from the date of service of the notice, the Petitioner would be liable to pay interest on the said amount towards penalty. It was also contemplated that upon failure of the Petitioner to pay the amount within the specified period, action would be taken in accordance with Sections 222 to 227, 229 and 232 of the Act.
4. It is the case of the Petitioner that the Petitioner had filed

return of income for the year 2018-19, declaring gross income to the tune of ₹ 37,22,49,259/-. As per the return, the net income was NIL. The case was selected for scrutiny under the Computer Assisted Scrutiny Selection (CASS). A notice was issued by the Respondent No.1 under Section 143(2) of the IT Act on 16/9/2019, a reply to which was filed on 28/9/2019. Respondent No.1 had issued a notice under Section 142(1) calling for certain details and the Petitioner had complied with the said notice and filed the requisite documents online through e-filing portal. That Respondent No.1 issued a show cause notice, and according to Respondent No.1, the assessment of the Petitioner could not be considered as a charitable trust as defined under Section 2(15) of the Act and, therefore, the notice was issued to that effect and instead the income was to be computed under the head “income from business”.

5. On 16/4/2021, the Income Tax Officer National e-Assessment Centre had issued a show cause notice to the Petitioner and had opined that the claim of the Petitioner under Section 12A as being a charitable trust, cannot be considered since the CIT, Panaji had withdrawn 12A registration granted to the assessee vide

order under Section 12AA(3) dated 27/12/2011 w.e.f. Assessment Year 2009-10 in view of the amendment to Section 2(5).

6. The claim of the Petitioner, as a charitable trust and the registration of the same under Section 12A, has been decided by this Court vide Judgment and Order dated 4/2/2020 in Tax Appeal No.2/2013, by which the orders passed by the CIT & ITAT, were quashed and the registration under Section 12A was directed to be revived. It is in view of that, an order was passed under Section 143(3), read with Section 144B of the Act.

7. It is the case of the Petitioner that the Assessment Authorities had not issued a notice, calling upon the Petitioner to show cause as to why the assessment should not be completed as per the draft or final draft and the same has caused prejudice to the Petitioner. In fact, in the course of processing under Section 143(1) (a) on 15/10/2019, the Assistant Commissioner of Income Tax had passed an order to the effect that pursuant to the Judgment passed by the High Court dated 4/2/2020, the assessment had been modified by giving suitable benefits as per Section 11 of the IT Act and hence, the assessment was complete by accepting the return of

income that was shown by the Assessee.

8. The Petitioner submits that the income from the house property could not have been taken into consideration as rental income at reduced amount is reflected in Part-B-TI-Statement of Income at Sl.No.13(i). The main contention is that the principles of natural justice have not been followed and no opportunity was given to the Petitioner for personal hearing, as contemplated under Section 144 clause (vii), which reads under :

“(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such draft or final draft or revised draft assessment order, the assessee or his authorised representative as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income tax authority in any unit.”

9. It is submitted that without taking into consideration the said order dated 15/10/2019, the Income Tax Officer had issued the demand under Section 156 of the Act.

10. The main contention of the Petitioner appears to be that

the Petitioner has been denied the opportunity of personal hearing before passing the assessment order on 17/8/2021 under Section 143(3), read with Section 144B of the IT Act. That there is no compliance under Section 144B of the IT Act. In other words, Section 144B contemplates that in case of variation prejudicial to the assessee as proposed in the draft assessment order, the right is conferred on the assessee to request a personal hearing and the concerned authority is required to consider such a request.

11. It would be trite to refer to the Judgment of Bombay High Court in the case of *Golden Tobacco Ltd. vs. The National Faceless Assessment Centre and others*, reported in [2021] 132 taxmann.com 296 (Bombay dtd. [28-10-21] wherein the Court was pleased to consider the object of Section 144B of the IT Act and has held that the objective of faceless assessment is to promote efficient effective tax administration, interface to increase accountability and introduce team-based assessment and, therefore, the procedure prescribed under Section 144B is intended to be mandatory and neglect of any procedural safeguard, would render the assessment non-est.

12. Learned Counsel has placed reliance upon the judgment of the Bombay High Court in the case of *Parimal Enterprises Limited vs. Addl./Jt./Dy./Asstt, Commissioner of Income Tax/Income Tax Officer, Delhi*, reported in [2021] 129 taxmann.com 18 (Bombay), wherein the High Court, after taking into consideration various judgments, has held that Section 144B of the Act captioned “Faceless Assessment” commences vide its sub-section (1) with a non-obstante clause and compulsively requires assessment under Section 143(3) and 144 shall be by prescribed procedure contained in sub-section (1) of Section 144B in the cases referred to in sub-section (2) thereof.

13. Reliance is also placed on the Judgment of Bombay High Court in *Chander Arjandas Manwani vs. The National Faceless Assessment Centre and ors.* – Writ Petition No.3195 of 2021, wherein it is held that the Faceless Assessment Scheme, 2019 provides that where a modification is proposed, the National e-Assessment Centre shall provide an opportunity to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per draft assessment order, hence, where assessee’s request for personal hearing had been

ignored. The Court further held that the order having been passed without following requirements of Faceless Assessment Scheme, 20-19, being non est was quashed and set aside.

14. The Respondent No.1 has filed an affidavit contending therein that in fact, the order under Section 143(3) read with 144 is passed by the authorities only after giving adequate opportunity to the Assessee and after considering the submissions made by the Petitioners. It is submitted that the Petitioner had declared the income to the tune of ₹ 37,22,49,259/- and therefore, cannot claim that the assessment order is erroneous.

15. According to the Respondent, the gross total income as per the return was ₹ 37,22,49,260/- , to which an additional income of ₹ 13,28,11,253 from the house property, was taken into consideration and hence, the total income assessed was ₹ 50,50,60,513/-.

16. It is submitted that in fact, the Petitioner had made an oral request for personal hearing. However, the said request was turned down without assigning any reason. It is, in these circumstances and to comply with Section 144B of the IT Act, the

Petition deserves to be allowed and remitted back to the Respondent No.1.

17. In view of the same, the following order is passed :

(I) Assessment Order dated 17/8/2021, passed under Section 143(3) r/w Section 144B of the Income Tax Act, 1961 passed by the National Faceless Centre is, hereby, quashed and set aside.

(II) The matter is remanded to the Respondent No.1 to complete the assessment proceedings by following due procedure as contemplated by Section 144B of the the Income Tax Act, 1961.

(III) The Respondent shall give opportunity to the Petitioner of personal hearing (through Video-Conferencing).

(IV) The Respondent shall give 15 days advance notice before the date of hearing through video-conferencing.

(V) The assessment proceedings shall be completed within 3 months from the date of receipt of this order or from the date on which the order is uploaded, whichever is earlier.

18. Rule is made absolute in the aforesaid terms. The Petition

stands disposed of accordingly. There shall, however, be no order as to costs.

19. All parties to act on an authenticated copy of this order.

REVATI MOHITE DERE, J. SMT. SADHANA S. JADHAV, J.