Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2440 OF 2021

M/s. Zeus Housing & Construction Limited …Petitioner

Versus

Union of India & Ors. …Respondents

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy for the Petitioner.

Mr. Suresh Kumar for the Respondent.

CORAM : K.R. SHRIRAM & R.I. CHAGLA, JJ.

DATE : 15 September 2021 (V.C.)

ORDER :

1. The assessment order dated 22nd April 2021 for assessment year 2018-19 has been passed disallowing *inter alia* the arrears of depreciation of Rs. 54,74,780/-. In the assessment order it is mentioned that in response to a notice dated 23rd September 2019 and subsequent notices under Section 142(1) of the Income Tax Act, 1961 petitioner furnished written submissions. During the assessment

proceedings respondent noticed that petitioner has claimed depreciation of Rs. 54,74,780/- and issued notice under Section 142(1) dated 23rd March 2021 calling upon petitioner to show cause as to why the arrears of depreciation of Rs. 54,74,780/- may not be disallowed. As no response was received, the Assessing Officer proceeded to pass the assessment order disallowing the arrears of depreciation of Rs. 54,74,780/-. It was added to the total income of petitioner for the year under consideration and action was initiated under Section 270A demanding penalty for misreporting of income.

2. It is petitioner's case that it had received the notice dated 23rd March 2021 and also a notice dated 17th April 2021 along with draft assessment order (which has not been referred to in the assessment order), but because Shri. Ashit Balwant Doshi, director who was incharge and who was in the know of the matter and who has also signed and verified the petition was down with Covid, no reply was filed. To the notice dated 23rd March 2021 response was to be given by 26th March 2021. There is a certificate annexed to the petition which indicates that the swab for detection of Covid 19 by RTPCR was collected on 25th March 2021 and the report has been received on 27th March 2021 indicating detection of Covid 19. In

other words the said Ashit Balwant Doshi had tested positive for Covid 19. It is stated in the petition, for that reason and in view of the lock-down restrictions in the State of Maharashtra, petitioner could not respond to the notices dated 23rd March 2021 and 17th April 2021. In the affidavit in reply Shri. Ashit Balwant Doshi testing positive for Covid is not disputed. According to respondent, the notice dated 23rd March 2021 was delivered to assessee on 23rd March 2021, but the swab has been collected only on 25th March 2021 and only on 27th March 2021 a certificate has been issued confirming Shri. Doshi to be Covid 19 positive and as per the Government of Maharashtra Circular dated 15th March 2021, all offices were allowed to open with 50% staff and hence, the excuse of detection of Covid 19 should not be accepted a valid reason for not replying to the notice. It is also averred that petitioner is a company and there will be other personnel and directors in the company, who could have responded and if petitioner wanted time for the reason noted above, it could have addressed a communication.

3. Everyone has seen what the country has gone through during the unprecedented second wave. Many people have lost their lives and also livelihood. It is easy for respondents to say that swab

was collected only on 25th March 2021 and certificate received only on 27th March 2021, when the notice was issued on 23rd March 2021. The fact is, the notice dated 23rd March 2021 itself has been uploaded only at 17:11 IST which means the whole of 23rd March 2021 has been lost. Moreover, this Court cannot be heartless or insensitive as Yeshwant S. Kamble, ITO – 8(3)(1), Mumbai, who has affirmed the affidavit in reply.

4. We are inclined to, on humanitarian grounds, as a special case interfere and set aside the assessment order dated 22nd April 2021 which we hereby do. The consequential penalty notices and demand notices are also set aside.

5. Petitioner is directed to respond to the notice dated 23rd March 2021 and the draft assessment order received on 17th April 2021 within a period of two weeks from today, failing which, the concerned Authority may go ahead and pass fresh assessment order based on available material on record. If the response is filed by petitioner, the concerned Authority shall consider that response and pass the assessment order. In either case petitioner shall be granted a personal hearing as per the rules.

6. We clarify that we have not made any observations on the merits of the case.

7. Petition disposed.

[R.I. CHAGLA J.] **[K.R. SHRIRAM, J.]**