Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3322 OF 2021

M/s. Asian Tradecon 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. Petitioner is impugning the assessment order dated 30th April 2021 for assessment year 2018-19 on the grounds that the same has been passed without application of mind and on incorrect reasons.

2. In the assessment order it is stated as under:-

> "*Notices u/s 142(1) dated 17/1/2020, 12/2/2020 and 7/4/2021 and reminder dated 11/11/2020 and 14/12/2020 was left unheeded, even though a statutory notice mandates utmost compliance. Since the assessee was not responsive, the case was referred to Verification Unit for physical service of notice. The VU has reported vide reports dated 23/02/2021, 24/02/2021 and 25/02/2021 that the assessee was searched in 3 probable addresses, but the assessee could not be located.*
>
> *The assessee has failed to comply with the provisions of all the terms of the notice issued under Sub-section (1) to Section 142, as per the provisions of S. 144(1)(b), as a last resort compelled to make as assessment, as the best judgment assessment u/s 144 after taking into account all materials which have been gathered and other information available on record.*"

Therefore, the Assessing Officer has proceeded on the basis that petitioner has not responded to any of the notices and the petitioner was not traceable at any of the addresses, and therefore, the order has been passed based on material which has been gathered and other information available on record.

3. It is pertinent to note that petitioner had received a notice dated 22nd September 2019 under Section 143(2), to which

there is no reference in the impugned order, seeking further details. Petitioner filed its reply dated 7th October 2019 to this notice as per the evidence available in the e-proceedings, response acknowledgment of the department. There is no reference to this reply in the impugned order. Thereafter petitioner received another notice dated 17th January 2020 under Section 142(1) of the Act to which according to petitioner, a reply dated 23rd January 2020 has been filed. It is Respondent's case that it was filed only on 30th April 2021 and not on 23rd January 2020. Petitioner later received a notice dated 12th February 2020 under Section 142(1) followed by a reminder dated 14th December 2020. Admittedly, no response was filed by petitioner to these two notices. Petitioner thereafter received a notice dated 7th April 2021 to which a partial response has been filed on 30th April 2021. In view of this background, for the Assessing Officer to say that the notices issued by respondents under Section 142(1) of the Act were left unheeded or the assessee was unresponsive is not correct.

4. For respondent to also say that the verification unit for physical service of notice reported that petitioner could not be located in the three addresses also is not acceptable because

petitioner is a company registered under the Companies Act, 1956 and the address mentioned in Exh.R-1 to the reply at page 376 is the registered office address of the company. It is stated in the report that it is the residential apartment and the address was found but details of the specified person could not be ascertained also is unacceptable.

Next address is a commercial address belonging to petitioner from where petitioner was carrying on his business and this address can also be found in the return filed, but for the Income-tax Inspector who filed a report to say that address found, but details of the specified person could not be ascertained again is unacceptable.

There is a third address in which service has been attempted, but petitioner says that address does not belong to petitioner and it is so mentioned in the rejoinder.

5. In the circumstance, for the Assessing Officer to say that no response was received from the petitioner or petitioner could not be traced is certainly not acceptable to the Court. Therefore, the assessment order dated 30th April 2021 is quashed and set aside. The consequential notices also dated 30th April 2021 under Section 274

read with 270A, 271AAC(1) and 272A(1)(d) of Income-tax Act, 1961 are set aside.

6. Matter is remanded for *de novo* adjudication keeping open the rights and contentions of petitioner.

7. Shri. Ramesh Ramamurthy states that petitioner will file all further documents required as per the notices/reply to the notices referred to in the petition within a period of two weeks from today. Statement accepted as an undertaking to this Court. If not filed the Assessing Officer may proceed to pass order considering the response already filed, but shall grant a personal hearing to petitioner in accordance with the rules.

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

8. Petition disposed.

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