IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1999 OF 2021

M/s. Zeus Housing Company ….Petitioner

V/s.

Union of India and Anr. ….Respondents

Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramamurthy for petitioner.
Mr. Sham V. Walve a/w. Mr. Pritish Chatterjee for respondents.

CORAM : K.R. SHRIRAM, &
R.I. CHAGLA, JJ
DATED : 14th SEPTEMBER 2021

P.C. :

1 Mr. Ramamurthy states that the assessment order dated 29th April 2021 impugned in this petition be quashed, set aside and the matter be remanded back to the concerned authority for fresh assessment on merits after giving a proper and reasonable opportunity to petitioner to personally explain its case.

2 Respondent no.3 has passed an assessment order dated 29th April 2021 prejudicial to petitioner. In the order, respondent no.3 has noted that a show cause notice alongwith draft assessment order was issued on 21st April 2021 but petitioner failed to provide any documentary evidence or even respond to the said show cause notice. At Exhibit "L" to the petition is a copy of the reply to the show cause notice. In the said exhibit, a print out of the e-proceedings response acknowledgment from the Income Tax Department is also annexed which confirms that the reply to show cause notice alongwith various annexures have been submitted on 27th April

2021. Therefore, respondent no.3 has erred in stating that petitioner did not even respond to the show cause notice. It is, therefore, also obvious that respondent no.3 has not considered the reply filed by petitioner before passing the assessment order.

3 In the circumstances, the assessment order dated 29th April 2021 impugned in this petition is quashed and set aside. Consequently, the demand notice dated 29th April 2021 under Section 156 of the Income Tax Act, 1961 is also quashed and set aside. The question of issuance of any other consequential notice will not arise.

4 The matter is remanded for *de novo* consideration. The concerned authority may pass such order as he may deem fit in accordance with law. We will hasten to add, we have not made any observations on the merits of the case.

5 We have to note that in the affidavit in reply filed by one Manoj Kumar, Income Tax Officer, Mumbai and affirmed on 12th August 2021, there is no denial of the fact that reply has been filed to the show cause notice. According to affiant, the Income Tax Business Application (ITBA) does not show any response of assessee to the notice. The least we would have expected the Officer, who has affirmed the affidavit, is to diligently go through the portals of the Income Tax Authorities particularly, when petitioner has annexed to the petition the e-proceedings response acknowledgment and not file a wishy washy reply. The affiant also stated in paragraph 12 of the reply that ITBA case history noting does not show any

email requesting three days more time for responding to show cause notice. This is stated notwithstanding the fact that petitioner has annexed to the petition a print out of the e-proceedings seeking adjournment where he has sought three days time to respond. It is rather unfortunate that officers respondent no.3 are not truthful in filing their affidavit. Mistakes happen. It would, therefore, have been better if the concerned officer had accepted the error on their part and not filed an affidavit which, to put it mildly, is economical with truth.

6 A copy of this order be placed before the Commissioner of Income Tax (Judicial), Mumbai and also be circulated to all Commissioner (Judicial) in the country so that they are made aware of the fact that it would be in the interest of department to be truthful and accept their mistakes instead of filing such affidavits as it has been done in the present case.

7 Petition disposed.

(R.I. CHAGLA J.) **(K.R. SHRIRAM, J.)**

GAURI AMIT GAEKWAD Digitally signed by GAURI AMIT GAEKWAD Date: 2021.09.18 11:26:48 +0530