IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2289 OF 2021

Pinkrose Realty Pvt. Ltd. ….Petitioner

V/s.

The Assessment Unit/Additional/
Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer
and Ors. ….Respondents

Mr. Mihir Naniwadekar a/w Mr. Rohan Deshpande i/b Farzeen Khambatta for Petitioner.
Mr. Sham V. Walve a/w Mr. Pritish Chatterjee for Respondents.

CORAM : K.R. SHRIRAM &
M.S. KARNIK, JJ.
DATED : 20th SEPTEMBER 2021

P.C. :

1. Petitioner is impugning the assessment order dated 27th April, 2021 but digitally signed on 28th April, 2021 on the grounds that the order has been passed without considering or dealing with the submissions made by petitioner in its reply dated 24th April, 2021.

2. Petitioner had received various notices under Section 142 (1) of the Income Tax Act, 1961 for assessment year 2018-19. Petitioner replied to all these notices. Thereafter, petitioner received notice dated 20th April, 2021 calling upon to show cause as to why the assessment should not be completed as per draft assessment order. Petitioner was granted time upto 23.59 hours of 24th April, 2021. This show cause notice has been digitally signed at 19.40 hours on 20th April, 2021. So effectively petitioner had four

days to respond. Notwithstanding the short period granted to respond, petitioner submitted its reply dated 24th April, 2021 to the draft assessment order. In the order impugned in the petition, respondent has referred to this reply dated 24th April, 2021 but has not dealt with any of the submissions made in the said reply. In the petition, there is specific averment as under :

> *"Moreover, apart from recording that petitioner filed a reply on April 24, 2021 in response to the draft order, none of the specific detailed averments and documentary references advanced in the reply have been adverted to, or dealt with in the impugned order".*

3. In the additional affidavit in reply filed by one Reena Jha Tripathi affirmed on 2nd August, 2021, respondent states as under :

> *"……..In response to the statutory notices on the above issues and a Show Cause Notice containing Draft Assessment order (DAO) dated 20.04.2021; the assessee furnished its replies on 12.09.2020, 21.12.2020, 12.02.2021 and 24.04.2021. The reply, documents and objections to the DAO furnished by the assessee were examined and had been discussed in the following paragraph nos. 6-33 of the assessment order……."*

4. We have perused with the assistance of the learned counsel for petitioner and respondent paragraph no. 6 to 33 of the assessment order and we find that it is repetition of paragraph no. 6 to 33 of the draft assessment order dated 20th April, 2021.

5. Mr. Walve in fairness states that there is no specific denial in the affidavit in reply to the allegations made by petitioner. He states that respondent has referred to the reply dated 24th April, 2021 but the same has not been dealt with in the assessment order.

6. In the circumstances, we are inclined to and hereby interfere with the impugned assessment order. The assessment order dated 27th April, 2021 is set aside. Respondent may consider the reply dated 24th April, 2021 and pass such order as deemed fit in the fresh assessment order to be issued. As petitioner has not sought for personal hearing, no personal hearing is required to be granted. We have not made any observations on the merits of the case.

7. Petition accordingly stands disposed.

(M.S. KARNIK, J.) **(K.R. SHRIRAM, J.)**