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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3195 OF 2021

Chander Arjandas Manwani

..Petitioner

vs.

The National Faceless Assessment
Centre & ors.

..Respondents

Mr. Dharan V. Gandhi for petitioner.

Mr. Sham V. Walve a/w. Mr. Pritish Chatterjee for
respondents.

CORAM : K. R. SHRIRAM

M. S. KARNIK, JJ.

DATE : SEPTEMBER 21, 2021

P.C. :

Petitioner had filed returns for AY 2018-2019 declaring a total income of Rs.98,70,370/-. Petitioner received a notice dated 22nd September, 2019 under Section 143 (2) of the Income Tax Act, 1961 (the Act) initiating scrutiny assessment. Petitioner responded to the same.

2. We can fast forward to January, 2021. Petitioner received a notice dated 18th January, 2021 calling upon to show cause as to why the assessment should not be completed as per the draft assessment order. Paragraph 2

of the notice reads as under :

"2. A draft assessment order proposing to modify your returned income and/or sum payable is reproduced as under:-

From the perusal of the reply dt. 28/12/2020, the following findings have come out which as below:

1. In response of question **"Reasons for showing low income in comparison to TCS receipts"**, you have submitted that "Now a days market is buyer markets, there is competition in market in every kind of product, in this case also market is very competitive, reason for low income is due to competition. But, failed to substantiate with documentary evidences. Please substantiate with documentary evidences. If you fail, why not adverse view may be taken and why not net profit may be estimated @ 8% of total receipt.

2. In response of substantial increase in capital in year, you have submitted the gift deeds of donors regarding Rs.89,00,000/-. In this respect, you are requested to please submit the source of income alongwith business activities, copy of ITR, P&L and Balance Sheet and copy of Bank Statements of the donors and prove the genuineness of donors and also submit the documentary evidences of proceeds received on partition of Arjandas Manwani (HUF) amounting to Rs.1,09,73,174/-. If you fail, please show cause as to why not abovementioned amount i.e. Rs.89,00,000/- and Rs.1,09,73,174/- may be added in your total income.

You are hereby given an opportunity to show cause why the assessment should not be completed as per the draft assessment order."

(emphasis supplied)

3. We find that it is not a draft assessment order but a notice calling upon petitioner to provide further details and documentary evidences. In paragraph 1 it is stated

"----- Please substantiate with documentary evidences. If you fail, why not adverse view may be taken and why not net profit may be estimated @ 8% of total receipt." In paragraph 2 it is stated " ----- In this respect, you are requested to please submit the source of income alongwith business activities, copy of ITR, P&L and Balance Sheet and copy of Bank Statements -----."

Petitioner was called upon to submit his response by 23:59 hours of 22nd January, 2021 and also advised to specifically state whether a personal hearing was required.

4. Petitioner filed a reply on 26th January, 2021 stating that petitioner's Tax Consultant had undergone Prostate Surgery and that he has appointed another Chartered Accountant and sought time. Petitioner also stated that a personal hearing is required to be granted. This was followed by another reply dated 27th January, 2021 whereby petitioner complied with one of the requirements of the notice dated 18th January, 2021. Petitioner once again requested a personal hearing. Thereafter, petitioner filed a third response dated 1st February, 2021 whereby remaining

requirements of the notice dated 18th January, 2021 were provided.

5. On 1st February, 2021, petitioner received a fresh notice calling upon to show cause as to why assessment should not be completed as per the draft assessment order. In our view, this also was not a draft assessment order because petitioner is seeking further documentary evidences. Even in this show cause notice it is stated “*a draft assessment order proposing to modify your returned income and/or sum payable is reproduced as under* : But it goes on to say “*From the perusal of the reply dt. 26/01/2021, the following findings have come out which as below* : 1. In response of question “Reasons for showing low income in comparison to TCS receipts”, you have submitted that “Now a days market is buyer markets, there is competition in market in every kind of product, in this case also market is very competitive, reason for low income is due to competition. And reply dt. 26.01.2021 you requested for adjournment. But, failed to substantiate with documentary evidences. Again opportunity is being given

for your compliance.” (emphasis supplied)

6. Therefore, in our view, both these notices dated 18th January, 2021 and 1st February, 2021 have been issued without clear application of mind. Petitioner responded to this notice dated 1st February, 2021 by his reply dated 5th February, 2021. Thereafter, assessment order dated 2nd March, 2021 has been passed which is impugned in this Petition. According to petitioner, this assessment order has been passed in breach of the provisions of the Faceless Assessment Scheme, 2019 that was introduced by way of Notification No. 60/2020 dated 13th August, 2020 in as much as petitioner's request for personal hearing has been ignored and mandatory draft assessment order has not been issued to petitioner.

7. On the question of issue of non granting of personal hearing, the notices dated 18th January, 2021 and 1st February, 2021 both provided that petitioner may seek personal hearing so as to make oral submissions through video conferencing. Petitioner in his reply dated 26th January, 2021, 27th January, 2021 and 5th February, 2021

has sought personal hearing. Notwithstanding this request respondent has neither granted personal hearing nor stated in the assessment order why the personal hearing was not granted. On this ground alone, in our view, the assessment order dated 2nd March, 2021 requires to be set aside.

8. As regards non furnishing of draft assessment order, in the assessment order it is stated *“a show cause notice has been issued on 18/01/2021 for compliance on 22/01/2021 and again a final show cause notice with draft assessment order has been issued on 01/02/2021 for compliance on 05/02/2021. In response, the assessee has submitted the submission which has been perused”*. Though in the assessment order it is stated that draft assessment order was provided with show cause notice dated 1st February, 2021, from the affidavit in reply it appears that the draft assessment order was generated in ITBA system only on 25th February, 2021.

9. In our view, as noted earlier no draft assessment order has been issued at all let alone on 1st February, 2021. The notice dated 1st February, 2021, as stated earlier, is seeking

further documentary evidences and those evidences sought are for the first time. When respondent is seeking documentary evidences, that communication by no stretch of imagination can be even referred to as a draft assessment order.

10. The Faceless Assessment Scheme, 2019 as per the circular dated 13th August, 2020, 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. This has not been complied with. This is one more reason, in our view, for interfering.

11. We have to note that CBDT in its order dated 13th August, 2020 under Section 119 of the Act has ordered as under :

"2. In order to ensure that all the assessment orders were passed through the Faceless Assessment Scheme, 2019, the Board in exercise of powers under section 119 of the Income-tax Act, 1961 hereby directs that all the assessment orders shall hereafter be passed by National e-Assessment Centre through the Faceless Assessment Scheme, 2019, except as provided hereunder :-

- i) *Assessment orders in cases assigned to Central Charges.*
 - ii) *Assessment orders in cases assigned to International Tax Charges.*
3. *Any assessment order which is not in conformity with Para-2 above, shall be treated as non-est and shall be deemed to have never been passed."*

Therefore, any assessment order which is not in conformity with Para-2 above, shall be treated as *non-est* and shall be deemed to have never been passed.

12. In the circumstances, the assessment order not having been passed in conformity with the requirements of the Faceless Assessment Scheme, 2019 has to be treated as *non-est* and shall be deemed to have never been passed.

13. Therefore, the order impugned dated 2nd March, 2021, is hereby quashed and set aside. The consequential notice of demand and notice of penalty are also set aside.

14. It is open to respondents to take such steps as advised in accordance with law.

15. Petition disposed.

(M.S.KARNIK, J.)

(K.R. SHRIRAM, J.)