IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6866 OF 2021

Smita Mahadeo Parkar ….Petitioner

V/s.

The National Faceless Assessment Centre and Ors. …Respondents

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Mr. Rahul Hakani a/w Mr. Shantanu Kadam a/w Mr. Tarang Jagtiani i/b Mr.Gaurav Parkar for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 20th OCTOBER 2021

P.C. :

1. Petitioner has approached this court impugning the assessment order dated 20th September, 2021 on the ground that the order passed is against principles of natural justice and is an abuse of due process of law.

2. Petitioner is an individual who I am told is a senior citizen. Petitioner alongwith her son had booked a flat in an under construction building at Parel. The flat has been purchased in the joint name of petitioner and her son and major part of consideration for the flat has been paid by the son.

3. Petitioner received a show cause notice dated 15th September, 2021 alleging that petitioner did not file her original return of income for

the assessment year 2013-14. As the information available on the departmental database showed petitioner had entered into financial transaction relating to purchase of property and petitioner did not file return of income for the year under consideration, the case was selected for scrutiny under Section 147 of the Income Tax Act, 1961 (the Act) read with Rule 12E of the Income Tax Rules, 1962 to verify sources of purchase of property. Subsequently, notice under Section 148 of the Act was also issued. By the notice dated 15th September, 2021, petitioner was directed to provide various documents and also called upon to show cause why the proposed variation should not be made to the return of income filed by petitioner. This show cause notice has been digitally signed at 14:29:56 IST on 15th September, 2021 and petitioner was called upon to submit response by 23:59 hours of 17th September, 2021. On 17th September, 2021 petitioner sent reply giving explanation and also stating in the reply as under :-

> *……...This statement was also attached by be previously. Now said saving account has been closed and since the Account with ICICI Bank, Nariman Point Branch has been closed, it is difficult to get statement from that branch for earlier period within short time. My son has applied for the same which will be submitted once my son gets it. Hence this reply may be treated as partial. If you are satisfied with the documents uploaded you may treat this reply as full response without making any addition of Rs.42,84,150/- as unexplained investment as proposed by you. In nutshell there is no question of 'unexplained investment' in this case as suggested by you……...*

4. Notwithstanding this reply, respondent went ahead and passed an assessment order dated 20th September, 2021 in which paragraph no.8.2 reads as under :-

> *8.2 The reply of the assessee has diligently been examined but not*

> *found tenable. Going through the above submission shows that it is nothing but a reiteration of earlier argument and nothing afresh has been submitted by the assessee. In her submission, assessee stated that Rs.8,28,415/- only was paid by her and payment of Rs.22,56,915/- was made by her son Gaurav Parkar. However, the statement of the assessee is not supported by any documentary evidence such as bank account statement correlating the payments made to the builder etc. Therefore the sources of investment made for purchase of aforementioned immovable property apart from the loan amount of Rs.60,00,000 remains unsubstantiated.*

5. There is absolutely no whisper about petitioner's request to grant time to get statement from ICICI Bank, Nariman Point Branch for the account of the son that has been closed.

6. In the circumstances, we have no hesitation in setting aside the impugned order dated 20th September, 2021.

7. Though respondent have been served a copy of the petition on 12th October, 2021 no reply has been filed. We requested Mr. Suresh Kumar who was present in the court to assist the court. Mr. Suresh Kumar stated that Mr. Sham Walve was briefed in the matter, but Mr. Sham Walve is unwell. At the same time, Mr. Suresh Kumar in fairness stated that as the documents annexed to the petition speak for themselves, the court may set aside the impugned order and remand the matter for *denovo* consideration without making any observations on merits of the case.

8. In the circumstances, since we are also satisfied with the submissions made by Mr. Hakani, the order requires to be set aside and no

purpose will be served in adjourning the matter. The order dated 20th September, 2021 is hereby quashed and set aside. The matter is remanded for *denovo* consideration but shall not be placed before the same Assessing Officer who passed the impugned order. But we also clarify that we have not made any observations on the merits of the case.

9. The Assessment to be completed within six weeks after giving personal hearing in accordance with law.

10. Petition accordingly disposed.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**