IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8859 OF 2021

B.K. Associates ….Petitioner

V/s.

National E-Assessment Centre & Ors. ….Respondents

Ms. Deepa Khare i/b. Mint and Confreres for petitioner.
Mr. Sham V. Walve a/w. Mr. Pritesh Chatterjee for respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 13th DECEMBER 2021

P.C. :

1 Petitioner is impugning an assessment order dated 30th September 2021 for Assessment Year 2013-2014 on various grounds. This impugned order is followed by a notice of demand dated 30th September 2021 by which respondents have raised a tax demand of Rs.1,61,68,240/-.

2 Ms. Khare submitted that on 3rd March 2020 a notice under Section 148 of the Income Tax Act, 1961 (the said Act) came to be issued but the reasons were not provided. Ms. Khare states that when petitioner tried to upload the returns, they could not and petitioners were also handicapped because by 25th March 2020 COVID pandemic set in and lockdown was announced. Thereafter, on 27th October 2020 petitioner has received a notice under Section 142(1) of the said Act followed by another notice dated 3rd February 2021 and 19th March 2021. For the first time,

petitioner filed a response on 8th April 2021 which was followed by another notice dated 15th September 2021 under Section 142(1) of the said Act. Petitioner replied to this last notice on 21st September 2021. Thereafter, petitioner received a notice dated 22nd September 2021 calling upon petitioner to show cause as to why the proposed variation in petitioner's returned income should not be made. Petitioner states that this notice itself has been digitally signed at 18:28:24 IST of 22nd September 2021 and petitioner was directed to respond by 23:59 hours of 24th September 2021. Ms. Khare states that, therefore, petitioner was not given sufficient time to respond and on 30th September 2021 the assessment order, impugned in this petition, came to be passed.

3 Ms. Khare stated that the Court should interfere and set aside the notice issued under Section 148 of the said Act itself on the ground that according to petitioner it was issued without jurisdiction. Mr. Walve stated that petitioner having participated in the assessment proceedings, it is not open for petitioner to now contend that this Court should exercise its extra ordinary jurisdiction and prohibit the Authorities from proceeding further with the impugned notice. Mr. Walve relied upon ***Amaya Infrastructure (P.) Ltd. V/s. Income Tax Officer, Ward -12(1)(1)***[1] where paragraph 9 reads as under :

> *9. In this case, we find that the petitioners have filed detailed information called for by the Assessing Officer under Section*

1. (2017) 79 taxmann.com 345 (Bombay)

> *142(1) and 143(2) of the Act and thus participated in the assessment proceedings. This having been done, it is not open for the petitioners to now contend that this Court should exercise its extraordinary jurisdiction and prohibit the Authorities from proceeding further with the impugned notice. This is particularly so as the question of jurisdiction has been raised by the petitioners before the Assessing Officer during the assessment proceedings under the Act. In the present facts, the petitioners have participated in the proceedings before the Assessing Officer. The objections to the reasons recorded by the Assessing Officer in support of the impugned notice during the assessment proceedings is to point out to him the reassessment proceedings are bad as the requirement of Sections 147 and 148 of the Act are not satisfied. It would be completely different scenario where the petitioners have not participated in the proceedings before the Assessing Officer and object to exercise of jurisdiction by the Assessing Officer at the very threshold and not while participating in the reassessment proceedings. In such cases, it is not a case of a party seeking identical relief by two parallel modes. The orders passed by the Assessing Officer are subject to effective, efficacious alternative remedy under the Act. Therefore, we see no reason to exercise our extra-ordinary jurisdiction in the facts of this case.*

4 In the circumstances, we do not wish to exercise our extra ordinary jurisdiction and interfere with the notice issued under Section 148 of the said Act. At the same time, we would quash and set aside the impugned order dated 30th September 2021 and remand the matter to the Assessing Officer to the stage when the draft assessment order was issued. Within one week of this order being uploaded, respondent shall provide the link to which petitioner may upload its response to the draft assessment order cum show cause notice dated 22nd September 2021 and also submit further documents. It is open to petitioner to raise all grounds including express their displeasure with the contents of the reasons to reopen the

assessment and the Assessing Officer shall consider all submissions of petitioner and pass such order, as he deems fit, within six weeks of petitioner submitting its response/documents. Before passing any order, the Assessing Officer shall also give a personal hearing to petitioner and the date and time shall be intimated atleast one week in advance.

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

6 Petition disposed.

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