IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.830 OF 2020

Atul Projects India Ltd. ….Petitioner

V/s.

Union of India & Anr …Respondents

Mr. Naresh Jain i/b. Rushita Jain for petitioner.
Mr. N. C. Mohanty for respondents.

CORAM : K.R. SHRIRAM &
ABHAY AHUJA, JJ.
DATED : 12th AUGUST 2021

P.C. :

1 We have heard Mr. Jain and Mr. Mohanty and considered the petition. Unfortunately, this is another case of absolute high handedness by respondents in as much as, a notice dated 26th December 2019 under Section 142(1) of Income Tax Act 1961 (the said Act) is issued for AY-2017-2018 and the assessee is called upon to furnish or cause to be furnished the accounts and documents mentioned in the annexure to the said notice on or before 28th December 2019 at 03:02 p.m. Mr. Jain states that this notice was received by them only at 23:11:53 hrs. on 26th December 2019. This fact has not been disputed. Therefore, in effect, petitioner is given about 39 hours to respond to the notice by furnishing about 15 documents/details. If one reads the annexure, it is not just a requisition for the documents but also contains notice to show cause as to why deduction under Section 80-1B of the Act should not be disallowed.

2 Petitioner, by its letter dated 28th December 2019, brought to the notice of the Assesseeing Officer namely respondent no.2 that the time granted was too short and that was contrary to the principles of natural justice and submitted a reply nevertheless, but not containing all details. Respondent no.2 passed an order on 30th December 2019 and we must say we are surprised by the speed at which respondent no.2 has worked, rejecting petitioner's stand that the time given was very short. According to respondent no.2, petitioner did not seek an adjournment though raised a grievance that the time was short and, therefore, there was failure on the part of petitioner to furnish the information sought. Respondent no.2 proceeded to make a demand of Rs.5,59,25,328/- as further tax payable by petitioner. Respondent no.2, followed this with a notice of demand also dated 30th December 2019 under Section 156 of the Act.

3 Petitioner filed an appeal on 27th January 2020, which appeal was heard on 27th February 2020. Written submissions were also submitted to CIT (Appeals) on 27th February 2020. This appeal is still pending. After filing the appeal, petitioner filed an application dated 29th January 2020 under Section 220(6) of the Act, requesting respondent no.2 to keep his order in abeyance till petitioner's appeal is disposed. This request of petitioner under Section 220(6) was rejected by respondent no.2 by an order dated 3rd March 2020.

4 In our view, the fact that petitioner was given a very short time of hardly 39 hours to respond to the show cause notice, would certainly cause grave prejudice to petitioner and will be violative of principles of natural justice. In fact, the revenue's counsel seek four weeks and eight weeks to take instructions to file reply to the petitions filed by assessees but the revenue officers as noted above, gives hardly two days time to file reply to their show cause notices. We have come across few other matters in the last two weeks where such short time to respond has been given by revenue officials. Therefore, we feel it is a fit case to interfere.

5 Petitioner having filed an appeal before CIT (Appeals) which is pending disposal, is directed to file a stay application in the proper format before the proper CIT (Appeals) / authority, within three weeks from today. Mr. Mohanty states that the stay application should be filed before the Principal Commissioner of Income Tax, which Mr. Jain is not agreeing to. We do not wish to go into this aspect. If, the authority / office before whom the appeal is pending and stay application is filed feels he is not empowered to hear the stay application, he may direct his office to place it before the authority who has power to hear the stay application. The stay application shall be disposed within three weeks of filing the same. CIT (Appeals) may also dispose the appeal pending before him.

6 Until the stay application is heard and disposed, in our view, the impugned order dated 3rd March 2020 is required to be and is hereby

stayed. If the stay application is not so filed within three weeks, the stay granted by us will stand revoked without further reference to this court.

7 Petition disposed with no order as to costs.

8 All to act on authenticated copy of this order.

(ABHAY AHUJA, J.) **(K.R. SHRIRAM, J.)**