IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1229 OF 2021

Dennis James Fernandes ….Petitioner

V/s.

The National Faceless Assessment Centre and Ors. ….Respondents

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Mr. Dharan V. Gandhi for petitioner.
Mr. Sham V. Walve for respondents.

CORAM : K.R.SHRIRAM, &
ABHAY AHUJA, JJ
DATED : 10th AUGUST 2021

P.C. :

1 Petitioner is aggrieved by an assessment order dated 26th April 2021 passed under Section 143 (3) read with Section 144B of the Income Tax Act, 1961 (the Act) in as much as according to petitioner, and rightly so, respondent no.1 has passed the order without considering the reply/objections filed by petitioner.

2 Respondent issued a notice dated 20th April 2021 for the Assessment Year 2018-2019 calling upon petitioner to show cause as to why assessment should not be completed as per the draft assessment order. Respondent gave petitioner time to submit response through registered e-filing account by 23:59 hours on 24th April 2021. This show cause notice itself has been digitally signed at 11:40 A.M. on 20th April 2021. So in effect respondent was giving petitioner a little more than 96 hours to respond. As the time was too short, petitioner submitted its response on 26th April 2021

at 13:43 P.M. which has also been acknowledged and admitted by respondent.

3 Respondent has passed the impugned order without considering the response/objections by petitioner observing that petitioner did not respond to the show cause notice issued within the time allowed. Technically that observation in the order cannot be stated to be factually incorrect but the fact is (a) the time given to respond was way too short and (b) before the order impugned was passed on 26th April 2021, response of petitioner was already available in the portal. We say this because in the response for confirmation on submission of eAssessment generated by the online portal on 26th April 2021 at 1.43 P.M., it is mentioned "*Your e-Proceeding response for AAOPF1127B has been submitted successfully with transaction id 10363948579. Submitted response is available with "Acknowledgment PDF" option under the response view section of respective Proceeding.*" The impugned order, however, has been digitally signed by respondent at 12:21:56 hours on 26th April 2021 about 57 minutes before the reply was uploaded by petitioner. We would still set aside the order impugned and direct respondent to follow due process once again because (a) respondent did not give a reasonable time to respond as the time granted in the show cause notice was too short and (b) the Government of India had issued a press release on 24th April 2021 extending the time limits to 30th June 2021 for passing of any order for

assessment or reassessment under Section 153 or Section 153B of the Act. Respondent perhaps gave such a short notice because the earlier extension granted was expiring on 30th April 2021 and since this press release by Government of India was issued on 24th April 2021, respondent need not be in such a tearing hurry to pass the order impugned.

4 Mr. Walve submitted that when the order proposed for the approval of Range Head was prepared and delivered to assessee, neither the assessing officer nor the Range Head received any reply from the assessee and therefore, the order was passed without considering the reply filed on 26th April 2021 but only considering what was available on record.

5 In our view, grave prejudice will be caused to petitioner if this order impugned is sustained because on the date the order was passed, petitioner's response was already on record. In the facts and circumstances of the case, we hereby set aside the assessment order passed under Section 143 (3) read with Section 144B of the Act dated 26th April 2021, the notice of demand dated 26th April 2021 in Form No.156 as well as the show cause notices dated 26th April 2021 under Section 274 read with Section 270A and 271AAC of the Act and remand the matter back to respondent for *denovo* consideration without making any observation on the merits of the objections raised by petitioner.

Respondent may follow due process as available in law and pass such orders in accordance with law.

All rights and contentions of parties are kept open.

6 Petition disposed.

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