IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4688 OF 2021

PETITIONER : Shri Shivaji Education Society, having its office at Shivaji Nagar, Amravati 444 601, through its Secretary Shri Sheshrao Shankarrao Khade.

...**VERSUS**...

RESPONDENTS :

01 The Commissioner of Income Tax, Exemption, Pune having its office at 3rd Floor, "C" Wing, PMT Building Shankar Sheth Road, Swargate, Pune.

02 Assistant Commissioner of Income-Tax, Circle – Exemption, MECL Building, Nagpur.

03 National Faceless Assessment Centre, New Delhi, through the Principal Chief Commissioner of Income Tax, (NaFAC), Delhi.

Mr.Sunil Manohar, Sr. Advocate a/b Mr.Atharva Manohar, counsel for the petitioner.
Mr.S.N.Bhattad, counsel for respondent Nos.1 to 3.

CORAM : SUNIL B. SHUKRE &
ANIL L. PANSARE, JJ.

DATE : 29.11.2021

<u>O R A L J U D G M E N T</u> (Per : Sunil B. Shukre, J.)

Heard.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. No doubt, notices issued under section 143(2) and section 142(1) of the Income Tax Act, 1961 were issued to the petitioner at the time when e-portal was in order and that the petitioner had also filed replies to the notices, the fact remains that one crucial notice which was lastly issued on 11th June, 2021 and which gave a time of just seven days i.e. up to 18th June, 2021 to file reply to the same, could not be replied to by the petitioner on account of the e-portal of the Revenue not being functional. The e-portal of the Revenue was out of order and not functioning till 30th June, 2021, thereby making it impossible for the petitioner to file reply online to the impugned notice, and that was the only option available to the petitioner to send his reply under the Faceless Assessment Scheme.

4. The e-portal of the Revenue not being functional during the period when the last show cause notice was issued to the petitioner and till the period up to 30th June, 2021 has not been specifically disputed by the Revenue.

5. The impugned assessment order dated 30th June, 2021 which also stresses the fact that the petitioner did not file reply to the show cause notice dated 11th June, 2021, in the circumstances, cannot be held to be an order which has been passed after following principles of natural justice. No sufficient opportunity has been granted to the petitioner for filing his reply. Such an order, cannot be sustained in the eye of law. This is also the view taken by the Division Bench of Delhi High Court in *Writ Petition (C) No.5235 of 2021 & CM Appl. 16068 of 2021 (Renew Power Pvt.Ltd. v. National E-Assessment Centre Delhi)*, decided on 19th May, 2021 which commends to us.

6. The impugned assessment order is hereby quashed and set aside. The matter is remanded back to respondent No.3 for fresh assessment in accordance with law, which may be done after giving adequate opportunity of hearing to the petitioner, as

early as possible, preferably within six months from the date of the order.

7. It is made clear that limitation period for making the assessment as directed by this Court shall not come in the way insofar as the issue pertains to the period which is prior to passing of the order.

8. Learned Senior Advocate Shri Sunil Manohar, on instructions, also submits that the petitioner would not raise such an issue of limitation as it would pertain to the past period.

9. Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J) **(SUNIL B. SHUKRE, J)**

KHUNTE