IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 783 OF 2022

Vinod Bhagwan Wadhwani ...Petitioner
vs.
1. Deputy Commissioner of Income Tax-Circle-3, Thane & 3 Ors. ...Respondents

*****

Mr.Devendra Hastimal Jain for petitioner.

Mr.Ashok Kotangle a/w. Mr. P.A. Narayanan, Mr.Vipul Arun Bajpayee and Mr.Venkatesh Anchan for respondents-revenue.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATE : 8th MARCH, 2022

P.C.:

1. On 6th December 2021, the following order came to be passed in Writ Petition (OS) No. 2763 of 2019 for the assessment year 2012-13 :

> *"1 Paragraph 6 of the order dated 13th January 2020 reads as under:*
>
> > *" The cases arising under this jurisdiction would generally turn on the combination of facts of each case. It is not being argued before us that because of there was only an intimation under Section 143(1) of the Act, the jurisdictional requirement under Section 147 of the Act need not be present. We have perused the reasons in this case and the objections filed by the Petitioner giving explanation and creditworthiness of the Petitioner. The order passed by the Respondent No.1 – Assessing*

> *Officer disposing of the objections, do not show application of mind qua the objections raised by the Petitioner. Firstly there is a reference to fact that there was no scrutiny assessment, then the objection of the Petitioner on law regarding jurisdiction is commented on then it is stated that earlier no documents could be examined because it is the case of intimation under Section 143(1) of the Act, then the Assessing Officer reproduced the paragraphs regarding what is meant by "reasons to believe" and passed the order. In view of the fact that there is absolutely no application of mind whatsoever while disposing of the objections to the factual errors and factual aspects pointed out by the Petitioner, we find that arguable case is made out."*

> *2 We have once again perused the order disposing the objections and echo the observations as quoted above. In fact, we would add that the order lacks bonafides. Therefore, the order dated 26th September 2019 is quashed and set aside. The matter is remanded for denovo consideration and it should be placed before an Assessing Officer, who was not the Assessing Officer, who passed the order dated 26th September 2019.*

> *3 Accordingly, petition disposed. Respondents shall inform petitioner within two weeks about the link / communication for the personal hearing. Respondent no.1 may pass such orders as he deems fit <u>but it should be a reasoned order dealing with all submissions of petitioner</u>."*

(emphasis supplied)

2. Mr.Kotangale states that the order on objections has been disposed by another Assessing Officer. Though Mr.Kotangale tried his best to justify the order, when he was confronted with the contents of the order, Mr.Kotantale has to agree that this order

dated 18th January 2022 purportedly in accordance with the directions passed by this Court also is devoid of reasons. The Officer has not dealt with the submissions of petitioner on merits. We would add, this order also lacks bonafide.

3. We, therefore, set aside the order dated 18th January 2022 and remand the matter back, to be listed before the Jurisdictional Assessing Officer (JAO), who shall pass a reasoned order, after giving a personal hearing to petitioner, notice of which shall be given atleast seven working days, in advance.

4. If the JAO is going to rely on any order or judgment of any Court or tribunal, a list thereof shall be provided to petitioner along with the notice of personal hearing, so that petitioner can deal with/distinguish those orders/judgments during the personal hearing.

5. The fresh order on objection shall be passed by the Assessing Officer, other than the Officer, who had handled the petitioner's case earlier.

6. For not complying with our directions in true letter and spirit, we direct the Assessing Officer, who has passed the impugned order dated 18th January 2022, to pay from his personal account a sum of Rs.10,000/- (Rupees Ten Thousand

Only) as donation to PM Cares. The details of the account are as under :-

Details of Domestic Donation Account		
Name of Account	:	PM CARES
Account Number	:	2121PM2020
IFSC Code	:	SBIN0000691
UPI	:	pmcares@sbi
State Bank Of India, New Delhi Main Branch		

7. From the affidavit of Ms.Aparna M. Aggarwal, affirmed on 16th February 2022, it appears that one Mr.Mukesh Kumar Solanki, ITO (ReFAC) (AU)-4, Ahmedabad has passed the impugned order, dated 18th January 2022. The said Mr.Mukesh Kumar Solanki shall pay the amount of Rs.10,000/- within two weeks and shall file an affidavit in compliance thereof, to which should be annexed the Bank Statement of Mr.Mukesh Kumar Solanki to prove that this amount has been paid from his account. This affidavit shall be filed within three weeks from today.

8. Petition disposed.

9. Petition be, however, listed on 6th April 2022 for compliance.

(N. J. JAMADAR, J.) **(K.R. SHRIRAM, J.)**