

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

WRIT PETITION NO.2253 OF 2021

Gstaad Hotels Private Limited

....Petitioner

V/s.

The Assessing Authority

National Faceless Assessment Centre, Delhi & Anr.

....Respondents

Mr. Nishit Gandhi a/w. Ms. Akshita Bhandari for petitioner.

Mr. Sham V. Walve i/b. Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &

N.J. JAMADAR, JJ.

DATED : 9th FEBRUARY 2022

P.C. :

1 We have heard the counsel for petitioner as well as counsel for respondents. Petitioner is impugning an assessment order dated 22nd April 2021 and the consequent notice of demand also dated 22nd April 2021. Various grounds have been raised to impugn the assessment order. The primary ground is that the show cause notice cum draft assessment order dated 19th April 2021 was digitally signed at only 18.40 P.M. of 19th April 2021 but time to respond was given only till 23:59 hours of 20th April 2021. It is also averred in the petition that during this time there was lock down in force in the State due to the second wave of COVID pandemic.

2 Moreover, in the show cause notice cum draft assessment order, in paragraph 5, the total taxable income is mentioned as NIL and paragraph 6 says "*..... the income of the assessee is proposed to be assessed u/s*

143(3) r.w.s. 144B at Rs.Nil". The Assessing Officer despite giving such a short notice has passed an assessment order dated 22nd April 2021 in which he has also stated that no reply has been filed though a show cause notice/draft assessment order was provided on 19th April 2021. The Assessing Officer has not even explained why such a short notice was given. Moreover, in the assessment order, the total taxable income is given as Rs.53,80,12,676/- when in the show cause notice cum draft assessment order the amount mentioned is NIL.

3 In the circumstances, we set aside the assessment order dated 22nd April 2021 and all consequential notices and demands and remand the matter for *denovo* consideration. The matter shall be placed before an officer different from the officer who had passed the impugned order dated 22nd April 2021.

4 Respondents shall provide the link to petitioner to which the response to the show cause notice cum draft assessment order has to be uploaded. This link shall be provided within one week of this order getting uploaded and within two weeks thereafter, the response shall be filed by petitioner. The concerned authority shall strictly follow the mandatory provisions of Section 144B of the Income Tax Act, 1961. Respondents shall also give a personal hearing to petitioner and the notice of personal hearing shall be communicated to petitioner atleast one week in advance and the assessment order, after complying with the procedure required, shall be

passed within twelve weeks of this order getting uploaded. If the concerned authority is going to rely on any judgment or any order of the Tribunal or Court, copy thereof shall be provided to petitioner in advance before the personal hearing so that petitioner will be able to deal with the same/distinguish the same during the personal hearing. Any order passed shall be a reasoned and detailed order dealing with all the submissions of petitioner.

5 The reason for interference by this Court as recorded in paragraph 2 above indicate one thing - the Assessing Officer could not care for the assessee and was not even conscious of what he was actually doing. This is a pure form of harassment of the assessee, a tax payer. The entire approach smacks of high handedness and don't care attitude.

6 By his/her conduct, the Assessing Officer has compelled petitioner to knock at the doors of this Court and thereby has also impinged on the valuable judicial time of this Court. In our view, this is a fit case where this Assessing Officer should be saddled with substantial cost to drive home a message that this kind of attitude will not be tolerated ever. Therefore, we direct the concerned Assessing Officer, whose name is not disclosed, to pay a sum of Rs.25,000/- as costs from his salary/personal bank account to PM Cares Fund and affidavit in compliance shall be filed within two weeks alongwith copy of the bank statement that this amount has been paid from the Assessing Officer's own account. The account details

of PM Cares Fund are as under :

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

7 Petition disposed.

8 We clarify that we have not made any observation on the merits
of the case.

9 Petition be listed for compliance on 24th February 2022.

(N.J. JAMADAR, J.)

(K.R. SHRIRAM, J.)