

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1927/2021

Pankaj s/o Roshan Dhawan,
 Aged about 40 years, residing
 having place of business at Dhawan Complex,
 Near Ambedkar Bank Chamarnala,
 Nagpur-440 011.(MS)

..... **PETITIONER**

...V E R S U S...

- 1] National e-Assessment Centre,
 Income Tax Department,
 Ministry of Finance, Government of India,
 Delhi.
- 2] Principal Commissioner of Income Tax-2,
 Saraf Chamber, Sadar, Nagpur.
- 3] Dy. Commissioner of Income Tax,
 Circle-2, Nagpur.
 Aaykar Bhawan, Civil Lines, Nagpur.
- 4] The Central Board of Direct Taxes,
 Ministry of Finance,
 North Block, New Delhi-110 001.
- 5] The Union of India,
 through the Secretary,
 Government of India,
 Ministry of Finance, New Delhi-110 001.

..... **RESPONDENTS**

 Shri S.C.Thakar, Advocate with Shri R.S.Thakar, Advocate for petitioner.
 Shri A.J.Bhoot, Advocate for respondent no.3.

CORAM : A.S.CHANDURKAR and PUSHPA V. GANEDIWALA, JJ.
DATED : 19th JANUARY, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard learned counsel for the parties in view of notice for final disposal issued earlier.

2. The challenge raised in this writ petition filed under Article 226 of the Constitution of India is to the assessment order dated 14.05.2021 pursuant to the scrutiny assessment under E-Assessment Scheme-2019. The said order has been passed under Section 143(3) read with Section 144-B of the Income Tax Act, 1961 (for short, 'the said Act') by which the income of the assessee stands assessed. Consequent there upon a demand notice has also been issued on the same day in terms of the aforesaid order.

3. The principal ground of challenge as raised to the assessment order is based on the breach and non-compliance of the principles of natural justice inasmuch as there was no proper and sufficient opportunity granted to the petitioner to respond to the show cause notice issued in that regard by the respondent no.1. On 10.04.2021 the respondent no.1 issued a show cause notice to the petitioner seeking his response as to why assessment should not be completed as per the draft assessment order. The petitioner was called upon to respond to the said show cause notice by 4.00 p.m. of 13.04.2021 which is within a period of three days from the receipt of that notice. The petitioner was informed that he could request for grant of personal hearing which request if granted would be conducted through video conferencing. In response thereto, the petitioner on 12.04.2021 made a request for adjournment on medical grounds and prayed that such adjournment be granted till 21.04.2021. The petitioner also indicated on the same day that

the matter would require explanation due to complexity of facts and hence requested for personal hearing through video conference. It is the further case of the petitioner that on 21.04.2021 a detailed reply to the show cause notice was submitted by the petitioner. The respondent no.1 however on 14.05.2021 issued the assessment order in question but without considering the reply as furnished by the petitioner. This aspect is sought to be indicated by referring to the contents of paragraph 5 of the assessment order wherein it was stated that the assessee had not submitted any proper explanation till 20.04.2021. On this basis, it is submitted by the learned counsel for the petitioner that though the petitioner responded to the show cause notice on 21.04.2021 and assessment order was passed much later on 14.05.2021, the petitioner's explanation has not been taken into consideration. This has resulted in denial of proper opportunity to the petitioner and failure to take into consideration his response to the show cause notice. In other words, despite seeking adjournment on 12.04.2021 till 21.04.2021 and thereafter filing reply on 21.04.2021, the same has not been considered by the respondent no.1 while issuing the assessment order. On this count, it is submitted that the assessment order is liable to be set aside.

4. The learned counsel for the respondent no.3 by relying upon the reply filed on record submitted that after considering the entire material on record the assessment order was passed. Since no new fact or material

evidence was submitted by the petitioner in the reply dated 21.04.2021, the assessment order came to be passed in accordance with law. It was submitted that due opportunity was given to the petitioner before passing the assessment order. Further an alternate remedy by way of statutory appeal under Section 264 of the said Act was available to the petitioner for challenging the assessment order. It was thus submitted that the writ petition did not deserve to be entertained.

5. Having heard the learned counsel for the parties and having given due consideration to their respective submissions, we are satisfied that the assessment order dated 14.05.2021 has been passed without granting proper and meaningful opportunity to the petitioner to respond to the show cause notice. It is not in dispute that as per show cause notice dated 10.04.2021 the petitioner was called upon to submit his response by 4.00 p.m. of 13.04.2021. The petitioner on 12.04.2021 sought time to furnish his response on medical grounds. A request for personal hearing was also made while seeking time till 21.04.2021. It is further not in dispute that on 21.04.2021 the petitioner did file his reply to the show cause notice. Paragraph 5 of the assessment order dated 14.05.2021 indicates that the concerned Authority preferred to wait only till 20.04.2021 and thereafter proceeded to pass the assessment order. Despite the fact that on 21.04.2021 the petitioner had filed reply to the show cause notice, the same has not been taken into consideration though the

assessment order was passed much later on 14.05.2021. In other words, if the Authority was to pass the assessment order on 14.05.2021 the material already on record in the form of petitioner's reply dated 21.04.2021 ought to have been considered before passing the assessment order. Thus, despite the petitioner responding to the show cause notice much prior to issuance of the assessment order, there is no consideration of the reply given by the petitioner to the show cause notice. A mere statement now in the affidavit in reply that the petitioner's response to the show cause notice did not contain any new or material fact cannot be accepted as such reason/consideration is not found in the impugned assessment order. The validity of the impugned assessment order would have to be judged from its contents and the same cannot be supported by extraneous material in the form of affidavit in reply. Hence for this reason the challenge to the assessment order dated 14.05.2021 is liable to succeed.

6. It is true that an alternate remedy by way of statutory appeal is available to the petitioner. However in view of the fact that it is apparent that the assessment order has been issued without granting due and proper opportunity to the petitioner, we are not inclined to relegate the petitioner to avail that statutory remedy. We may also state that the petitioner has challenged the provisions of Section 144-B(7)(viii) and (xii) and provisions of Section 144-B(1)(xvi)(b) and (c) of the said Act as being violative of Article

14 of the Constitution of India. Since we are not required to enter into the merits of the assessment order, such challenge is kept open for being raised at an appropriate stage, if so advised.

7. For reasons aforesaid, the assessment order dated 14.05.2021 passed by the respondent no.1 is set aside. The proceedings are remanded to the respondent no.1 for a fresh consideration in accordance with law after giving due opportunity of hearing to the petitioner. The challenges on merits to the assessment order are kept open for being raised before the said Authority. The proceedings be completed within a period of six months from today. Consequently the notice of demand dated 14.05.2021 issued pursuant to the assessment order would not survive.

Rule is made absolute in aforesaid terms with no order as to costs.

(PUSHPA V. GANEDIWALA, J.)

(A.S.CHANDURKAR, J.)

Andurkar..