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

WRIT PETITION NO. 4664 OF 2021

Urdu Education Society,
A Society/Trust, through its authorised
Trustee/Member Dr. Tabish Afzaal
Iqbalullah Khan, having office at 1,
Rani Jhansi Road, Ratanlal Plot, Akola,
Maharashtra - 444001 .... **PETITIONER**

VERSUS

1) National Faceless Assessment Centre
(NFAC) also known as National
e-Assessment Centre (NeAC), through its
Authorised Officer, Income tax Department,
New Delhi.

2) The Income Tax Officer,
Ward No.2, Exemptions, MECL Building,
Seminary Hills, Nagpur, Maharashtra-
440006.

3) The Principal Commissioner of Income
Tax-3, Aayakar Bhavan, Telankhedi
Road, Civil Lines, Nagpur – 440001.

4) The Central Board of Direct Taxes,
North Block, New Delhi -110002,
through its Director.

5) The Union of India,
through its Secretary, Ministry of
Finance, Government of India,
North Bock, New Delhi -110001. .... **RESPONDENTS**

Mr. Devendra Jain, Counsel h/f. Mr. A.M. Kukday, Counsel for the

petitioner,
Mr. Anand Parchure, Counsel for the respondents.

CORAM : ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED : 26th AUGUST, 2022

ORAL JUDGMENT : (PER : ROHIT B. DEO, J.)

The petitioner-Urdu Education Society, Akola (society) is duly registered under the Maharashtra Co-operative Societies Act, 1960.

2. The challenge in the petition is to the order of assessment dated 20-4-2021 rendered by respondent 1 in exercise of power under Section 143(3) read with Section 144B of the Income Tax Act (Act). The consequential relief is that notice of demand dated 20-4-2021 issued under Section 156 of the Act and the show cause notice of even date issued under Section 274 read with Section 270A of the Act be set aside

3. The grievance of the petitioner-assessee is that the assessment order is passed in breach of the principles of natural justice.

4. At the very outset, we may record the preliminary objection of the learned Counsel Mr. Anand Parchure that the assessee has alternate remedy. It is true that the order impugned is appealable. However, since, for reasons spelt out hereinafter, we find that the submission

premised on the breach of the principles of natural justice is substantiated by the material on record, we are not inclined to compel the assessee to prefer the statutory appeal. Suffice is to note the observations of the Hon'ble Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1***.

> *"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

5. The relevant facts are brief and virtually uncontroverted as the facts are thus :

(i) The assessee filed return for the assessment clear 2018-2019 declaring NIL income, *inter alia* on the premise that exemption under Section 11 of the Act is available.

(ii) The E-Assessment Scheme 2019, which is known as

"Faceless Assessment Scheme" was introduced vide notification dated 12-9-2019.

(iii) The return filed by the assessee was randomly selected for scrutiny by the Assistant Commissioner of Income Tax, E-Verification who issued notice under Section 143(2) of the Act dated 22-9-2019.

(iv) Respondent 1 issued detailed questionnaire vide notice dated 16-1-2020 purportedly under Section 142(1) of the Act, to which notice the assessee filed reply dated 05-2-2020.

(v) The Central Government amended the E-Assessment Scheme, 2009 vide notification dated 13-8-2020. The amended scheme specifically provides an opportunity to the assessee to request for personal hearing through video conferencing facility in the cases where modification to income is proposed in draft assessment order.

(vi) The next relevant development is that the assessee was served with an intimation on 14-10-2020 to the effect that the assessment proceedings for the assessment year 2018-2019 would be completed as per the provisions of the Faceless Assessment Scheme, 2019. The said intimation was followed by notice dated 09-12-2020 issued under Section 142(1) of the Act whereby the assessee was asked to provide certain details. The assessee preferred application dated

24-12-2020 seeking further time of two months to comply with the notice supra in view of the non-availability of record due to the Covid-19 pandemic situation. Respondent 1 granted time of ten days and directed the assessee to submit the relevant details by 18-1-2021.

(vii) In the interregnum, Dr. Iqbalullah Khan Gulam-the Secretary of the assessee society, who was looking after the accounts, audit and taxation matters unfortunately expired. In view of the unfortunate demise of the Secretary, the assessee could not submit the relevant details before 18-1-2021 and on 19-1-2021 the assessee preferred another application seeking further time on the ground that due to the demise of the Secretary, the details could not be supplied. Vide intimation letter dated 20-1-2021 the hearing was adjourned for thirteen days and the assessee was asked to comply with the requirements by 02-2-2021.

(viii) Risking digression, the other aspect of the matter as is pleaded by the assessee may be noted. The Chartered Accountant (CA) of the assessee Mr. Ramesh Chaudhary and Company, Akola was engaged to represent the assessee in the e-proceedings. The email of the CA on the record of the department was incorrect, with the result that certain notices issued by the department were not, as a fact, received by the CA.

(ix) Reverting to the facts which are more relevant, on 15-4-2021 respondent 1 issued show cause notice asking the assessee as to why the assessment should not be completed as per the draft assessment order. The draft assessment order proposed addition of Rs.10,40,93,124 (Rupees Ten Crore Fourty Lac Ninety Three Thousand One Hundred Twenty Four) in the income declared. According to the assessee, the said amount represents the salary and non-salary grant received from the State Government, and by no stretch of imagination can be considered as income.

6. Be that as it may, it is discernible from the notice dated 15-4-2021 that the assessee was asked to respond by 19-4-2021. The period of four days given to the assessee included Saturday and Sunday. In effect, the assessee was given two working days to file its response to the show cause notice and the draft assessment order.

7. The assessee could not file its response within the narrow window of two working days and sought further time, particularly since due to the Covid-19 pandemic the educational institutions were closed and the staff handling accounts was not readily available for collecting the data and formulating the structured response. However, respondent 1 proceeded to pass the impugned order on 20-4-2021.

8. We have already observed supra, that the principles of natural justice are egregiously violated. Two working days were in effect available with the assessee to formulate and submit its structured reply to the show cause notice and the draft assessment order. It is in this view of the matter, that we have observed supra, that the assessee need not be compelled to prefer appeal as a ritualistic formality.

9. Mr. Anand Parchure did submit that several show cause notices were issued by the department prior to the show cause notice dated 15-4-2021. However, the earlier notices are not relevant in the context of the issue involved since it was only vide show cause notice dated 15-4-2021 that the draft assessment order was served on the assessee to which response was to be filed within four days, which included Saturday and Sunday.

10. We have no hesitation in setting aside the order of assessment impugned and all consequential orders.

11. We request respondent 1 to grant personal hearing to the assessee after giving the assessee seven clear days notice since the portal will have to be opened to facilitate the personal hearing.

12. We further permit the assessee to file all the relevant documents, and if need be, the separate portal shall be opened to unable the assessee to do the needful. The assessee will be given three days notice of the opening of the portal to enable the assessee to file the relevant documents.

13. We clarify that the order is passed in the peculiar facts of the case and may not be construed or understood as precedent.

14. The petition is disposed of in the aforestated terms.

(ANIL L. PANSARE, J.) **(ROHIT B. DEO, J.)**

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