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

WRIT PETITION NO.359 OF 2022

Premlata Ramakant Fatehpuria,
Aged about 61 years, Occupation- Business,
R/o. Naik Sadan, Central Avenue Road,
Nagpur-440 002. **..PETITIONER**

Versus

1] Principal Commissioner of Income Tax-1,
having his office at Ayakar Bhavan,
Nagpur.

2] The Assistant Commissioner of Income Tax,
Circle IV, Nagpur having his office at MECL,
Seminary Hills, Nagpur.

3] The National Faceless Assessment Center,
New Delhi, through the Principal Chief Commissioner of
Income Tax (NFAC), having its office at Delhi.
.... **RESPONDENTS**

Shri Sunil Manohar, Senior Advocate with S/Shri A.A.Choube and A.S.Manohar, Advocates for petitioner.
Shri S.N.Bhattad, Advocate for respondent nos. 1 to 3.

CORAM : A.S.CHANDURKAR AND URMILA S. JOSHI-PHALKE, JJ.
DATE : 8th JUNE, 2022.

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

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order of assessment under Section 143(3) of the Income Tax Act, 1961 dated 19.06.2021 passed by the National Faceless Assessment Center (NFAC), New Delhi.

3. It is the case of the petitioner that on 22.04.2021 a show cause notice was issued seeking a response from the petitioner as to why the assessment should not be completed as per the draft assessment order. The petitioner was called upon to submit her response by 25.04.2021 either by accepting the proposed modifications or by filing written reply objecting to the same or making a request for personal hearing. In response thereto, the petitioner contends that on 23.04.2021 a request was made for grant of personal hearing after submission of the written reply. Despite this request, it is the grievance of the petitioner that without granting any opportunity of personal hearing, the assessment order has been passed.

4. Shri Sunil Manohar, learned Senior Advocate for the petitioner submits that the petitioner had made a request for grant of personal hearing within the time within which response from the petitioner was sought. It was incumbent upon the respondent no.3 to have granted an opportunity of personal hearing before passing the assessment order. There was no

justification for not granting such opportunity when in fact the petitioner was put to notice that if such request is made by 25.04.2021, personal hearing would be granted. The option of grant of personal hearing having been exercised prior to that date, the petitioner ought to have heard in the proceedings before passing the assessment order. For want of proper opportunity of hearing, prejudice has been caused and in that regard reference is made to the observations in paragraph 8.1.1 of the assessment order to demonstrate the perversity therein. It is thus submitted that the impugned order was liable to be set aside and the proceedings deserve to be remanded for fresh adjudication.

5. The respondents through their learned counsel Shri S.N.Bhattad have opposed the aforesaid submissions by filing their reply. It has been stated in the reply that after giving the show cause notice to the petitioner, the order of assessment has been passed and there was no breach of principles of natural justice.

6. Having heard the learned counsel for the parties and having perused the documents on record, it is clear that in response to the show cause notice dated 22.04.2021, the petitioner had on 23.04.2021 sought an opportunity for grant of personal hearing. Despite receipt of this request by the respondent no.3, the impugned order has been passed after a period of

almost two months but without granting any such opportunity. The impugned order does not indicate the reason for not granting such opportunity despite request for the same having been made within time and received by the respondent no.3. We find from the facts of the present case that failure to grant such opportunity to the petitioner has definitely caused prejudice to the petitioner. On the ground that the principles of natural justice have been violated, the impugned order of assessment is liable to be set aside.

7. Accordingly for the aforesaid reasons, the assessment order dated 19.06.2021 is set aside. Considering the facts of the present case, the respondent no.3 shall grant an opportunity of personal hearing to the petitioner through video conferencing before it proceeds further in terms of the show cause notice dated 22.04.2021. All points on merits are kept open. It is expected that the respondent no.3 shall pass fresh assessment order within a period of four months from today.

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

(URMILA S. JOSHI-PHALKE, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..