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

WRIT PETITION NO. 480 OF 2022

Sarda Energy and Minerals Limited,
having its office at 73-A, Central Avenue Road,
Nagpur-440 018. through Director-
Padam Kumar Jain s/o Manak Chand Jain,
aged about 59 years.

..PETITIONER

Versus

1] Principal Commissioner of Income Tax-2,
having his office at Saraf Chambers,
Sadar, Nagpur-440001.

2] The Assistant Commissioner of Income Tax,
Circle 4, Nagpur having his office Saraf Chambers,
Sadar, Nagpur-440001.

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 Shri A.S.Manohar, Advocate 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 dated 22.04.2021 passed by the National Faceless Assessment Center (NFAC), New Delhi, raising a demand under Section 156 of the Income Tax Act, 1961.

3. It is the case of the petitioner that on 19.04.2021 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 its response by 23.59 hours of 20.04.2021 (within 30 hours from the issuance of the show cause notice) either by accepting proposed modifications or by filing written reply objecting to the same or making a request for personal hearing. In response thereto, the petitioner on 20.04.2021 moved an application for grant of adjournment till 28.04.2021 stating therein that the staff of the concerned Chartered Accountant firm through which the petitioner filed its returns had been infected with COVID-19 and hence prayed for adjournment. A detailed reply was submitted on 22.04.2021 in response to the show cause notice dated 19.04.2021. Despite this request, it is the grievance of the petitioner that the respondent no.3 without considering that detailed reply and ignoring the fact that the petitioner had applied for adjournment till 28.04.2021 by mentioning genuine reasons, the assessment order has been passed.

4. Shri Sunil Manohar, learned Senior Advocate for the petitioner submits that the petitioner has made a request for grant of adjournment till 28.04.2021 for

genuine reasons as the staff of the Chartered Accountant firm, engaged by the petitioner had been infected with COVID-19. Lockdown was also imposed in the State of Chhattisgarh. It was incumbent upon the respondent no.3 to have granted adjournment till 28.04.2021 considering the reasons mentioned in the application which was duly received. There was no justification for not granting adjournment. For want of proper opportunity of hearing, prejudice had been caused to the petitioner. The petitioner has placed reliance on various judgments including the decision in Writ Petition (L) No.11052/2021 dated 27.10.2021 at Principal Seat Mumbai, and submitted that in an almost identical situation, this Court had been pleased to quash and set aside the order impugned therein. Even otherwise, the respondent no.3 had not considered the detailed reply filed on 22.04.2021 before passing the impugned order. It is thus submitted that the impugned order is 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 is no breach of principles of natural justice.

6. Having heard the learned counsel for the parties and perused the documents on record, it is clear that in response to the show cause notice dated 19.04.2021 the petitioner had on 20.04.2021 sought adjournment till 28.04.2021 for

genuine reasons. Despite receipt of this request by the respondent no.3, the impugned order has been passed but without granting any such opportunity. The impugned order does not indicate the reason for not granting adjournment despite request for the same having been made within time and received by the office of 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 22.04.2021 is set aside. The respondent no.3 shall re-consider the matter and pass fresh assessment order within a period of four months from today after giving due opportunity to the petitioner.

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

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

Andurkar..