IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.505 OF 2023

Bhogin Danabhai Patel
Age 68 years, occ. Business,
23, Kailash Nagar, M.G. Road,
Ghatkopar (East),
Mumbai-400 077
PAN NO.AABPP0432A ... Petitioner

Versus

1. The National Faceless Assessment Centre, E Ramp, Jawarhalal Nehru Stadium, Delhi-110 003

2. Dy Commissioner of Income tax
Circle 27(1), Mumbai
IT-Office, Vashi Railway Station
Building, Vashi, Navi Mumbai-400 073

3. Union of India, through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi-110 001. ... Respondents

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Mr. Rahul Hakani i/b Ms. Niyati Mankad for the Petitioner.
Mr. Suresh Kumar for the Respondents.

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CORAM : DHIRAJ SINGH THAKUR &
ARIF S. DOCTOR, JJ.

DATE : 27 JANUARY 2023

P.C.

. The Petitioner challenges the Order of assessment dated 23 December 2022 passed under Section 144B r/w 143(3) of the

Income Tax Act, 1961 ("the Act"), primarily, on the ground that the Petitioner had not been granted a reasonable opportunity of being heard. It is stated that the draft assessment order came to be passed by the jurisdictional assessing officer on 14 December 2022, which required the Petitioner to show cause as to why the variation proposed be not made. The said notice also informed the Petitioner of his right to seek a personal hearing in the matter. The response was filed to the show cause notice and personal hearing was also prayed for, which was also allowed vide communication dated 20 December 2022. The time fixed was 21 December 2022 at 11.30 a.m. through Video Conferencing.

2 The Petitioner's case is that a request was made for a short adjournment on account of the fact that the Counsel for the Petitioner was busy in a court hearing and, therefore, prayed that the matter be taken up on 22 December 2022 at 02.00 p.m.

3 It is stated that without considering the prayer for adjournment, the Order of assessment came to be passed. It is stated that the Order of assessment also does not at all make mention of any such prayer having been made by the Petitioner muchless any reason is reflected as to why the prayer could not be

allowed. Learned Counsel for the Petitioner urged that had the Petitioner been afforded some time, as had been prayed for, certain aspects, which were in the mind of the assessing officer against the Petitioner could have been clarified leading to a different view being taken by the assessing officer.

4 Mr. Suresh Kumar, learned Counsel for the revenue, on the other hand, submitted that the reply having been filed by the Petitioner to the draft assessment Order, it would make no material difference even if opportunity of personal hearing was not given. This argument is, however, unacceptable inasmuch as scheme of Section 143(3) read with Section 144B itself envisages a personal hearing to be granted to the assessee. Reference in this regard can be made to the draft assessment order dated 14 December 2022, which specifically provided that the assessee could request for a personal hearing through Video Conferencing. In this circumstance, it is not open to the Respondents to claim that such opportunity of hearing even when envisaged, was not necessary.

5 Be that as may, we allow the Petition. The impugned Assessment Order dad 23 December 2022 is set aside. The matter is remanded to the National Faceless Assessment Centre for passing

the Orders afresh after providing to the Petitioner an opportunity of personal hearing. The Order be passed in four months from today.

(ARIF S. DOCTOR, J.) **(DHIRAJ SINGH THAKUR, J.)**

RAJESH VASANT CHITTEWAN Digitally signed by RAJESH VASANT CHITTEWAN Date: 2023.02.04 12:00:25 +0530