IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6410 OF 2022
WITH
WRIT PETITION NO. 3410 OF 2022
WITH
WRIT PETITION NO. 6411 OF 2022
WITH
WRIT PETITION NO. 3428 OF 2022

Abhijeet Anilkumar Gaikwad ….. Petitioner
Vs.
Assistant Commissioner of
Income Tax-Circle 1 and ors. ….. Respondents

Mr.Dharan Gandhi, for Petitioner.
Mr. Ajeet Manwani a/w Ms. Samiksha Kanani, for Respondents.

CORAM: K.R.SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : JUNE 20, 2023

P.C.

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1. The petitioner is aggrieved by notice dated 31/03/2021 issued under Section 148 of the Income Tax Act, 1961 ('the Act') and the order dated 22/02/2022 rejecting petitioner's objections.

2. Though various grounds have been raised, two grounds that Mr. Gandhi highlighted at the outset are: (a) no personal hearing was granted before the impugned order dated 22/02/2022 was passed and (b) there has been non-application of mind while passing the order dated 22/02/2022. Mr. Gandhi of course also adds that the application for sanction and the approval under Section 151 of the Act has been made available

despite called for only in the affidavit-in-reply.

3. The fact that no personal hearing was given is not disputed.

4. On the ground of non-application of mind, it was submitted, as averred in the petition, that respondent no.4 has passed the impugned order in a mechanical way without considering the contentions raised by petitioner, without conducting any further enquiry and by stating incorrect facts.

5. Mr. Gandhi submitted that in paragraph 4 of the impugned order, it has been stated *"From the perusal of ITR, it is not established that the gross receipts of the assessee are in Cash",* but this allegation has not been raised in the reasons recorded for reopening. Mr. Gandhi also submitted that in the same paragraph 4 of the impugned order, it is stated *"Hence, the source of cash deposits amounting to Rs.85,94,597/- and Rs.6,00,000/- against insurance premium to HDFC Life Insurance Company through demand draft cannot be presumed to include the amount of gross receipts of the assessee*." This finding is incorrect inasmuch as the reasons recorded itself indicate that cash deposit in the account is only Rs.3,94,600/- and non-cash is Rs.81,99,997/-. Mr. Gandhi further submitted that in paragraphs 5 and 6 of the impugned order also there are incorrect findings. These allegations which are made in ground (J) to the petition

have not been denied by respondents. In the affidavit-in-reply filed through Abdhesh Kumar Jha affirmed on 13/04/2022, respondents state *“it is respectfully submitted that the contentions of the assessee in this ground are pertaining to National E-Assessment Centre, Delhi i.e. Respondent No. 4. Hence, no comments are being offered.”*

6. Therefore, on this ground alone, the impugned order dated 22/02/2022 is required to be quashed and set aside, which we hereby do.

7. At the same time, without making any observations on merits of the matter and keeping open all rights and contentions of petitioner, the matter be remanded to the Jurisdictional Assessing Officer (JAO) who shall dispose petitioner’s objections within 4 weeks of receiving supplementary objections from petitioner, which Mr. Gandhi undertakes will be filed within 2 weeks from today.

8. The order to be passed shall be a reasoned order dealing with every objection of petitioner and before passing any such order, a personal hearing shall be granted to petitioner, notice whereof shall be communicated atleast 5 working days in advance.

9. If JAO is going to rely on any judgment, a list thereof shall

be provided to petitioner along with the notice for personal hearing so that petitioner will be able to deal with/distinguish the same during the personal hearing.

10. If petitioner wishes to file written submissions stating what transpired during the personal hearing, the same to be filed within 3 days from the personal hearing.

11. Petition disposed.

12. Petitioner's statement that petitioner shall co-operate and will not seek any adjournment unless the notice is not given in accordance with our directions above is accepted.

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13. Mr. Gandhi states that identical grounds in Writ Petition No. 6410 of 2022 have been raised in these three petitions as well which Mr. Manwani does not dispute.

14. Therefore, the impugned orders in these three petitions, being order dated 22/02/2022, are quashed and set aside.

15. The directions given above in paragraphs 7 to 10 shall also apply to these petitions.

(FIRDOSH P. POONIWALLA, J) **(K.R.SHRIRAM, J)**