IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6069 OF 2023

Arun Shirke ....Petitioner

V/s.

Principal Commissioner of
Income Tax, Thane & Anr. ....Respondents

Mr. Sham Walve a/w. Mr. Abhishek Khandelwal for petitioner.
Mr. Ajeet Manwani a/w. Ms. Samiksha Kanani for respondents.

CORAM : K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED : 29th AUGUST 2023

P.C. :

1 Petitioner is impugning an order dated 29th March 2023 passed under Section 264 of the Income Tax Act, 1961 (the Act) by respondent no.1 rejecting petitioner's application filed on 18th November 2021. Rejection has been on the ground that petitioner has not submitted any explanation and has also not responded to the show cause notice dated 16th March 2023.

2 In the facts and circumstances of the case, we do not wish to go into the details of background. Suffice to say, petitioner was issued notice dated 16th March 2023 by respondent no.1 calling upon petitioner to submit relevant documents and explanation regarding petitioner's case on 23rd March 2023 at 11.30 a.m. It is petitioner's case that the said notice itself was received by petitioner only on 27th March 2023. At Exhibit "Q" is copy of the postal acknowledgment. It is not denied in the affidavit in reply

that petitioner received it only on 27th March 2023. It is only stated that the show cause notice was issued through ITBA system of the Department and hence, served on petitioner on the same day.

3 Petitioner is an individual and we would, therefore, proceed on the basis that petitioner was not served the notice before the date on which he was to make submissions before respondent no.1.

4 In the circumstances, we hereby quash and set aside the impugned order dated 29th March 2023 and remand the matter to respondent no.1 to pass such order as he deems fit on merits. Before passing any order, respondent no.1 shall give personal hearing to petitioner, notice whereof shall be communicated atleast five working days in advance by courier as well as by email at arun.shirke@dfpcl.com. During the personal hearing petitioner may submit relevant documents and explanation including legal precedent. The order to be passed shall be a reasoned order dealing with every submission of petitioner. Application of petitioner to be disposed within twelve weeks from the date this order is uploaded.

5 Petition disposed.

6 We clarify that we have not made any observation on the merits of the matter.

(DR. N. K. GOKHALE, J.) **(K. R. SHRIRAM, J.)**

Gauri Gaekwad