IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7858 OF 2023

Jigneshkumar Dhirajlal Savaliya ….Petitioner

V/s.

Income Tax Officer, Ward 28(2)(1),
Mumbai and Ors. …Respondents

Mr. Harsh R. Kothari for Petitioner.
Mr. Manoj Shirsat, Senior Panel Counsel, Income Tax Department.

CORAM : K.R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATED : 4th JULY 2023

P.C. :

1. The prayers (a), (b) and (c) in the petition read as under :

> *(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ, order or direction in the nature of Certiorari under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned show cause notice, passing of the impugned order, the issue of the impugned notice under section 148 of the Act, the passing of the impugned assessment order and the issue of the impugned demand notice and the impugned penalty notice and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned show cause notice dated 21st March 2022 (Exhibit B), impugned order dated 30th March 2022 passed under section 148A(d) of the Act (Exhibit D), the impugned notice dated 30th March 2022 issued under section 148 of the Act (Exhibit E), the impugned assessment order dated 29th March 2023 (Exhibit R), the impugned demand notice dated 29th March 2023 (Exhibit S) and the impugned penalty notice dated 29th March 2023 (Exhibit T) for the assessment year 2018-19;*

> *(b) that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, ordering and directing Respondent No.1 to withdraw the impugned show cause notice dated 21st March 2022 (Exhibit B), impugned order dated 30th March 2022 passed under section 148A(d) of the Act (Exhibit D), the impugned notice dated 30th March 2022 issued under section 148 of the Act (Exhibit E), the*

impugned assessment order dated 29th March 2023 (Exhibit R), the impugned demand notice dated 29th March 2023 (Exhibit S) and the impugned penalty notice dated 29th March 2023 (Exhibit T) for the assessment year 2018-19;

(c) that this Hon'ble Court may be pleased to issue a Writ of Prohibition or any other writ order or direction under Article 226 of the Constitution of India ordering and directing Respondent No.1 not to take any action in furtherance to the impugned assessment order dated 29th March 2023 (Exhibit R), the impugned demand notice dated 29th March 2023 (Exhibit S) and the impugned penalty notice dated 29th March 2023 (Exhibit T) for the assessment year 2018-19;

2. Petitioner is aggrieved because among other grounds taken in the petition, the primary ground is that no personal hearing was granted to petitioner despite an express request being made.

3. When the petition was taken up for admission yesterday, we indicated to counsel for respondents that we are inclined to dispose the petition at the admission stage itself and he should take instructions as to why the impugned orders and notices be not quashed and set aside.

4. When Mr. Shirsat was confronted with this position as to the effect of not giving a personal hearing or opportunity to be heard, Mr.Shirsat as an officer of the court in fairness submitted that he has come across atleast two judgments being ***Bharat Aluminium Company Limited Vs Union of India and Others***[1] and ***Piramal Enterprises Limited vs. Additional/ Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer and Others***[2] in which it states that assessee should be given an opportunity to present his case personally. More so, if he asks for.

1 2022 SCC OnLine Del 105
2 2021 SCC OnLine Bom 1534

5. In the circumstances, without going into the merits of the matter we hereby quash and set aside the order dated 30th March 2022 passed under Clause (d) of Section 148A of the Income Tax Act, 1961 (the Act) and the Assessment Order dated 29th March 2023. Consequential demand notice and penalty notice both dated 29th March 2023 also be quashed and set aside. The matter is remanded for *denovo* consideration. The time spent from the date this petition was lodged, i.e. 8th June 2023 till date is excluded in computing limitation.

6. Before passing any order, petitioner shall be given a personal hearing, notice whereof shall be communicated atleast five working days in advance. If the Assessing Officer is going to rely on any judgment or any order of the Tribunal or Court, list thereof shall be provided to petitioner in advance alongwith notice of personal hearing so that petitioner will be able to deal with the same/distinguish the same during the personal hearing. Any order passed shall be a reasoned and detailed order dealing with all submissions of petitioner.

7. Petition disposed. No order as to costs.

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