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

WRIT PETITION 1103 OF 2023

Jayant Umakant Mamidwar,
Aged about 57 yrs, Occ. Business,
R/o.Kotwali Ward,
Chandrapur 442 402 .....**PETITIONER**

...V E R S U S...

1.Union of India,
through its Secretary,
Ministry of Finance,
New Delhi 110 001

2. Central Board of Direct Taxes,
New Delhi, Ministry of Finance,
North Block,
New Delhi 110 001

3. National Faceless Appeal Centre,
Through its commissioner of
Income Tax (Appeals), Income
Tax Department, Ministry of
Finance, Government of India,
New Delhi.

4. Pr. Commissioner of Income
Tax – 1, Nagpur, Aaykar Bhawan,
Civil Lines, Nagpur 440 001

5. Local High Pitch Committee,
Through its Chairperson,
c/o. Pr. Chief Commissioner of
Income Tax, Nagpur, Aaykar Bhawan,
Civil Lines, Nagpur 440 001

6. Dy. Commissioner of Income Tax,
Circle – Amravati, Amravati. ...**RESPONDENTS**

Mr. Ram Heda, counsel for petitioner,
Mr. Anand Parchure, counsel for respondents.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 28.02.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. The petitioner has sought the following substantive relief:

> i). To hold and declare that the Instruction F. No. 225/101/2021-ITA-II dated 23.4.2022 (Annexure – X) issued for constitution of Respondent No. 5 Local High Pitch Committee by the Respondent No. 2 Central Board of Direct Taxes, New Delhi is unconstitutional and ultra vires to the Income Tax Act, 1961 in the interest of justice;
>
> ii) Issue of a writ certionari or an order quashing the impugned order dated 19.10.2022 passed by the Respondent No. 4 Pr Commissioner of Income Tax – 1 (Annexure No. XII) rejecting the application for stay of recovery of tax as being illegal, invalid, null and void, unjust, unfair and violative of Arts. 14 and 19 of the Constitution of India, in the interest of justice;

iii) Issue of a writ of certiorari or an order quashing the impugned minutes of meeting dated 11.11.2022 given to the petitioner by the Respondent No. 5 Local High Pitch committee (Annexure No – XV) whereby the grievance application preferred by the petitioner was rejected as being illegal, invalid, null and void, unjust, unfair and violative of Arts. 14 and 19 of the Constitution of India in the interest of justice;

iv) Direct the Respondent No. 4 Pr Commissioner of Income Tax – 1 to grant stay on recovery of taxes without payment of any tax in light of Instruction No. 1914 of 2016 (Annexure No – XVIII) dated 31.7.2017 in the interest of justice.

3. Petitioner claims to be businessman engaged in providing transport and logistic services in addition to real estate and renting services.

4. Petitioner claims to have filed his income tax return for the assessment year 2018-19 under Section 139(1) of the Income Tax Act, 1961 on 31.10.2018 declaring total

income of Rs. 79,23,080/- and to have paid tax of Rs. 16,91,514/-.

5. Petitioner’s return was scrutinized under CASS and Assessment Order was passed by the National E-Assessment Centre, New Delhi. Income of Rs. 4,61,17,232/- was added and Demand Notice for Rs. 4,94,31,517/- was issued to the petitioner.

6. The petitioner preferred an appeal before respondent 3 – National Faceless Appeal Centre, New Delhi on 18.4.2021. The petitioner preferred an application for stay. The petitioner also preferred separate application before respondent 6 – Deputy Commissioner of Income Tax for stay of the demand.

7. The petitioner contends that respondent 2 Central Board of Direct Taxes (“CBDT”) has issued Circular dated 29.12.2021 articulating guidelines for priority disposal of the appeals pending with respondent 3 – National Faceless

Appeal Centre. The guidelines *inter alia* provide that where a demand raised is above Rupees One Crore and where the assessee is facing genuine hardship, respondent 3 – National Faceless Appeal Centre, on recommendations of respondent 4, shall take up the hearing of the appeal out of turn.

8. The petitioner claims that in the light of the Circular dated 29.12.2021, he requested for out of turn hearing of the appeal pending with respondent 3 – National Faceless Appeal Centre. However, on 26.8.2022, respondent 6 rejected the application for stay of recovery of demand on the ground that the petitioner failed to deposit 20% of the gross demand.

9. Aggrieved by the rejection order passed by respondent 6, the petitioner claims to have preferred an application before respondent 4 – Commissioner of Income Tax-1, seeking consideration of high pitched assessment.

10. Petitioner contends that the CBDT has directed

constitution of local committees to deal with taxpayer's grievances regarding the high pitched scrutiny assessment. Petitioner accordingly preferred an application before respondent 5-Local High Pitched Committee for stay on recovery of demand *inter alia* on the ground that the Assessment Order was passed in violation of the principles of natural justice.

11. Petitioner claims that respondent 4 did not grant stay on recovery and directed the petitioner to pay the amount demanded in installments of Rs. 4 lakhs per month. The petitioner contends that he expected hearing from High Pitched Committee. However, on 22.12.2016, respondent 6 informed the petitioner that respondent 5 – Local High Pitched Committee has concluded that the assessment is not high pitched.

12. Petitioner requested respondent 6 for copy of the reasoned order which is not provided to the petitioner. However, respondent 6 did share the copy of the minutes of

the High Pitched Committee which would reveal that the material placed on record by the petitioner is not considered and the application is rejected by respondent 5 - Local High Pitched Committee in a mechanical manner.

13. Petitioner contends that he has also preferred second application for stay on recovery of tax which is pending with respondent 3-National Faceless Appeal Centre. The petitioner contends that he is served with notice dated 10.1.2023 which demands the tax.

14. We have heard learned counsel for petitioner Mr. Ram Heda and the learned counsel for respondents 1 to 6 Mr. Anand Parchure. We are not inclined to delve deeper in seemingly broader question raised in the petition. We note that the order under Section 143(3) read with the other relevant provisions of the Income Tax Act is rendered on 11.11.2022. The petitioner has preferred an appeal under Part A of Chapter (XX) of the Income Tax Act, 1961 which is pending with the National Faceless Appeal Centre. We

further note that the Deputy Commissioner of Income Tax did invite the attention of the petitioner to the CBDT instructions 1914 of 2016 and informed that the request for stay could be considered only after the payment of at least 20% of gross demand. The petitioner did not comply and on 2.9.2022 addressed communication to Commissioner of Income Tax-1, seeking stay till the disposal of the appeal.

As regards the grievance that the High Pitched Committee did not consider the material on record, and that the petitioner was not heard, we may extract the Circular dated 29-12-2021, which we have already noted albeit partially earlier :

"F. o.279/Misc./M-102/2021-ITJ
Government of India
(Ministry of Revenue)
Central Board of Direct Taxes ITJ Section
29-12-2021

To,
All Pr.CcsIT

Subject – Guidelines for priority/out of turn disposal of appeals by CsIT (AU) and CsIT (Appeals)–reg.

It has come to notice that many taxpayers have requested for priority/out of turn hearing of their appeals *pending with CsIT(AU) and/or CIT(A). With a view to address the issue it is decided that requests covering genuine and exceptional circumstances, raised at the instance of the appellant, may be considered by the Pr. CCIT NFAC and CCsIT of Central charges and International Taxation, on the basis of recommendations of jurisdictional Pr.CIT/ Pr.CIT (Central)/CIT(IT), in the following situations -*

i) Cases having demand above Rs.1Cr.
ii) Cases where refunds, as originally claimed in ITR, are in excess of Rs.1,00,000/-,
iii) Cases where directions to this effect have been issued by Courts,
iv) Cases where request is made by senior citizens and/or super senior citizens,
v) Any other case of genuine hardship.

Yours faithfully,

(Tanay Sharma)
DCIT (OSD)(ITJ)-I

Copy to : JCIT, Data-Base Cell for uploading on www.irsofliccrsonline.gov.in"

15. The request for early hearing is made on the premise that the additional assessment under Section 143(3)

and the demand under Section 156 of the Income Tax Act (Act) is high-pitched and inasmuch as the demand is more than Rs.1 Crore, appeal challenging the order under Section 246-A of the Act, and which is pending before the Principal Commissioner of Income Tax, be heard out of turn.

16. The contention that in such matters, where out of turn hearing of the appeal is the issue, principles of natural justice must be followed or the material on record must be considered in depth, need not detain us. Indeed, contentious as the submission is, we are not required to delve deeper. We note that personal hearing as such was not sought, and nothing is brought to our notice to suggest that a personal hearing is provided either under any statutory rule or then any guideline issued by the CBDT.

17. We may further note the revised instructions issued by the CBDT dated 23-4-2022 which provides for the constitution of local committees to deal with the grievance of very high-pitched scrutiny assessment. Paragraph-D

articulates the action to be taken by the local committees on grievance petitions, and we may extract the same.

> *"D. Action to be taken by the Local Committees on grievance petitions :*
>
> *(i) A grievance petition received by the Local Committee would be acknowledged. A separate record would be maintained for dealing with such petitions by the Member-Secretary.*
>
> *(ii) Member-Secretary on receipt of taxpayers' grievances of High-Pitched Assessment, will forward the same to the Chairman and Members of the Local Committee within three days of receipt of the grievance.*
>
> *(iii) The grievance petition received by Local Committee would be examined by it to ascertain whether there is a prima facie case of High-Pitched Assessment, non-observance of principles of natural justice, non-application of mind or gross negligence of Assessing Officer/Assessment Unit.*
>
> *(iv) The Local Committee may call for the relevant assessment records to peruse from the Jurisdictional Pr.CIT concerned.*
>
> *(v) The Local Committee may seek inputs from the Directorate of Systems (ITBA/e-filing/CPC-ITR, CPC-TDS, etc.) on Systems-related issues emanating from the grievance/matter under consideration, if considered necessary.*
>
> *(vi) Local Committee would ascertain whether the addition(s) made in assessment order is/are not backed by any sound reason or logic, the provisions of law have grossly been misinterpreted or obvious and well-established facts on records have outrightly been ignored. The Committee would also take into consideration whether principles of*

> *natural justice have been followed by the Assessing Officer/Assessment Unit. Thereafter, Local Committee shall submit a report treating the order as High-Pitched/Not High-Pitched, along with the reasons, to the Pr. CCIT concerned.*
>
> *(vii) The Local Committee shall endeavour to dispose of each grievance petition within two months from the end of the month in which such petition is received by it.*
>
> *(viii) Member-Secretary will ensure that the meetings of the Local Committees are held at least twice in every month during the pendency of the grievance petitions and that timely reports are submitted to the Pr.CCIT concerned."*

The parameters of considerations are specified in sub-paragraph (vi).

18. However, considering that High-Pitched Committee is constituted only to decide the entitlement to out of turn hearing, it is evident that the material on record will have to be evaluated, not in depth which is the adjudicatory role of the appellate authority, but from a *prima facie* prospective. The material placed on record would suggest that the High-Pitched Committee considered the grievance of the assessee along with the relevant record. The High-Pitched Committee

noted that the petitioner did not comply with notice under Section 142(1) of the Act dated 03-12-2020 nor did he comply with the reminder letter dated 20-12-2020 or then the show cause notice dated 19-1-2021. The Committee further noted that the reminder letter dated 03-2-2021 is responded belatedly and there is no compliance with the letter dated 26-2-2021. We may extract the reasons recorded by the High-Pitched Committee -

> *"As can be seen from the table given above, that the Assessing Officer has given several notices to make the compliances. The assessee has made only one compliance dated 24-2-2021, which was considered by the A.O. Thus, the claim of the assessee that he had replied time to time stands incorrect.*
>
> *From verification of the reply/annexures given during his solitary compliance, it is noticed that the documentary evidence has been submitted in respect of non-taxable income of PPF interest of Rs.47,860/-. The Assessing Officer asked further supporting documents in respect of balance addition in capital account vide letter dated 26-2-2021, but assessee did not make any compliance in this regard. As the assessee has not submitted supporting documents in support of his clarification dated 24-2-2021, the A.O. has left no other alternative, but to make the addition under head unexplained cash credit u/s 68 of the I.T. Act. In view of these allegation levied by the assessee that "all the relevant documents and submissions were made" does not bear ground.*

It is also seen that the assessee was given reasonable opportunity of being heard. However, the assessee did not produce the evidences as required and asked for by the Assessing Officer. The AO has computed the increase in capital as an income of the previous year and after deducting there from total income shown as per ITR, which is based on available documents on record. The difference in capital was assessed as unexplained cash-credit u/s 68 which is as per the I.T. Act, 1961. As such the Assessing Officer has concluded the assessment proceeding and passed the assessment order on the basis of available evidences and as per the provision of I.T. Act.

Under the facts and circumstances of the case and the findings discussed in the preceding paras, the Committee is of the considered opinion that the addition made in the assessment order is based on facts. The provisions of the law have not been misinterpreted. The AO had not ignored the relevant facts on record. However, the A.O. should have observed the Tax Audit report carefully which includes certain income and capital receipts, which are not credited to profit and loss A/c. The principles of natural justice have been duly followed by the AU. Therefore, the assessment order made in this case of ***Jayant Umakant Namidwar for A.Y. 2018-19*** *cannot be considered to be High-Pitched assessment."*

19. In writ jurisdiction, we are not inclined to delve deeper in the narrative and the counter narrative. The assessee is only denied out of turn hearing. We do not find any irrationality in the reasons recorded by the High-Pitched Committee.

20. We may note that the department has already shown indulgence inasmuch as Stay is granted for assessment year 2018-19 on the condition of payment of Rs.4,00,000/- (Rupees Four Lakh) per month, the first installment being due and payable from November 2022. In essence, the petitioner is permitted to deposit 20% demand, in monthly installment of Rs.4,00,000/- (Rupees Four Lakh). In our considered view, the department has been very reasonable and considerate.

21. The petition is absolutely meritless, and is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand), which may be paid to the Department within four weeks from the date this order is uploaded on the High Court Website.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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