

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2919 OF 2024

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Cheftalk Food and Hospitality Services Pvt. Ltd.

A company incorporated in India

having office at A-34-35,

New Empire Industrial Estate,

Kondivita Road, Andheri E, J.B. Nagar,

Mumbai-400059.

PAN : AAFCC7584D

... Petitioner

Versus

1. Income Tax Officer,
Ward (9)(2)(1) Mumbai

2. The Assessment Unit,
Income Tax Department,
New Delhi-110003.

3. The Union of India
Through its Revenue Secretary,
Department of Revenue, Ministry of Finance,
Mumbai-400020.

... Respondents

Mr. Sandeep Huilgol, for Petitioner.

Mr. Suresh Kumar, for Respondent-Revenue.

**CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.**

Date : August 13, 2024

ORAL JUDGMENT (Per, G.S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India assails the Assessment Order dated 27 March, 2024 ("*Assessment Order*") passed by

Respondent No.2 under the provisions of Section 144 read with Section 144B of the Income Tax Act, 1961 (*“the Act”*).

2. The primary grievance as raised by the Petitioner is that prior to the Assessment Order being passed, the Petitioner was issued a Show Cause Notice dated 22 March, 2024 (*“Show Cause Notice”*) (Exhibit “G”) calling upon the Petitioner to show cause on the variations which were sought to be made, in the return of income, as filed by the Petitioner. Paragraph 3 of said Show Cause Notice recorded that the Petitioner should submit its response through its registered e-filing account by 17:30 hours of 23 March, 2024.

The said paragraph reads thus :

3. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 17.30 hours of 23/03/2024, whereby you may either :-

- a. accept the proposed variation ; or
- b. file your written reply objecting to the proposed variation ; or
- c. If required, in addition to filing written reply you may request for personal hearing so as to make oral submissions, or present your case. The request can only be made by clicking the Seek Video Conferencing button available against the SCN, in the view notices of this proceeding in the e-proceedings tab on e-filing portal. The request can be made only before expiry of compliance date & time through video conference.

3. The Petitioner contends that such notice was generated and uploaded on the portal on 22 March, 2024 at 20:03:29 IST. Further, the next day (i.e. 24 March, 2024) was a Saturday. The Petitioner objected to the said Show Cause Notice by its reply dated 23 March, 2024, wherein the Petitioner stated that the Petitioner being granted less than 24 Hours to respond the Show Cause Notice, was in breach of the principles of natural justice, which would amount to a flaw in the decision making process. The relevant extract of the Petitioner's objection require to be noted :

1.....The SCN was issued on 22-03-2024 at 20:03:29 IST and the assessee was asked to comply to the SCN on 23-03-2024 by 17:30 IST. The assessee was asked to comply to the notice by providing less than 24 hours time. The assessee submits that giving less than 24 hours time to reply to SCN is a flaw in decision making process.

2. The department should have a bonafide intention to provide fair opportunity to the assessee. The SCN issued at the fag end of the limitation period curtails the rights of the assessee. The SCN is issued to provide fair opportunity to the assessee to put forth his defense and such opportunity should be extended to the assessee in a real nature.

3. The assessee begs to place reliance on the decision of the Hon'ble Jurisdictional High Court of Karnataka in the case of MMG Constructions LLP Vs. Union of India in WP No. 21638/2021 dated 13-12-2021 wherein it was held that allowing less than 24 Hours to respond to SCN is violation of principles of natural justice and hence the entire proceedings was quashed for violation of principles of natural justice."

4. The Assessing Officer replied to such objections as raised by the Petitioner, by communication dated 24 March, 2024 addressed to the Petitioner, which was made available on the Petitioner's portal. Such communication recorded that as a matter of last opportunity to the Petitioner to make proper and complete submissions with all documentary evidence, time to reply to the Show Cause Notice was extended upto 26 March, 2024 upto 11:30 AM. Such intimation was uploaded by the Assessment Unit, Income Tax Department on 24 March, 2024 at 13:01:43 IST. The Petitioner, however, could not submit its response within the short extended time as specified by the communication dated 24 March, 2024. In these circumstances, the assessment of the Petitioner's return was completed in the impugned Assessment Order dated 24 March, 2024, being passed by the Assessing Officer as challenged in the present proceedings.

5. In support of the reliefs prayed in the present proceedings, the primary contention as urged on behalf of the Petitioner is to the effect that under the provisions of Section 144B(6)(xi) of the Act, the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre, is conferred power to be exercised with prior approval of the Board, to lay down the standards,

procedures and processes for effective functioning of the National Faceless Assessment Centre and the units set up, in an automated and mechanised environment. It is submitted that in pursuance of such powers, the Commissioner of Income-tax-1, National Faceless Assessment Centre, Delhi has notified the “Standard Operating Procedure for Assessment Unit under the Faceless Assessment provisions of Section 144B of the Act”, dated 3 August, 2024 (for short, “*the SOP*”). Our attention is drawn to the relevant paragraph of the SOP, being paragraph ‘N’ of the said order under the heading “Process of Assessment”. Clause N.1.3 thereunder provides that a period of seven days be given to the assessee for obtaining response from issuance of Show Cause Notice. The said paragraph reads thus :

N.1.3 To ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the SCN shall be :

N.1.3.1 Response time of 7 days from the issue of SCN.

1.1.3.2 Response time of 7 days may be curtailed, keeping in view the limitation date for completing the assessment.

6. Considering the aforesaid provisions of the SOP, learned counsel for the Petitioner has submitted that in the present case, such hurried exercise of passing of the assessment order was arbitrary and in breach of the principles of natural justice, inasmuch as the time-limit of seven days to respond to the

Show Cause Notice as specified under the said instructions was not complied, in passing the impugned Assessment Order. It is submitted that in such view of the matter, the impugned Assessment Order needs to be quashed and set aside and the proceedings be remanded for a fresh assessment order to be passed, after an opportunity being granted to the Petitioner, to reply to the Show Cause Notice.

7. Mr. Suresh Kumar, Learned Counsel for the Respondents would not dispute the applicability of the SOP as also to the fact that it was mandatory under the provisions of the SOP as issued under the provisions of Section 144B(6)(xi) of the Act, to issue a seven days notice to the Petitioner to reply to the Show Cause Notice. He would submit that as seen from the documents on record, it cannot be disputed that the assessment order was passed without such time of seven days being given to the Petitioner to file objections.

8. Having heard Learned Counsel for the parties and on perusal of the record, we find much substance in the contention as raised on behalf of the Petitioner. It may be observed that the SOP, as issued under the provisions of Section 144B(6)(xi) of the Act, in paragraph N.1.3 clearly provides a

response time of seven days from the issuance of the Show Cause Notice to the assessee to submit his reply. In the present case, the Show Cause Notice was issued on 22 March, 2024. It is also clear that sufficient time was available to the Assessing Officer to pass an assessment order even if he was to grant seven days time to the Petitioner to file reply to the Show Cause Notice. However, the Assessing Officer granted only two days time at the first instance and thereafter extended the same by another two days, which apart from being not sufficient, was certainly, not in accordance with the time to respond the Show Cause Notice, as prescribed under the SOP (supra). The Assessing Officer, therefore, appears to have arbitrarily exercised jurisdiction by granting an extension of only two days. In our opinion, such approach on the part of the Respondents was clearly in breach of the SOP, which has also resulted in breach of the principles of natural justice, which guaranteed to the Petitioner a fair and reasonable opportunity to respond to the Show Cause Notice under the procedure prescribed, in undertaking the assessment proceedings. This has surely caused a prejudice to the Petitioner.

9. In the light of the above discussion, we are inclined to allow the petition in terms of the following order :

- (i) The impugned Assessment Order dated 27 March, 2024 (Exhibit K1) is quashed and set aside.
- (ii) The proceedings are remanded for a fresh Assessment Order to be passed under Section 144 read with Section 144B of the Act.
- (iii) Let the portal be opened within a period of two weeks from today and within a period of seven days thereafter, the Petitioner shall submit its detailed response to the Show Cause Notice, raising all the necessary contentions as the law would permit
- (iv) After such response is submitted by the Petitioner, a fresh Assessment Order be passed by the Respondents in accordance with law within a period of four weeks, from the date of the Petitioner uploading its reply to the Show Cause Notice.
- (v) The consequential Computation Sheet dated 27 March, 2024 (Exhibit K2) and Notice of demand dated 27 March, 2024 (Exhibit K3) shall also stand quashed and set aside.
- (vi) All contentions of the parties on the assessment are expressly kept open.

10. Parties on act on an authenticated copy of this order.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)