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

WRIT PETITION NO.2856 OF 2025

Dhiraj Lakhamshi Shah .. Petitioner

Versus

The Assessing Authority National Faceless Assessment Centre, Delhi & Ors. .. Respondents

Mr. Nishit M. Gandhi a/w Aadnya Bhandari, Advocates for the Petitioner.

Mr. Subir Kumar a/w Niyanta Trivedi, Advocates for the Respondents.

CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE : DECEMBER 17, 2025

P. C.

1. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking to quash and set aside the Assessment Order dated 18th September 2022 and all consequential proceedings thereto, including the Notice of Demand dated 18th September 2022 and the Penalty Notice issued under Section

274 read with Section 270A of the Income Tax Act, 1961 (for short "**the IT Act**").

3. It is the case of the Petitioner that the Assessment Order has to be set aside as it is passed in breach of the principles of natural justice. According to the Petitioner the show cause notice issued to the Petitioner under Section 144B(1)(xvi) was dated 24th March 2022 calling upon him to show cause why the variations to his income ought not to be made in the assessment proceedings. However, the time to respond to the said show cause notice was only 3 days, and which is in violation of the Standard Operating Procedure ("**SOP**") issued by the CBDT under the provisions of Section 144B(6)(xi). It was submitted on behalf of the Petitioner that paragraph N.1.3 of the said SOP clearly provides a response time of 7 days [from the issuance of the show cause notice] to the Assessee to submit his reply. In the present case, the time given to the Assessee was only for a period of 3 days and which was highly inadequate to submit the response.

4. This apart, it is the case of the Petitioner that there was certain mistakes in the original return filed by the Petitioner which has given rise to the clarification sought by the Assessing Officer as well as the variations proposed in the show cause notice. The Petitioner, in fact, has made an Application under Section 119(2)(b) of the IT Act before the Principal Commissioner of Income Tax for condoning the delay in filing the revised return so as to enable the Petitioner to file his revised return. That Application was made on 4th March 2022, i.e. before the show cause notice, and the same has not been decided till date. It is the case of the Petitioner that if the Application of the Petitioner seeking a condonation of delay in filing the revised return is allowed, all the clarifications sought by the Assessing Officer, or the variations proposed, would not survive. For all these reasons, it was the case of the Petitioner that the Assessment Order be set aside and the matter be remanded to the Assessing Officer for fresh adjudication.

5. On the other hand, Mr.Kumar the learned advocate appearing on behalf of the Revenue submitted that the Petitioner in the present case has been consistently delaying the above assessment proceedings. He submitted that initially a notice was issued to the Petitioner under Section 143(2) and thereafter also under Section 142(1) seeking certain clarifications. However, no clarifications were forthcoming, and the Petitioner kept seeking adjournments to furnish the clarifications. Finally the Assessing Officer, being exasperated, issued the show cause notice dated 24th March 2022. He submitted that the time for furnishing the reply was curtailed to 3 days (instead of 7 days) because at the time when the show cause notice was issued, the assessment proceedings were getting time barred by 31st March 2022. Once this is the case, he submitted that there was nothing wrong in the Assessing Officer in granting only 3 days to the Petitioner to respond to the show cause notice especially looking to his previous conduct. Consequently he submitted that there is no merit in this Writ Petition and the same ought to be dismissed.

6. We have heard the learned counsel for the parties and also perused the papers and proceedings in the above Writ Petition. It is not in dispute that the show cause notice was issued on 24th March 2022. This show cause notice gave only 3 days time to the Petitioner to file its response to the said show cause notice. The argument of the Revenue is that this time was curtailed because the assessment proceedings were getting time barred. However, we find that in fact the time to pass the Assessment Order was extended upto 30th September 2022. Once this is the case, even assuming for the sake of argument that on the date of the issuance of the show cause notice the aforesaid extension was not in place, the Assessing Officer ought to have complied with the SOP by granting atleast 7 days time to the Petitioner to respond to the show cause notice once the time to pass the Assessment Order was extended upto 30th September 2022. In fact the Assessing Officer has passed the Assessment Order on 18th September 2022. This would clearly indicate that the Assessing Officer had adequate time not only to pass the Assessment Order but also comply with the SOP by giving 7 days time to the Petitioner to respond to the show cause notice.

7. We, therefore, find that in the present case, the Assessment Order has been passed clearly in breach of the principles of natural justice that requires interference under Article 226 of the Constitution of India.

8. Faced with this factual situation, Mr.Kumar, the learned counsel for the Revenue, submitted that the SOP came into effect only on 3rd August 2024 and hence cannot be applied to the show cause notice issued on 24th March 2022.

9. Even assuming for the sake of argument that the SOP operates only prospectively, we are clearly of the view that even prior thereto, giving only 3 days time to respond to the show cause notice would be highly inadequate and a bare minimum of 7 days ought to be given to the Assessee to respond to the variations proposed in the show cause notice. We are therefore of the view that even assuming for the sake of argument that the SOP would not apply to the show cause notice issued on 24th March 2022, the same would make no difference to the findings given by us above.

10. Since it is also the case of the Petitioner that the entire assessment proceedings would take a completely different complexion if the revised return is taken on record after condoning the delay, we are also of the view that apart from setting aside the Assessment Order it would be in the fitness of things if the Principal Commissioner of Income Tax is directed to decide the Application of the Petitioner filed under Section 119(2)(b) in a time bound manner.

11. In view of the foregoing discussion, we pass the following order:-

(i) The impugned Assessment Order dated 18th September 2022 is quashed and set aside. The proceedings are now remanded to the Assessing Officer to pass a fresh Assessment Order under Section 144B of the IT Act.

(ii) Before passing the aforesaid Order, the Portal of the Income Tax Department shall be opened within a period of

4 weeks from today and Petitioner shall submit its detailed response to the show cause notice within a period of 7 days from the date of opening of the aforesaid Portal.

(iii) The Petitioner can raise all their contentions in the said response as the law may permit. It is only after such response is submitted by the Petitioner within the aforesaid time frame, that the fresh Assessment Order shall be passed by the Assessing Officer in accordance with law within a period of 2 months from the date of the Petitioner uploading its reply to the show cause notice.

(iv) The Principal Commissioner of Income Tax is also directed to decide the Application filed by the Petitioner under Section 119(2)(b) as expeditiously as possible, and in any event within a period of 4 weeks from today.

12. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the case there shall be no order as to costs.

13. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] **[B. P. COLABAWALLA, J.]**