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

WRIT PETITION NO.1748 OF 2024

M I Alloys ...Petitioner
Versus
Income Tax Officer-30(1)(1),
Mumbai & Ors. ...Respondents

Mr. Tanmay Phadke i/b. Mr. Ruturaj H. Gurjar for the Petitioner.
Ms. Swapna Gokhale for the Respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATED : 13 January 2025

PC.:- *(Per M. S. Sonak, J.)*

1. Heard Mr. Tanmay Phadke instructed by Mr. Ruturaj Gurjar for the Petitioner and Ms. Swapna Gokhale for the Respondents.

2. The Petitioner challenges an assessment order dated 25 May 2023, *inter alia,* on the ground that it was made without granting a personal hearing, even though such a hearing was specifically requested.

3. Mr. Phadke relies on the provisions of Section 144B(6)(vii) and (viii) of the Income Tax Act, 1961 ("the Act"). He also relied on the decision of the Co-ordinate Bench of this Court in ***Goa Industrial Development Corporation vs. Additional / Joint / Deputy / Assistant Commissioner of Income-tax / Income-tax Officer, National Faceless Assessment Centre, Delhi***[1].

4. Ms. Gokhale submits that the requests for a personal hearing, if made by the Petitioner, were never received by the Faceless

1 [2022] 135 taxmann.com 266 (Bombay)

Assessment Unit. Accordingly, she submits that there was no obligation to provide any personal hearing as it is now claimed. She refers to clause 8A(i) of the affidavit filed on behalf of the Respondents in this regard.

5. The rival contentions now fall for our determination.

6. At the outset, we clarify that against an assessment order, the Petitioner has an alternate and efficacious remedy of an appeal. However, since, in this case, the allegation is about a violation of the principles of natural justice, we have entertained this petition.

7. The Petitioner has placed material on record, indicating that the Petitioner sought a personal hearing digitally. This was followed by written communications seeking personal hearing through video conference. The Petitioner made it clear that such personal hearing could be availed by the Petitioner on any date convenient to the Respondents except 17 May 2023, as the Petitioner's representative would not be available on the said date. The Petitioner, in the submissions filed on 20 May 2023 also reiterated the requests for personal hearing or, rather, complained that the proceedings are *void ab-initio* because no personal hearing was being granted to the Petitioner.

8. Paragraph 8A(i) of the affidavit filed on behalf of Respondents, reads as follows:-

> *"**8A. Remarks on Ground A:***
>
> *(i) The contention of the Petitioner that in violation of the provisions of section 144B opportunity for personal hearing was not provided before passing the assessment order dated 25.05.2023 is not valid. As per the Order Sheet of the case under consideration (attached herewith) no such request was received by the Faceless Assessment Unit. Therefore, without any such request from the Petitioner available on Portal/Software how could Faceless Assessment Unit provide Video Conferencing? It seems that the petitioner could not*

> *properly execute the request for personal hearing due to some technical problem. Therefore, no violation of any of the provisions of section 144B has been done in the instant case.”*

9. Thus, there is no firm denial about the Petitioner making any requests for a personal hearing. The material which the Petitioner has placed on record shows that such requests were made has not even been dealt with in the affidavit. To comment that the Petitioner could not properly execute the request for a personal hearing due to some technical problem is vague, and based upon the same, we cannot discredit the documentary evidence placed on record by the Petitioner indicating that a request was made for a personal hearing.

10. Section 144B(6)(vii) and (viii) of the Act read as follows: -

> ***“Section 144B : Faceless Assessment***
> *(6) For the purposes of faceless assessment-*
> *(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority of the relevant unit;*
> *(viii) where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing video technologically feasible, in accordance with the procedure laid down by the Board;”*

11. From the above, it is clear that where a request for personal hearing has been received, the income tax authority of the relevant unit shall allow such a hearing through the National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board.

12. Since, in this case, we are satisfied that the Petitioner requested a personal hearing and admittedly, no such personal hearing was granted to the Petitioner, we set aside the impugned assessment order on the grounds of violation of the principles of natural justice and fair play on the ground of breach of Section 144B(6) (vii) and (viii) of the Act, which provisions incorporate the principles of natural justice and fair play. The consequential demand notice/penalty notice issued based on the impugned assessment order will also not survive and are set aside.

13. After setting aside the impugned assessment order, we remand the matter for fresh consideration and disposal of the show cause notice issued to the Petitioner after granting the Petitioner an opportunity for a personal hearing in terms of the above-referenced statutory provisions. The show cause notice must be disposed of within four months of this order being uploaded to this Court's website.

14. We clarify that we have not considered the merits of the matter and have set aside the assessment order only because it violated the principles of natural justice.

15. Accordingly, all contentions of all parties on merits are left open.

16. The Rule is made absolute to the above extent. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

(Jitendra S. Jain, J.) **(M. S. Sonak, J.)**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 15/01/2025 14:03:00