IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3878 OF 2025

Sanjay Moreshwar Potdar .. Petitioner

Versus

National Faceless Assessment Centre (formerly known as National E-Assessment Centre) & Ors. .. Respondents

Mr. Devendra H. Jain *a/w. Mr. Shashank A. Mehta, Mr. Saukhya Lakade i/b. Ms. Radha Halbe***,** *Advocates for the Petitioner.*

Mr. Siddharth Chandrashekhar**,** *Advocate for the Respondent.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.

DATE: December 8, 2025

P. C.

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

2. By this Petition, the Petitioner is challenging the assessment order passed by the Respondent No. 1 under Section 143(3) read with Section 144B dated 27.12.2022 and the consequential show cause notice issued under Section 274 read with Section 271AAC(1) of the Income Tax Act, 1961, dated 27.12.2022.

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3. The facts are in a narrow compass. The assessment of the Petitioner for Assessment Year (AY) 2021-22 was picked up for scrutiny under the Faceless Assessment Scheme as contained in Section 144B of the Income Tax Act, 1961 [**"IT Act"**]. Pursuant to the same, various notices were issued to the Petitioner by the Assessment Unit, National Faceless Assessment Centre (NFAC), the 1st Respondent herein. To these notices, replies along with relevant documents were filed by the Petitioner from time to time.

4. Thereafter, the NFAC issued a Final Show Cause Notice dated 16.12.2022 (Friday) around 4.25 PM proposing variations to the income as returned by the Petitioner. The Petitioner was required to file a reply to this notice on or before 11 AM on 21.12.2022, i.e., within 5 days. (page 149 of the Petition).

5. According to the Petitioner, since various and voluminous details were to be furnished in response to the said Notice dated 16.12.2022, it sought an extension of time to furnish the same. Therefore, the Petitioner filed an application for adjournment on 19.12.2022 (i.e., within the due date to file the reply to the show cause notice), seeking additional time upto 24.12.2022 (page 154 of the Petition). However, no response in regard to

acceptance or rejection of the adjournment request was received from the 1st Respondent.

6. On 22.12.2022, when the Petitioner was trying to file its submission cum objection to the show cause notice cum draft Assessment Order, the e-proceeding window to submit the response was not accessible. Accordingly, the Petitioner immediately filed a grievance bringing this technical issue to the notice of the Director General of Income Tax (Systems) vide his grievance application number 10132652 dated 22.12.2022. (page 156 of the Petition).

7. Simultaneously, the Petitioner also brought this issue to the notice of Respondent No.2 via email dated 22.12.2022 and provided his submission cum objection against the proposed variations along with relevant annexures (page 159 of the Petition). It was also mentioned in the email that this email was being sent because the Petitioner was unable to upload the submissions in the e-proceedings portal due to a technical glitch.

8. Thereafter, on 27.12.2022, Respondent No.1, without replying or considering the adjournment request of the Petitioner, and without taking into consideration the submissions made by the Petitioner on 22.12.2022,

directly passed the final Assessment Order under Section 143(3) read with Section 144B by making an aggregate addition of Rs. 2,25,00,000/-. Consequently, notice of demand under Section 156 of the Act was also raised. Further, a Show Cause Notice was issued under Section 274 read with Section 272AAC(1) dated 27.12.2022, asking as to why an order imposing a penalty under Section 272AAC(1) should not be passed.

9. In the said order dated 27.12.2022, at paragraph 1 on page 3, Respondent No. 1 has stated that *"the Assessee has not filed any reply to the Show Cause Notice, which shows that the Assessee has nothing to say in this regard and the facts of the transaction made have been accepted by him."* Also at paragraph 3 on page 5, it is stated that *"the Assessee has not furnished any reply in response to show cause notice dated 16.12.2022"*. It is against this order and particularly the observations therein as mentioned above, that the Petitioner has approached this Court seeking quashing of the Assessment Order, the consequential demand notice, and the penalty and other proceedings, on the ground that the same is in violation of the principles of natural justice and the provisions of Section 144B of the Act.

10. The Petitioner was granted ad-interim relief on 17th April 2023, in the terms of prayer clause (d) of the petition and the revenue was directed

to take instructions. The relevant extract of the said ad-interim order is reproduced below ;

> *“2. Learned Counsel for the Petitioner states that entire procedure adopted by the respondents is vitiated in view of the fact that time period granted to the Petitioner to file his response to the show cause notice dated 16th December, 2022 was not adequate and in any case, not in conformity with the instructions, namely the standard of operating procedure(SOP) prescribed for assessments under section 144B of the Act, according to which a minimum period of 7 days has been envisaged for replying to any show cause notice in cases which involved variation, which is prejudicial to the interest of the Assessee. It is therefore stated that not only the instructions as prescribed in the standard operating procedure have been violated, but also the Petitioner’s specific prayer for extending the period of 5 days had received no attention. In any case, it is stated that the objection to the proposed variation has been submitted even through email and therefore, available on the system of the assessing officer much before the order impugned dated 27th December, 2022, which were not considered at all. We are of the prima facie, view that the Petitioner has not been granted an adequate opportunity of being heard before the order impugned came to be passed. However, we allow the learned Counsel for the Revenue to take instructions in the matter so that the instant case can be remanded to the assessing officer for passing orders afresh.”*

11. The learned Counsel Mr. Devendra Jain for the Petitioner submitted that till date no instructions were taken by the revenue as directed by the interim order dated 17th April 2023. He further submitted that the non-consideration of the reply of the Petitioner, apart from being in violation of the principles of natural justice, is also in violation of Section 144B(1)(xv)

of the IT Act which mandates that the NFAC must consider the reply furnished by the Assessee before passing the Assessment Order. The learned Counsel relied on several judgments of various High Courts, including this Court, to contend that non-consideration of the reply filed by the Assessee vitiates the Faceless Assessment Order.

12. On the other hand, Mr. Siddharth Chandrashekhar, the learned Counsel appearing for the Revenue, submitted that including the day on which the said notice was issued i.e. 16.12.2022 and the day on which the Assessee was required to comply, i.e. 21.12.2022, it was a period of six days and not five days as alleged, and due to the heavy case load, the erstwhile Assessing Officer had reduced one (1) day from the seven days as stated in the SOP which period could be reduced. Due to the time constraint only some of the Assessing Officers are likely to be allowed the period below seven (7) days. Though the AO has allowed the period below the prescribed period of seven (7) days, the assessment was completed on 27.12.2022 which means the assessee had a period of 10 days by excluding the date of issue of notice and date of completion of assessment. In addition to the above, the Petitioner has an alternative remedy available and he could have pursued the same. He, however, fairly stated that if this Court is inclined to allow the Petition, then the present Assessment be remanded back to the stage of the Show Cause

Notice dated 16th December 2022 and the Faceless Assessing Officer, NFAC [the 1st Respondent herein] be allowed to consider the reply filed by the Petitioner.

13. We have considered the material on record and the submissions of the parties. Admittedly, in the present case, firstly, the show cause notice issued gives less than 7 days time period for the Petitioner's submission. Hence it is violative of the Standard Operating Procedure (SOP). Secondly, the Petitioner requested an adjournment before the Respondent No. 1, however, no response was given to the said adjournment letter. Moreover, the Petitioner furnished its reply on 22.12.2022 with Respondent No. 2 to the final Show Cause Notice dated 16.12.2022, which is before the passing of the assessment order dated 27.12.2022. Therefore, the observations of the 1st Respondent that no response is furnished by the Petitioner clearly proceeds on incorrect facts and cannot be sustained. Further, it is also in violation of Section 144B(1)(*xv*) of the IT Act, which specifically mandates that the reply of the Assessee as well as all material available with the Assessment Unit shall be taken into consideration before passing the final Assessment Order. Therefore, the impugned order deserves to be set aside on the ground of non-consideration of adjournment request, violation of SOP and the provisions of Section 144B of the IT Act, and also in violation of the principles of natural justice.

14. The assessment is now restored to the file of the Assessing Officer, NFAC, at the stage of the Show Cause Notice dated 16.12.2022. The NFAC is directed to open the assessment portal again, so that the Petitioner can submit it's reply against the Show Cause Notice in the said portal. The NFAC shall consider the reply already filed by the Petitioner and any additional submissions made in the portal and provide an opportunity of being heard via Video Conferencing. The Assessment Order shall be passed within a period of 8 weeks from today.

15. We make it clear that we have not expressed any opinion on the merits of the matter which shall be considered by the NFAC in the proceedings before it.

16. Rule is made absolute in the aforesaid terms and the Petition is also disposed of in terms thereof. No order as to costs.

17. 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.]**

Sufiyan Syed – P.A.