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

WRIT PETITION NO.2547 OF 2024

Tulsidas Khimji Pvt Ltd .. Petitioner

Versus

Assistant Commissioner of
Income Tax-2(3)(1) & Ors. .. Respondents

Mr.Nishit Gandhi, Advocate for the Petitioner.

Mr.Abhishek Mishra, Advocate for the Respondents.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE : JULY 15, 2025

P. C.

1. The present Petition challenges the assessment order dated 26.03.2024 for Assessment Year 2022-23 passed by the National Faceless Assessment Centre ["**NFAC**" for short] u/s 143(3) read with section 144B of the Income Tax Act, 1961 ["**the Act**" for short]. The primary grievance of the Petitioner is that the assessment order has been passed without first serving on it the Show Cause Notice proposing variation to the returned income as mandated u/s 144B (1) of the Act. In this regard, the Petitioner has stated that it has filed due and complete replies to all the notices issued and served by the Respondent(s) on the correct/registered email addresses as per its return of income which are, office2854@gmail.com and todigitalsignature@gmail.com. However, it appears that the Show Cause Notice proposing variation was issued on the email address info@tkpl.in. Since no reply could be filed by the Petitioner to the said Show Cause Notice proposing variation, an assessment order came to be passed whereby additions were made by the NFAC in line with the said Show Cause Notice. The Petitioner is aggrieved by the said order and has approached this Court against the said order primarily on the ground that the same is passed in violation of principles of natural justice as also the provisions of section 144B of the Act.

2. The learned counsel for the Petitioner, Mr. Nishit Gandhi, furnished a note on propositions alongwith certain judgments. He submitted that under the faceless assessment scheme [as contained in section 144B of the Act], before making an assessment adverse to the Assessee, it is mandatory for the NFAC to first serve on the Assessee a show cause notice proposing variation to the returned income [S.144B(1)(xii)]. It is mandatory to *"serve"* on the Assessee a show cause notice proposing variation. He further submitted that an electronic communication such as the notice has to be served not just by uploading the same on the portal but it must also be followed by a real time alert by sending an email to the registered email address of the Assessee or by way of an SMS. He, referring to a screenshot from the portal as regards delivery of the said Show Cause Notice pointed out that the apparently the same was sent on the email address info@tkpl.in [pg. 297 of the Petition]. He further submitted that this email address was never given by the Petitioner to the Respondents or the Income tax Department. He further relied on a chart providing the details of various notices issued by the NFAC including the email addresses to which they were sent and submitted that due and complete responses were sent to all the notices that were issued on the correct/registered email addresses of the Petitioner being office2854@gmail.com and todigitalsignature@gmail.com as reflected in its return for the relevant year. He further submitted that there is no reason why the most important Show Cause Notice proposing variation to the returned income should have been issued on the email address, info@tkpl.in, particularly when this was never given to the Respondents/Income Tax Department by the Petitioner. He further relied on the judgment of this Hon'ble Court in the case of ***Lok Developers V/S DCIT [(2023) 149 taxmann.com 93 (Bombay)]*** to submit that the service of a Notice u/s 148 even to a registered secondary email ID is bad in law. He relied on the following observations of this Court:-

> *"6. We heard both counsel and also perused the papers in the proceedings. In the present case on 7th January 2021 the petitioner had filed its Return of Income for AY 2020 -21 and the email id mentioned therein was loktax2016@rediffmail.com therefore the AO ought to have considered this email as provided u/r 127 (1) (b) (i) email address available in the income tax return furnished by the addressee to which the communication relates which would be the primary email id or (ii) i.e. email address available in the last income tax return furnished by the addressee. In our view the AO clearly erred in issuing a notice on the secondary email address when there was a primary email address given by the petitioner. It is common knowledge that a secondary email address has to be used as an alternative or in such circumstances when the authority is unable to effect service of any communication on the primary address. There is no prudence in issuing an email on the secondary email address. In our view the AO ought to have sent the notice u/s 148 to both the primary address and the email address mentioned in the last Return of Income filed to preempt a jurisdictional error on account of valid service; there was neither any cost to it or any prejudice to any party for sending it on more than one email in a given circumstance as in the present case. We see no wrong with the petitioner's refusal to participate in a proceeding vitiated by valid service of notice. This Court in the case of Mrs. Chitra Supekar v. ITO [Writ Petition No. 15580 of 2022, dated 15-2-2023] has held that it was imperative for the AO to have checked if there was a change of address before initiating a proceeding; and that a valid service of*

notice under section 148 is a condition precedent lest it would be a jurisdictional error.

7. *We accordingly quash and set aside the notice dated 28th March 2022, and all consequential proceedings including the show cause notice for proposed variation dated 25th March 2022 and assessment order u/s 144B r.w s.144. However, the respondent will be at liberty to proceed with the assessment after issuance of fresh notice in accordance with law.”*

3. He further relied on the judgment of the Hon’ble Madras High Court in the case of ***Indian Bank V/S DCIT [(2023) 156 taxmann.com 264 (Madras)]*** wherein it was held that where intimations of notices were sent to e-mail IDs on one of the Branch Offices of assessee-bank and not on the designated e-mail ID of the head office of the assessee, it was not sufficient for completing assessment and therefore the assessment was set aside. He submitted that apart from the actions of the Respondents being violative of section 144B of the Act, the assessment order passed without serving the Show Cause Notice proposing variation is also violative of principles of Natural Justice as held by the Hon’ble Supreme Court in the case of ***Tin Box Co. V/S CIT [(2001) 249 ITR 216 (SC)]***. He therefore submitted that the said assessment order be quashed and the same be remanded back to the Assessing Officer.

4. On the other hand, the Ld. Counsel for the Revenue, Mr. Abhishek Mishra stated that the show cause notice proposing variation was uploaded on the portal. The Petitioner itself has stated that the email address info@tkpl.in on which the Show Cause Notice was sent, is non-monitored. The Petitioner has replied to earlier notices and so he was aware of the ongoing assessment proceedings and therefore he could have replied to the Show Cause Notice proposing variation. The learned counsel for the Revenue, however, on instructions stated that if we are inclined to set aside the impugned assessment order, the matter be remanded back to the Assessing Officer (NFAC) at the show cause notice stage.

5. We have heard the learned counsel for the parties and also perused the material on record. The primary grievance of the Petitioner is that the final assessment order being passed without first serving the Show Cause Notice proposing variation is bad in law. In this regard, it is apposite to refer to section 144B(1)(xii) of the Act which mandates that before making an assessment of income adverse to the returned income of the Assessee, service of a Show Cause Notice proposing variation to the returned income is mandatory before passing the final assessment order u/s 144B. Further in the affidavit in reply as filed by the Respondents, there is no denial to the fact that the said Show Cause Notice proposing variation was sent on an email ID never provided by the Petitioner. Therefore, admittedly, the impugned Show Cause Notice proposing variation dated 10.03.2024 is not served on the Petitioner. Therefore, in view of what has been laid down in the above judgments, and based on the submissions of the Parties, the impugned assessment order is quashed and set aside. We deem it appropriate to remand the matter back to the NFAC, at the stage of the Show Cause Notice dated 10.03.2024. The Respondents shall provide the link to petitioner to which the response to the show cause notice can be uploaded.

6. The Petitioner is directed to file his response to the same and which shall be considered before passing the final order. The Petitioner shall also be granted a personal hearing, if he so desires, before passing the final assessment order. The assessment order shall comply with the procedure required u/s 144B and shall be passed within 12 weeks of this order getting uploaded. Any order passed shall be a reasoned order dealing with all the submissions of petitioner.

7. We make it clear that we have not expressed any opinion on the merits of the matter. All contentions of the parties on merits are expressly kept open.

8. The above Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

9. 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.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**