IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.12055 OF 2025
IN
WRIT PETITION NO.2866 OF 2023

Rajan Datar .. Applicant

In the matter between:-

Rajan Datar .. Petitioner

Versus

Satish Kumar Goyal & Ors. .. Respondents

WITH

WRIT PETITION NO.2866 OF 2023

Rajan Datar .. Petitioner

Versus

Satish Kumar Goyal & Ors. .. Respondents

Mr.Rafique Dada, Senior Advocate a/w Zubair Dada, Gaurav Mehta, Mukul Taly, Shamima Taly, Sehyr Taly i/b S. Mahomedbhai & Co., Advocates for the Applicant/Petitioner.

Mr.Akhileshwar Sharma, Advocate for the Respondents.

CORAM : B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE : JANUARY 19, 2026

P. C.

1. An Interim Application has been filed in the present matter requesting that the Petition be taken up for final disposal because according to the Senior Counsel for the Petitioner, the Assessment Order impugned in the present Petition dated 29th September 2021 pertaining to A.Y.2007-08, is liable to be set aside on the basis of the judgments of this Court in regard to faceless assessments.

2. By consent, the Petition is taken up for hearing.

3. The Petitioner has challenged the Assessment Order dated 29th September 2021 passed by the National Faceless Assessment Centre, Respondent No.2 under Section 143(3) read with Section 254 read with Section 144B of the Income Tax Act, pertaining to the A.Y.2007-08.

4. The Petitioner has submitted that an Assessment Order was passed in the case of the Petitioner on 31st December 2009 under Section 143(3) of the Income Tax Act holding that the capital receipt of Rs.10,65,74,000/- was wrongly classified as long term capital gain. The Petitioner was aggrieved by the said order and filed an Appeal before the

Commissioner of Income Tax (Appeals) who set aside the said order dated 31st December 2009. An Appeal was filed by the Assessing Officer before the Income Tax Appellate Tribunal (**ITAT**), which set aside the order of the Commissioner of Income Tax (Appeals) and remanded it back to Respondent No.2 (the NFAC) for fresh consideration.

5. Consequent upon the remand order, the National Faceless Assessment Centre, viz. Respondent No.2, called for certain documents from the Petitioner. The Petitioner filed written submissions indicating his response to the requisition of additional documents which he had also filed before the ITAT at the stage of the remand. The Petitioner also submitted a list of judgments which supported his case to justify the income shown in the Return as a "capital receipt".

6. The Petitioner has averred in the Petition that the impugned Assessment Order was finally passed by Respondent No.2 on 29th September 2021. The impugned Assessment Order suffers from two fundamental infirmities viz. non-furnishing of the draft Assessment Order before passing the impugned Assessment Order dated 29th September 2021, and non-consideration of the documents and submissions made by the Petitioner. In the Petition, the Petitioner has referred to the various submissions made by him and indicated how the same have not been considered in the Assessment Order.

7. The Petitioner has also indicated that it is incumbent upon the revenue to serve a draft Assessment Order on the Assessee if it seeks to modify the return income of the Assessee. The Petitioner has submitted that no such draft Assessment Order was ever served upon the Petitioner.

8. In support of the aforesaid proposition, the Petitioner has relied upon the judgment of this Court dated 28th October 2021 passed in ***Golden Tobacco V/S NFAC [(2022) 442 ITR 204 (Bom)]***. In the said judgment, this Court set aside the final Assessment Order since no draft Assessment Order was issued prior thereto. The Petitioner has also relied on the judgment of this Court in the case of ***New Globe Logistk LLP V/S Assistant Commissioner of Income Tax-2(3)(1) & Ors. [WP(L)/11264/2025 decided on 28th July 2025]***. In this judgment, this Court set aside the Assessment Order on the grounds of denial of natural justice including non-consideration of the reply filed by the Assessee prior to passing the Assessment Order.

9. The Petitioner has sought a prayer that this Court should set aside the impugned Assessment Order as also the orders passed in Revision under Sections 264 and 154 of the Income Tax Act and has further prayed that the case be remanded back for a fresh consideration after keeping all submissions made by the Petitioner open. The Petitioner has further prayed that he was compelled to deposit a sum of Rs.2,02,21,990/- as a pre-condition for stay of the demand on 2nd February 2022. This amount was deposited pursuant to the stay order passed by the Revisional Authority challenging the impugned Assessment Order.

10. The Petitioner has prayed that since the impugned Assessment Order is bad in law, the Revisional Order is equally bad for failure to set aside the same. The Petitioner has also submitted that any amount deposited pursuant to the order of stay granted by the Revisional Authority is required to be refunded to the Petitioner with interest payable as per law.

11. On the other hand, the Respondents have not disputed the factual averments by the Petitioner that the Draft Assessment Order has not been furnished to the Petitioner before the Final Assessment Order was passed. The Respondent has stated that the Revisional Authority has referred to various judgments to support the Assessment Order. The Respondent, relying upon the affidavit-in-reply, submits that the Assessment Order dated 29th September 2021 and the order passed by Revisional Authority dated 13th January 2023 and 21st January 2023 are in accordance with law.

12. The Senior Counsel for the Petitioner submits that the impugned Assessment Order has not considered any of the judgments cited by the Petitioner in support of his case and the Revisional Authority has also supported the impugned Assessment Order. The Petitioner has submitted that consideration by the Revisional Authority cannot assist the Revenue if the original Assessment Order has failed to consider the judgments cited by the Petitioner. The Petitioner has submitted that consideration by the Revisional Authority, which in this case is disputed, cannot be a substitute for a detailed consideration by the original Authority which is required in law to support the original Assessment Order.

13. We have considered the submissions of the Petitioner in regard to the impugned order dated 29th September 2021 which was passed on an original remand by the Income Tax Appellate Tribunal as also the order in Revision refusing to correct the infirmities in the order. It would appear that this is a clear case of non-furnishing of the Draft Assessment Order before passing the Final Assessment Order dated 29th September 2021. This is not disputed by the Revenue. We also find that there is non-consideration of the documents and submissions submitted by the Petitioner before the Final Assessment Order dated 29th September 2021 was passed. The Revisional Authority viz. Respondent No.1 has also not considered the submissions of the Petitioner by the order passed in Revision, as also by the order refusing to correct the Revisional Order under Section 154 of the Income Tax Act.

14. In view of the foregoing discussion, we hereby quash and set aside the impugned order dated 13th January 2023 and 9th February 2023 passed by Respondent No.1 under Section 264 and under Section 154 of the Income Tax Act respectively and also the impugned Assessment Order dated 29th September 2021 passed by Respondent No.2. We now remand the matter back to Respondent No.2 to pass a fresh order after *de-novo* consideration of all the submissions made by the Petitioner.

15. Prayer clause (c) of the Petition is not pressed by Mr.Dada, the learned Senior Counsel appearing on behalf of the Petitioner.

16. Considering that the Petitioner was made to deposit a sum of Rs.2,02,21,990/- as a pre-condition for stay of the demand, and which amount was deposited on 2nd February 2022, we are of the view that this amount has to be refunded back to the Petitioner because the order passed by the Revisional Authority as well as the Assessment Order dated 29th September 2021 have now been quashed and set aside by us and the matter is remanded back for a *de-novo* consideration to Respondent No.2.

17. Accordingly, the Interim Application No.12055 of 2025 is also allowed in terms of prayer clause (b) which reads as under:-

> *"(b) direct the Respondent No.1 to arrange the immediate refund of Rs.2,02,21,990/- along with interest payable as per law;"*

18. We may hasten to clarify that we have not gone into the merits of the matter and all contentions in that behalf are expressly kept open to be considered at the time when the fresh Assessment Order is passed by Respondent No.2.

19. The Writ Petition as well as the above Interim Application are both disposed of in the aforesaid terms. However, there shall be no order as to costs.

20. 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.]**