

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

WRIT PETITION (L) NO. 11052 OF 2021

Parag Kishorchandra ShahPetitioner

V/s.

The National Faceless Assessment
Centre and Ors. ...Respondents

Mr. Dharan V. Gandhi for Petitioner.
Mr. N.C. Mohanty for Respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 27th OCTOBER 2021

PC. :

1. At the outset Mr. Gandhi states that the dates given in prayer clause (a) to (d) where it is stated that 24th April, 2021, it should be corrected to read as 20th April, 2021. Mr. Gandhi expresses regret for the error.

2. Petitioner is impugning the Assessment Order dated 20th April, 2021 passed under Section 143 (3) read with Section 144 B of the Income Tax Act, 1961 (the Act) together with Notice of Demand under Section 156 of the Act and Show Cause Notice under Section 274 read with Section 270 A, 271 AAC of the Act both dated 20th April 2021. The ground primarily is that the order has been passed without following principles of natural justice in as much as reasonable time to file response to the Draft

Assessment Order was not granted and even the response and documents filed earlier have not been considered in the Draft Assessment Order.

3. Petitioner has been filing response to various notices received under Section 142 (1) of the Act. Last such notice was dated 14th February, 2021 under Section 142 (1) of the Act and petitioner filed its reply to the said notice in three parts, the last of which is dated 24th February, 2021.

4. Thereafter, suddenly petitioner received on Saturday, 17th April, 2021 at about 4.30 p.m., (almost two months later) a notice dated 17th April, 2021 digitally signed at 14:43:37 IST on 17th April, 2021 calling upon petitioner to show cause as to why the assessment should not be completed as per the Draft Assessment Order. This was the time when there was total lock-down in Maharashtra including Mumbai due to Covid pandemic. Petitioner, in effect having been granted only one working day time to respond, therefore filed a request on 19th April, 2021 (18th April, 2021 being Sunday) bringing to the notice of respondents, problem faced due to Covid 19 situation and sought a reasonable period of ten days to respond to the Show Cause Notice. According to us, respondents have been most unreasonable and unfair to an assessee in giving such a short time to respond, whatever could be their reason. We make this observation because the last response which petitioner had filed to the notice under Section 142 (1) of the Act was on 24th February, 2021 and respondents took almost two

months to prepare a Draft Assessment Order and gave a very unreasonably short period of less than 24 working hours to respond to the Draft Assessment Order. Ignoring even this request for reasonable period of ten days, on 24th April, 2021 an Assessment Order digitally signed at 13:10:56 IST was passed followed with Notice of Demand under Section 156 of the Act and Notice of Penalty under Section 274 read with Section 271 A of the Act recomputing petitioner income by adding a sum of Rs.12,57,02,560/- both also dated 24th April, 2021.

5. In the Assessment Order respondent states as under :

“In this case show cause notice with draft assessment order was also sent to the assessee on 17-04-2021 whereby date of compliance was fixed on 19-04-2021, but till date no reply filed by the assessee”.

6. Therefore, the Assessing Officer has not even bothered to even look at the adjournment request dated 19th April, 2021. Notwithstanding this, respondents have filed an affidavit in reply through one Mr. Manoj Kumar, Assistant Commissioner of Income Tax affirmed on 10th August, 2021 in which it is stated that the assessment was getting time barred on 30th April, 2021 and by seeking ten days adjournment on 19th April, 2021 petitioner had intended to put pressure of time on the Assessing Officer and when the Assessing Officer had allowed time upto 19th April, 2021 to respond to the Show Cause Notice dated 17th April, 2021, there is no legal infirmity in the action of the Assessing Officer for completing the assessment on 20th April, 2021. It is like adding insult to injury. Even for a moment we

feel that there was hurry to pass the Assessment Order, because it was getting time barred on 30th April, 2021, still when a request for adjournment was sought on 19th April, 2021, the Assessing Officer could have at least given five days time to the assessee when he has taken almost two months to prepare a Draft Assessment Order. We are also shocked by the tenor of the affidavit in reply where petitioner is accused of bringing pressure on the Assessing Officer where petitioner has sought a reasonable time of ten days. In our view, this stand of respondents is most unfortunate and gives an impression of high handedness. We note our displeasure at this unacceptable stand of respondents and we only hope that respondents will be gracious in owning their mistakes and not take such unreasonable stand.

On this ground alone, petition has to be allowed.

7. Moreover, as rightly pointed out by Mr. Gandhi, respondent has not even considered the submissions made and the documents filed by petitioner in the Assessment Order. Mr. Gandhi pointed out, for e.g., with regard to sale of flat at Sahyadri, Neelkanth one of the items in the Assessment Order, the Assessing Officer has alleged that there was no evidence to prove that the property was acquired by petitioner from his father's HUF. According to Assessing Officer there is no evidence of court order or probate or Deed of Partition filed and in the absence of Deed of Partition or probate, title of petitioner in the property has not been

established. Therefore, the consideration received on sale of the said property must be taxed as income from the other sources in the hands of petitioner. But the fact is petitioner has submitted ;

(a) Copy of the will and probate granted by the Bombay High Court alongwith its submission dated 17th February, 2021.

(b) Copy of Partition Deed alongwith submission dated 15th January, 2021.

(c) Purchase Deed of the said property alongwith submission dated 15th January, 2021.

In the Assessment Order it is also alleged, with regard to a commission of Rs.45 Lakhs, that petitioner had received this amount from M/s. Mascott Infra Projects LLP but the same has not been included in income, was not offered to tax with TDS deducted of Rs.15,99,075/- and payment of Rs.29,00,925/- and therefore liable to be added being under the head other sources. Penalty under Section 271 of the Act for under reporting income has also been initiated. But the fact, as alleged in the petition, is that petitioner had received commission of Rs.45 Lakhs from one Man Infraconstruction Ltd. and not any M/s. Mascott Infra Projects LLP According to petitioner, petitioner had received commission of Rs. 45 Lakhs from Man Infraconstruction Ltd., TDS of Rs.15,99,075/- was deducted and balance payment of Rs.29,00,925/- was received and that amount has already been offered to tax. Petitioner had also submitted Form No.16 from


Man Infraconstruction Ltd., vide its submission dated 9th October, 2019, details of salary wherein it has been mentioned that petitioner had received a commission of Rs. 45 Lakhs from Man Infraconstruction Ltd., vide its letter dated 28th February, 2020 and vide submission dated 12th February, 2021, petitioner had also filed details about the receipt from Man Infraconstruction Ltd., and those details mentioned about the salary, commission and pay slips.

8. In the affidavit in reply it is not denied that these materials have been provided. In the affidavit in reply it is stated that these related to merits of the addition/dis-allowance made by the Assessing Officer and the remedy was to file an Appeal and not a Writ Petition before this court. Once again, we have to observe that this stand of respondents smacks of perversity and is totally unacceptable.

9. In the circumstances, we have no hesitation in setting aside the impugned Assessment Order, Notice of Demand as well as Show Cause Notice, all dated 20th April, 2021. Ordered accordingly.

10. For the reasons stated in paragraphs 4 and 6 of this Judgment, we are satisfied that this is a fit case where a direction needs to be issued to the Assessing Officer to pay costs to bring judicious approach amongst Assessing Officers for effective implementation of faceless assessment in its letter and spirit. The Assessing Officer should have been aware of the consequence provided under sub-Section (9) of Section 144B of the Act,

which renders the entire assessment non-est in case procedure provided in Section 144B is not complied with. Undue haste in passing order of assessment runs counter to the purpose behind introduction of Faceless Assessment Scheme resulting in over-burdening of the Courts. The imposition of costs on the Assessing Officer may not act as a penalty. Still, it will serve as a deterrent for implementing the Faceless Assessment Scheme to achieve its purpose and object. We, therefore, direct the Assessing Officer to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) as donation to PM Cares. This amount shall be paid by the concerned Assessing Officer from his/her personal account to PM Cares and the account details are as under :-

 <p>PM CARES Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund</p> <p>pmcares@sbi</p> <p>Scan & Pay with BHIM UPI app</p> <p>BHIM UPI</p>	<p>Details of Domestic Donation Account</p> <p>Name of Account: PM CARES Account Number: 2121PM20202 IFSC Code: SBIN0000691 UPI : pmcares@sbi State Bank Of India, New Delhi Main Branch</p>
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This shall be paid within two weeks from the day this order is uploaded and compliance affidavit annexing thereto proof of payment from his/her savings account shall be filed within a week thereafter.

11. Petition be listed for compliance on 15th December, 2021.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)