

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12864 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

**VIRDICHAND BAWANDAS HUF KARTA OF HUF PAWANKUMAR VIRDHICHAND
AGRAWAL****Versus
THE NATIONAL E-ASSESSMENT CENTRE**

Appearance:

MR SUDHIR M MEHTA(2058) for the Petitioner(s) No. 1

MS SHAILEE S MEHTA(5873) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2

M R BHATT & CO.(5953) for the Respondent(s) No. 1,2

**CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Date : 05/07/2022****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

Where the petitioner-assessee was confronted with draft assessment order under Section 144B of the

Income Tax Act, 1961, and wanted to submit his response to such assessment order, whether in the facts of the case the Department was justified in not granting time to file reply especially when, the seeking of time by the assessee was during the pandemic period-is the question posed.

2. With request and consent of learned advocates for the parties, the petition was taken up for final consideration today.

2.1. Rule, returnable forthwith. Learned advocate Mr.Karan Sanghani for M.R.Bhatt & Co. waives service of Rule. Learned Senior Advocate Mr.M.R.Bhatt appeared for the respondents-Department.

2.2. Heard learned advocate Mr.Sudhir Mehta for the petitioner and learned Senior Advocate for the respondents.

3. Petitioner has prayed to set aside assessment order dated 27.05.2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter mentioned as "the Act"). The petitioner has also challenged the notice of demand dated 27.05.2021 as well as notice regarding penalty under Section 274 read with Section 270A of even date, which all related to the Assessment Year 2018-19.

3.1. The petitioner appears to be Hindu Undivided Family. It has filed the petition through the Karta

of the HUF. For the Assessment Year 2018-19, return of income came to be filed by the petitioner-assessee on 30.08.2018. It followed by notice dated 22.09.2019 under Section 143(2) of the Act. The faceless assessment was adverted to by the department under the Faceless Assessment Scheme, 2019. The petitioner-assessee was required to furnish documents, for which notice under Section 142(1) dated 16.10.2020 was issued.

3.2. It appears that in response to the demand by the Department for furnishing the request, the assessee requested for adjournment on 29.01.2021. There was a further reminder by the Department and the reply sent by the assessee. It appears that the assessee responded to the aforesaid notice as well as the reminder by stating inter-alia that certain new grounds were raised by the Revenue in respect of the investment in the mutual fund.

3.3. On 16.05.2021, the Department passed draft assessment order. In the draft assessment order, the Department dealt with the income from business, the interest income part and additions under Section 68 of the Act relating to the loan transaction. It appears that the assessee wanted to respond to the draft assessment order by filing reply.

3.4. On 22.05.2021, a request was made for granting fifteen days' time with reference to the show-cause notice which was issued pursuant to the draft order.

The said request letter was sent by Email. The record of the petition reflects (Page Nos.51 and 52) that the request letter was received by the Department wherein the time was prayed for by the assessee up to 06.06.2021.

3.5. It is further reflected, and is not in dispute, that the said request was not responded to, nor came to be ever decided by the respondent authorities. Finally passed was the impugned assessment order dated 27.05.2021 for the Assessment Year 2018-19. The petitioner was deprived of any opportunity to make out his case in respect of the draft assessment order and the final assessment order came to be passed.

4. Learned advocate for the petitioner invited attention of the Court to notification dated 13th August, 2020, more particularly, Clause 2(xvi)(b) thereof which inter-alia contemplates for providing an opportunity to the assessee, in case a modification is proposed, by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order.

5. The Scheme regarding faceless assessment which would resulted into the draft assessment order as reflected in the aforementioned notification dated 13th August, 2020, has now been translated into statutory format with effect from 01.04.2021. In other words, at the time when the final order was

passed, the Scheme including the providence for giving opportunity to the assessee pursuant to the draft assessment order was a statutory requirement.

5.1. It could not be said, nor it is the case of the Department, that the right of the assessee to reply and put forth his case and the objections, if any, at the stage of draft assessment order before it culminates into the final assessment order under Section 143(3) read with Section 144B of the Act, was not the statutory providence. When statute provides for opportunity of hearing and the same is not complied with and breached, it could be said to have operated prejudicial to the assessee, without anything requiring further.

5.2. While the above aspect by itself clinches the relief for the assessee, there is an additional weighty aspect. The request for time to respond the draft assessment order, when made on 22.05.2021, it was admittedly a period when Covid-19 pandemic was at its peak. The second wave which had shattered the life and affairs in the society. Even a judicial notice can be taken of the said state of thing. In such hard times, it was expected of the Income Tax Department to be even more lenient.

5.3. As the petition was contested by filing affidavit-in-reply, after narrating the dates and events, it was stated in paragraph 4(iv) that, "the assessment was required to be finalized by the

Assessing Officer on or before 30.06.2021, and taking into consideration the paucity of time at his disposal on account of other pending time bound assessments, the Assessing Officer was not in a position to take note of the petitioner's request for adjournment."

5.4. The above stand reflects, to say the least, the thick skinned approach on part of the Taxing Authorities. We fail to understand when the assessment was to be finalized before 30.06.2021, what prevented the Department from granting time to the petitioner-assessee up to 06.06.2021.

5.5. The assessee congenial approach should be reflected not only in the application of taxation laws but also in the procedural mechanism to be applied towards assessee in treating him for the purpose of tax. It hardly stood reason that the department refused the request of the assessee for grant of time to file his response to the draft assessment order. There was sufficient time available for the final assessment to be made. Furthermore, it was pandemic time when the department should have adopted liberal approach in refusing the request for time for filing objection to the draft assessment order and finally passing the assessment order. The department acted thick skinned.

6. For the above reasons, the petitioner deserves to be granted a relief. The assessment order dated

27.05.2021 under Section 143(3) read with Section 144B of the Act as well as the notice dated 27.05.2021 under Section 274 read with Section 270A of the Act are hereby set aside.

6.1. The assessment proceedings are remanded to the Assessing Officer to be taken up afresh from the stage of the draft assessment order. The Assessing Officer shall pass appropriate order after giving opportunity to the petitioner to file reply.

6.2. The entire assessment proceedings culminating into the final assessment order shall be completed within twelve weeks from the date of receipt of this order.

6.3. We make it clear that we have allowed the petition and quashed the order and notice, as mentioned above, only on the ground of breach of natural justice without going into much less expressing any opinion on the merits of the case of the either side.

7. The petition is allowed as above. Rule is made absolute in the said terms.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)