

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16261 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE N.V.ANJARIA****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

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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 ?	

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MAP REFOILS INDIA LIMITED
Versus
NATIONAL E-ASSESSMENT CENTRE, DELHI

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Appearance:

MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1

MR MR BHATT, SENIOR ADVOCATE FOR MR BHATT & CO for the Respondents

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA**and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Date : 16/12/2022****CAV JUDGMENT**

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Hardik Vora for the petitioner and learned Senior Advocate Mr. M.R. Bhatt for M.R. Bhatt & CO. for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has prayed to set aside the assessment order dated 23.09.2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") and further prayed to stay the assessment order/or demand of Rs. 1,01,48,95,580/- and consequent penalty proceedings.

3. Brief facts of the case are that the petitioner is engaged in the business of refining and trading of different kind of edible oil from crude and raw cotton wash

oil.

3.1) The petitioner filed return of income declaring total income at Rs.1,97,88,000/-.

3.2) The case of the petitioner was taken under scrutiny assessment under the E-assessment Scheme, 2019 and notice under section 143(2) of the Act was issued. Further notices under section 142(1) of the Act along with detailed questionnaire were also issued. In response to such notices, the petitioner assessee submitted his reply from time to time.

3.3) It is the case of the petitioner that thereafter, vide show cause notice dated 12.05.2021, draft assessment order was issued wherein addition of Rs. 1,17,05,44,981/- was proposed on various grounds.

3.4) Pursuant to the show cause notice, the petitioner submitted a detailed reply dated 25.05.2021 and requested for personal hearing through video conference.

3.5) On 01.09.2021, the Assessing Officer has gave the personal hearing through video conference to the petitioner.

3.6) It is the case of the petitioner that subsequent to the personal hearing, the Assessing Officer made further inquiry and issued notice under section 133(6) to one Kunal Exports and Infrastructure and Gurdas Agro Private Limited on 08.09.2021 and 15.09.2021 asking confirmation of accounts, sample bills and voucher etc. The Assessing Officer also issued notice to SBI Bank for verifying genuineness of bank statement.

3.7) It is the case of the petitioner that respondent authority passed the final assessment order dated 23.09.2021 making huge addition of Rs. 92,42,86,979/- without providing opportunity of hearing to the petitioner on the basis of new material which was never mentioned in the draft assessment order or any of the earlier notices.

3.8) Being aggrieved by such action of the respondent, the petitioner has preferred the present petition.

4. Learned advocate Mr. Hardik Vora for the petitioner submitted that though the petitioner has given all the details as required by the Assessing Officer, the Assessing Officer without affording any opportunity of hearing to the petitioner passed the assessment order and therefore, there was breach of principles of natural

justice.

4.1) It was submitted that as per section 144B of the Act, the Assessing Officer has the power to prepare draft assessment order based on existing material and can request to other units for further inquiry or verification or technical assistance and on the basis of such inquiry and verification, the Assessing Officer prepares the draft assessment order as per the provisions of clause (xiv) of the Act.

4.2) It was submitted that as per the provisions of clause (xvi), the assessee is to be given opportunity of being heard if there is proposed variation prejudicial to the interest of the assessee in the draft assessment order. The review unit under clause (xvii) or assessment unit under clause (xx) may suggest variation to draft

assessment order and in case such variation are prejudicial to the interest of assessee as per clause (xviii) or (xxi) read with clause (xvi) (b), opportunity of hearing is required to be given to the petitioner. However, the assessee has not received any final draft assessment order for opportunity of being heard as per clause (xxi) read with clause (xvi) (b) even when detailed inquiry was being carried out and inquiry was made the very base of the assessment order.

4.3) It was further submitted that clause (xxiii) requires National Faceless Assessment Centre (NFAC) to send response from the assessee to assessment unit and assessment unit after taking into account the response of the assessee, makes a revised draft assessment order as per clause (xxiv) and in case, variation proposed in the revised draft assessment order are prejudicial to the

interest of the assessee, opportunity is required to be given to the assessee as per clause (xxv) (b) .

4.4) Learned advocate Mr. Vora for the petitioner submitted that the petitioner assessee is not aware regarding issuance of notices under section 133(6) of the Act were issued by the review unit or any other unit as it is an internal departmental working. It was submitted that neither any material nor information of any inquiry made after draft assessment order was made available to assessee any time before the receipt of final assessment order which is in complete violation of provisions of section 144B of the Act. It was submitted that draft assessment order dated 12.05.2021 and final assessment order dated 23.09.2021 are different and in the final assessment order, major thrust for making addition is on the

inquiry made after draft assessment order, which was never made available to assessee even when the opportunity is required to be given to the assessee as per express provisions of section 144B of the Act. It was submitted that the assessment order passed without adhering to the prescribed procedure under section 144B of the Act is to be considered as non-est in the eyes of law.

4.5) Relying upon the judgment in case of **CIT v. Chhabil Dass Agarwal** reported in 357 ITR 357,1 it was submitted that the Court in extraordinary circumstances may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or the procedure required for decision has not been adopted.

4.6) On merits of the case, learned advocate for the petitioner Mr. Vora

submitted that during the assessment proceedings, the petitioner had already submitted confirmation of accounts from M/s. Kunal Exports and Infrastructure and M/s Gurdas Agro Private Limited and during the subsequent year, the petitioner has repaid the amount owed to M/s. Kunal Exports and Infrastructure and M/s. Gurdas Agro Private Limited.

4.7) Learned advocate Mr. Vora submitted that during the assessment proceedings, the respondent had called for copy of bank statements which the petitioner had supplied to the respondents and after verifying such details, the Assessing Officer has proceeded for further inquiry. Therefore, the Assessing Officer was satisfied with the details furnished by the petitioner and proceeded with further inquiry. So the details about further inquiry must have been given to the

assessee before making any addition on the basis of such inquiry. It was therefore, submitted that looking to the above facts, and the provisions of law, the impugned order being violative of principles of natural justice is required to be quashed and set aside.

5. On the other hand, learned Senior Advocate Mr. M.R. Bhatt for the respondent has opposed this petition and would submit that after examining the explanations of the petitioner, the impugned order has been passed by the respondent and, therefore, no interference is required by this Court. He, therefore, would submit that the present petition be dismissed.

5.1) It was submitted that sufficient opportunities were provided to the assessee starting from the issue of notice under

section 143(2) of the Act dated 22.09.2019 and subsequent notices under section 142(1) from time to time and therefore, the principles of natural justice was followed including providing right to fair hearing and reasonable opportunity of being heard to the assessee.

5.2) It was further submitted that the replies given by the petitioner have been given due consideration and incorporated in the assessment order itself. It was further submitted that the issues on which additions were made in the impugned assessment order for Assessment Year 2018-2019 are on the same issues on which additions have been made in Assessment year 2017-2018.

5.3) Learned Senior Advocate Mr. Bhatt submitted that as per the audited accounts of the petitioner, there were unsecured loans amounting to Rs. 68,86,84,206/- and when the

petitioner was asked to prove the identity, genuineness and creditworthiness of the creditors, the petitioner instead of providing the above details claimed the amount of Rs. 68,86,84,206/- as Trade payable instead of unsecured loans. It was submitted that after making inquiries by issuing notices under section 142(1) of the Act, the claim of the petitioner was found to be bogus and therefore, addition under section 68 of the Act was proposed in the show cause notice along with Draft Assessment order dated 12.05.2021.

5.4) Learned Senior Advocate Mr. Bhatt submitted that the assessee has efficacious alternative remedy under section 246A of the Act and therefore, the petitioner should be relegated to avail such remedy.

5.5) It was submitted that the draft assessment order with show cause notice was

sent to Review unit by National Faceless Assessment Centre for review report. Further, as per the show cause notice dated 12.05.2021 the proposed additions were of Rs. 1,17,05,44,981/- however in the final assessment order dated 23.09.2021, the additions were reduced to Rs. 92,42,86,979/-.

5.6) Learned Senior Advocate Mr. Bhatt submitted that clause (xxi) of section 144B of the Act is applicable only when Review unit does not concur with the draft assessment order of the Assessment unit and NFAC assigns the case after considering the variations suggested by the review unit to another assessment unit. It was submitted that in the relevant assessment proceedings, the review unit has concurred with the draft assessment order sent by the assessment unit. As the review unit has concurred with the assessment unit, procedure laid down in

clause (xviii) of section 144B of the Act is to be followed. It was therefore, submitted that as per the procedure laid down in clause (xviii) of section 144B, show cause notice along with the draft assessment order was sent to the assessee.

5.7) Learned Senior Advocate Mr. Bhatt therefore, submitted that petition is devoid of any merit and may be rejected.

6. We have heard learned advocates appearing for the respective parties and perused the impugned order as well as gone through relevant provisions of law. In order to adjudicate the issue involved with regard to providing opportunity of hearing, it would be germane to refer to the relevant provisions of section 144B of the Act, 1961 which reads as under :

"144B. (1) Notwithstanding anything to the contrary contained in any

other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:-

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(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;

(xv) the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any;

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to-

(a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or

(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;

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(xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;

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144B(7) For the purposes of faceless assessment-

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(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit;

(viii) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (vii) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (h) of clause (xii);

(ix) where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, such hearing shall be conducted

exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board;"

7. Section 144B of the Act, 1961 provides detailed procedure for Faceless Assessment introduced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 1st April, 2021. Section 144B(1) starts with a non-obstante clause i.e. "notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner..." as per the procedure prescribed therein.

8. The above-referred clause of section 144B(1) and 144B(7) deals with the procedure to be

adopted by the National Faceless Assessment Centre on receipt of draft order from the assessment unit who has prepared the draft after providing opportunity to the assessee by serving a notice upon him to show cause as to why the assessment should not be completed as per such draft or final draft or revised draft assessment order. Therefore, such personal hearing in era of Faceless assessment is to be provided through video conferencing.

9. It is not in dispute that in facts of the case no draft assessment along with show cause notice as required under section 144B(1) and section 144B(7) is given to the petitioner so as to enable the petitioner to give explanation for proposed addition during the hearing before the National Faceless Assessment Centre. Section 144B(1)(xii) provides that on receipt of show cause

notice, assessee may furnish his response to the National Faceless Assessment Centre and as per clause (xiv), assessment unit shall make a revised draft assessment order after considering the response of the assessee and send it to the National Faceless Assessment Centre. As per the provisions of section 144B(7) in case of variation prejudicial to the assessee as proposed in the draft assessment order, the assessee is entitled to request for personal hearing and upon such request, the personal hearing may be provided by the authority, if the case of the assessee is covered by circumstances provided therein in exercise of powers under sub-clause (h) of clause (xii) of section 144B(7) of the Act, 1961.

10. In view of above, it can be safely be said that the impugned order was passed by the respondent in violation of principles of

natural justice without affording an opportunity of personal hearing by not following the prescribed procedure laid down as per the provisions of section 144B of the Act, 1961 for Faceless assessment.

11. In the result, this petition succeeds and is accordingly allowed. The impugned order of assessment passed by the respondent under Section 143(3) read with section 144B of the Act dated 23.09.2021 and demand notice under section 156 of the Act are quashed and set aside. The respondent/Revenue will be at liberty to proceed with assessment under the provisions of section 144B of the Act, 1961 as permissible under the law after issuance of show cause notice-cum-draft assessment order so as to provide an opportunity of hearing to the petitioner. The petitioner shall be given an opportunity of hearing as per the provisions of section 144B of the

Act, 1961. Such exercise shall be completed within 12 weeks from the date of receipt of copy of this order.

12. Rule is made absolute to the aforesaid extent. Direct service is permitted.

13. It is made clear that we have not examined the merits of the case.

(N.V.ANJARIA, J)

RAGHUNATH R NAIR

(BHARGAV D. KARIA, J)

THE HIGH COURT
OF GUJARAT

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