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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17572 OF 2024

Vijay Shrinivasrao Kulkarni
Age 64 years, Occupation: Retired
B2/8, Building Kasliwal Classic,
Phase I, Tapdiya Nagar,
Aurangabad – 431 005. … Petitioner

Versus

1. **INCOME TAX APPELLATE TRIBUNAL, PUNE BENCH,**
Through its Registrar,
2nd Floor, Maharashtra Jeevan Pradhikaran Bldg.,
Near St. Marry High School, 463,
Stavely road, Camp, Pune -411 001
Email: pune.beneh@itat.nic.in

2. **THE INCOME TAX OFFICER, WARD 1(1), AURANGABAD ,**
Add: Aayakar Bhawan,
LIC Building, (Jeevan Suntan Building) N-5,
Cidco, Aurangabad431003
Email: aurangabad.ito1.1@incometax.gov.in

3. **UNION OF INDIA,**
Through the Ministry of
Finance, Department of Revenue,
Room No. 46, North Block, … Respondents
New Delhi — 110 001.

Mr. Sanket S. Bora a/w Ms. Unnatii A. Thakkar i/b. SPCE, for the Petitioners.

Mr. A.K. Saxena, for the Respondent - State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

JUDGMENT RESERVED ON : 10 DECEMBER 2024

JUDGMENT PRONOUNCED ON : 4 FEBRUARY 2025

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ORAL JUDGMENT (Per Advait M. Sethna, J.) :

1. Rule, made returnable forthwith. The respondents waive service. By consent of the parties, heard finally.

2. This petition is filed under Article 226 of the Constitution of India. The petitioner is mainly aggrieved by an Order dated 12 March 2024 (received by the Petitioner on 11 October 2024) passed by the Income Tax Appellate Tribunal (**"ITAT"** for short), Pune Bench under section 254(1) of the Income Tax Act, 1961 (**"IT Act"** for short).

3. The substantive prayer in the petition reads thus :-

> *"A. To issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the impugned Order dated 12"' March 2024 passed by the Respondent No. 1;"*

A) <u>Issue Before the Court:</u>

4. The primary issue that falls for consideration revolves around the legality and validity of impugned order of ITAT dated 12 March 2024 alleged to be passed without hearing the petitioner and/or his representative and without

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considering the written submissions filed by the petitioner, in contravention of the well settled jurisprudential principles of natural justice.

(B) Factual Matrix:

The relevant facts necessary for adjudication of the present proceedings are :-

5. The petitioner assessee in the present case is a 64 years old retired serviceman, who earned income primarily from salary for the relevant assessment year being Assessment Year 2019-2020 ("**A.Y. 2019-20**" in short). He was then an employee of M/s. Pfizer Healthcare India Pvt. Ltd. ("**Pfizer Healthcare**" for short) posted at Aurangabad from where he derived his salary income.

6. Respondent no. 1/ITAT which passed the impugned order dated 12 March 2024 under section 254(1) of the IT Act ought not to have been made a party. Respondent no. 2 is the jurisdictional assessing officer. Respondent no. 3 is the Union of India.

7. The petitioner filed his original income tax returns (**"ITR"** for short) for the A.Y. 2019-20 on 1 August 2019 declaring a total income of Rs.57,84,740/-. The petitioner had claimed relief under section 89(1) of the IT Act for an amount of Rs.13,22,187/-. Subsequently, the petitioner's case was selected for scrutiny under *Computer Assessed Scrutiny Selection* (CASS). Pursuant thereto, a notice under section 143(2) of the IT Act was issued to the petitioner on 31 March 2021, followed by notice dated 16 August 2021 issued

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under section 142(1) of the IT Act, calling for details and documents. In response to such notices, the petitioner submitted copies of computation of income, Form 26AS, Form 16, Form 10E along with other supporting documents.

8. Respondent no. 2 issued a show cause notice-cum-draft assessment order dated 16 September 2021 to the petitioner directing him to furnish his reply on or before 19 September 2021. The petitioner filed his submissions/reply dated 16 September 2021 to the show cause notice-cum-draft assessment order issued by respondent no. 2. The petitioner also requested for the grant of a personal hearing through video conferencing, which was so granted on 23 September 2021.

9. According to the petitioner the relief claimed by him under section 89(1) of the IT Act warranted consideration, as such amount was a salary advance, justifying such relief. However, the petitioner during the course of assessment proceedings withdrew such relief as claimed under section 89(1) and alternatively claimed receipts of Ex-Gratia and other incentives as capital receipts. This was with reference to the amounts received from his employer, i.e., Pfizer Healthcare on account of closure of its plant at Aurangabad and in terms of the settlement to all permanent employees under the financial scheme for employees of Aurangabad 2019, dated 9 January 2019.

10. Respondent no. 2 proceeded to pass the assessment order dated 29 September 2021 under section 143(1) read with section 144B of the IT Act.

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In passing such order, the petitioner's submissions were rejected on the ground that the amount received by the petitioner on termination of employment cannot be treated as salary in advance, as claimed by the petitioner. Thus, the relief claimed by the petitioner under section 89(1) of the IT Act for an amount of Rs.13,22,187/- was rejected by the assessment order.

11. The petitioner being aggrieved by the said assessment order, approached the National Faceless Appeal Centre ("**NFAC**" in short) by filing an appeal dated 28 October 2021 in Form 35 under section 246A(1) of the IT Act read with rule 45 of the Income Tax Rules, 1962 ("**IT Rules**" for short), on the grounds as set out in the said appeal memo.

12. It was during the proceedings initiated by the petitioner before the NFAC that various notices under section 250 of the IT Act were issued to the petitioner on 31 August 2022, 15 March 2023, 9 May 2023, 22 June 2023, 6 July 2023, 25 July 2023, 3 August 2023 and 4 September 2023. However, the petitioner's Chartered Accountant ("**CA**" in short) could not respond to the above notices, and sought adjournments, mainly on the ground that a senior CA was intended to be engaged to defend the petitioner in the said proceedings.

13. On the aforesaid backdrop, the NFAC proceeded to pass an ex-parte order dated 8 September 2023, rejecting the petitioner's appeal filed before it, thereby confirming the assessment order passed by respondent no. 2.

14. The petitioner being aggrieved by the above, approached ITAT, Pune, by filing an appeal dated 6 November 2023 in Form 36 under section

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253 of the IT Act read with rule 47(1) of the IT Rules. The petitioner supported his case on the grounds set out in the appeal memo.

15. The appeal filed by the petitioner was listed for hearing on 11 March 2024 before the Division Bench of ITAT, Pune. The petitioner's advocate submitted that the matter was required to be remanded to the NFAC, on the ground that the order of the NFAC was an ex-parte order, as it was passed in absence of a hearing being granted to the petitioner/his representative. The petitioner's CA also filed an affidavit in this regard. The ITAT rejected the petitioner's prayer to remand the matter to NFAC and insisted on hearing the appeal on merits. The petitioner's advocate then requested for a short adjournment, so that a paper book could be submitted. However, such request was denied. The petitioner's advocate then requested to the ITAT to grant one day's time to submit such paper book and to take up appeal for hearing on merits on the next date. Such request was also rejected by the ITAT. The petitioner's advocate was directed to submit written submissions and paper book on the basis of which, the ITAT would pass appropriate orders. The petitioner through his legal representative accordingly submitted written submissions, along with the paper book and case laws on 12 March 2024, before the ITAT.

16. It was in the above backdrop that the ITAT proceeded to pass the impugned order dated 12 March 2024, a copy of which was received by the petitioner on 11 October 2024 by email. The petitioner being aggrieved by such order approached this court by filing a writ petition dated 18 October 2024.

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(C) Submission and Analysis:

17. Mr. Sanket S. Bora, learned counsel for the petitioner would submit that the petitioner is seriously prejudiced by the actions of the respondent No. 1 in passing the impugned order dated 12 March 2024 received by him on 11 October 2024 as also the ex-parte order of the jurisdictional assessing officer, i.e., Respondent No. 2 dated 8 September 2023. It is the petitioner's case that completely overlooking the principles of natural justice, the ITAT without an opportunity of an appropriate hearing to the petitioner to represent his case on merits, the ITAT proceeded to pass the impugned order.

18. Mr. Bora, would urge that as it is the petitioner was aggrieved by an ex-parte order dated 8 September 2023 passed by respondent no. 2 and it was against such order, the petitioner approached the ITAT in the appeal in question under section 253 of the IT Act, in the hope of justice. However, the ITAT despite an ex-parte order being suffered by the petitioner at the hands of respondent no. 2, refused to remand the proceedings to respondent no. 2, despite such prayer of the petitioner. Mr. Bora, would further submit that the petitioner was not given any opportunity to plead his case before the ITAT in as much as ITAT even turndown the request made by the petitioner's Advocate to submit a paper book for which a short adjournment was sought. Mr. Bora, would then

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submit that despite furnishing written submission along with the paper book and the relevant case laws on 12 March 2024 the ITAT disregarded the same and proceeded to pass the impugned order on the petitioner's appeal causing serious prejudice to the petitioner.

19. Considering the above Mr. Bora would refer to the following orders passed by the ITAT on the same day, i.e., 12 March 2024, which are summarized below:-

Sr. No.	Party Name	Appeal No.
1.	Vijay Kamble	162/PUN/2024
2.	Somnath Shinde	1224/PUN/2023
3.	Shailendra Singh	I.T.A. No. 1202/PUN/2023
4.	Vaishali Gatagat	I.T.A. No. 1400/PUN/2023

He would thus urge that ITAT had in similar facts and circumstances remanded the matter to the assessing officer for further consideration on merits. As the ITAT did not adopt the same approach in the present case. According to him a fair approach ought to have been adopted by the ITAT considering the facts of the case, as no prejudice would have been caused to the respondents.

20. On the other hand, Mr. A.K. Saxena, the learned counsel for the respondents would support the impugned order and the reasoning set out therein. The respondents' case is that the petitioner was given several opportunities to represent its case before respondent no. 2 and before the

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ITAT. However, the petitioner for reasons best known, failed to avail such opportunities available to the petitioner. The ITAT in adjudicating the petitioner's appeal has correctly analyzed the case of the petitioner on merits with particular reference to the proviso to section 89 of the IT Act under which no relief could have been granted to the petitioner, in respect of the amount received or receivable by the petitioner on his voluntary retirement or termination of service in accordance with the scheme of voluntary retirement. It is submitted that the claim of the petitioner under section 89 was clearly hit by the proviso to section 89(1) under which the petitioner was not entitled to any relief. As regards the additional claim made by the petitioner before the CIT appeal on the amounts in question to be considered as compensation to be treated as capital receipt, also could not have been accepted as such compensation fall within the ambit of section 17(iii) of the IT Act, under which the compensation received from the former employer for termination of services is taxable as profit in lieu of salary. According to the respondents the ITAT was justified in concluding, that there was no need to remand the proceedings to respondent no. 2. In light of the above, such remand would be an exercise in futility. Accordingly, the ITAT was justified in dismissing the appeal of the petitioner.

(D) <u>Reasons & Conclusion</u> :

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21. At the very outset in our view this is a case where the violation of the settled principles of natural justice is not just apparent but real, palpable and clearly visible. The petitioner is deprived of an opportunity to present its case not only before the respondent no. 2 but also subsequently before the ITAT. In not affording a reasonable opportunity to the petitioner to present its case had perpetuated from the ex-parte order passed by respondent no. 2 which in our opinion was not noticed by the ITAT in passing the impugned order.

22. It is not disputed that the jurisdictional assessing officer, i.e., respondent no. 2 under the faceless regime passed an ex-parte assessment order, without affording an opportunity to the petitioner of being heard. Thus, evaluation of assessment of the petitioner's income and rejecting the submissions of the petitioner was undertaken also ought to have been appropriately undertaken by following the natural rules of fairness adhering to the principles of natural justice and such infirmity at least should have been addressed by the ITAT in passing the impugned order.

23. A perusal of the impugned order of the ITAT makes it clear that it proceeded to deal with the case of the petitioner on merits as is evident from paragraph 5 of its order. The petitioner submitted that considering the fact that the order impugned before the ITAT itself was passed by respondent no. 2 was passed ex-parte, it would be just and

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proper for the ITAT to remand the matter to respondent no. 2 for passing orders on merits, after considering submissions of the petitioner. Also, the written submissions being tendered on behalf of the petitioner before the ITAT on 12 March 2024 the same appear to have not being considered in the impugned order being passed by the Tribunal. We may refer to a judgment of the Supreme Court in the case of **Delhi Transport Corporation v. DTC Mazdoor Union.**[1] The Supreme Court *inter alia* held that Article 14 guarantees a right of hearing to a person who is adversely affected by an administrative order. The principle of *audi alteram partem* is a part of Article 14 of the Constitution of India. In light of such decision, the petitioner ought to have been granted an opportunity of being heard which, partakes the characteristic of the fundamental right under Article 14 of the Constitution of India.

24. In the facts and circumstances of the given case, it will be apposite to refer to a decision of the Supreme Court in the case of **Commissioner of Income Tax Madras v. Chenniyappa Mudiliar.**[2] The Supreme Court in interpreting the section 33(4) of the Income Tax Act, 1922 has held that the appellate tribunal was bound to give a proper decision on question of fact as well as law, which can only be done if the appeal is disposed off on merits and not dismissed owing to the absence of the appellant. There is no escape from the conclusion that under the said provision, the appellate tribunal had to dispose

1 AIR 1999 SC 564

2 1969 1 SCC 591

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off the appeal on merits which could not have been done by dismissing the appeal summarily for default of appearance. The principles laid down in the said decision would squarely apply to the facts and circumstances of the present case, in as much as the petitioner was neither heard nor were his written submissions placed before the ITAT, considered.

25. In light of the above, we concur with the submissions of Mr. Bora in regard to the setting aside of the impugned order of the ITAT dated 12 March 2024 is concerned. We are unable to accept the submissions of Mr. Saxena for the respondent for the reasons noted above.

26. Considering the above discussion, we allow this petition in terms of prayer clause (a).

27. We accordingly remand the proceedings to the ITAT, i.e., respondent no. 1 for *de novo* hearing of the petitioner's appeal filed before it. ITAT shall after hearing the parties, pass fresh orders on merits and in accordance with law, as expeditiously as possible not later than within six weeks from the date of this order made available to the ITAT.

28. Rule made absolute in the above terms. No costs.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI , J.)

RAJESH VASANT CHITTEWAN
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