

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16690 of 2021

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INDEX INDIA PRIVATE LIMITED
Versus
ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME
TAX/INCOME TAX OFFICER

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Appearance:
MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1
NOTICE SERVED(4) for the Respondent(s) No. 2

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 14/12/2021

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. This Court at the time of issuance of notice on 15.11.2021 passed the following order:

“The petitioner is before this Court challenging under Article 226 of the Constitution of India. The Assessment order passed under Section 143(3) read with Section 144B of the Income Tax Act on the ground of non-compliance of the provision of law. It is the grievance on the part of the petitioner that the respondent has failed to follow the procedure under Section 144 B and straightaway pass the order of assessment without issuing the show cause notice cum draft assessment order for giving any opportunity of

hearing to the petitioner.

The prayer sought for are as follows:

7 (a) quash and set aside the impugned order at Annexure-'A' to this petition;

(b) pending the admission, hearing and final disposal of this petition, to stay implementation and operation of the order at Annexure-A to this petition and stay the demand notice at Annexure 'G' to this petition and the Penalty notice at Annexure-H to this petition.

(c) any other and further relief deemed just and proper be granted in the interest of justice;

(d) to provide for the cost of this petition.

3. We have heard the learned Advocate Mr. Bandish Soparkar who has not disputed that for the proposed variation a show cause notice has not been issued. We could notice from 24.8.2021 show cause notice issued to the petitioner the variation has been proposed by the law officer concerned. He has taken us to the order which is impugned dated 22.9.2019 urging fervently that neither there is draft assessment order nor there is a compliance of the provision of Section 144 B particularly empasing on 144 B(1) (xxv) to (xxxii).

4. Issue Notice as to interim relief returnable on 22.11.2021.

5. Direct Service is permitted today by Speed Post.”

2. Thereafter, since the Jurisdictional Assessing Officer was to be joined as a party respondent, the order was passed on 25.11.2021 which deserves to be reproduced:

“1. Draft amendment moved today is permitted by joining jurisdictional Assessing Officer as a party from Vadodara and National Faceless Assessment Centre, New Delhi will be a separate party. Necessary amendments to be carried out today itself.

2. Let the service through the speed post be made to the National Faceless Assessment Centre, New Delhi by next week.

3. We have heard the learned advocate, Mr.B.S.Soparkar appearing for the petitioner and learned senior standing counsel, Mr.Varun Patel appearing for respondent-department.

4. Request has been made by the learned senior standing counsel, Mr.Varun Patel to grant the time as there is no

detail obtained from the National Faceless Assessment Centre and it is not feasible for him to get it in a near future. It is also further submitted that the cause title since was not proper, the concerned officer also was unable to provide the necessary instructions.

5. We have also heard learned advocates on both the sides on the interim relief as the time is expiring on 29.11.2021 for preferring the appeal.

6. Noticing the nature of litigation and the averment set out questioning the noncompliance of provision of law, we are inclined to accede to the request of stay the implementation and operation of the assessment order dated 27.09.2021 till 14.12.2021.

7. Affidavit-in-reply shall be filed in the instant case on or before 14.12.2021."

3. Affidavit-in-reply has been filed for and on behalf of the respondent by the learned senior standing counsel, Mr. Varun Patel, where he has given the chronology of events to say that the draft assessment order after being approved by the Range

Head of the Faceless Assessment Unit was sent to Assessing Officer of Faceless Assessment Unit on 22.09.2021. He submitted the draft for review to National Faceless Assessment Centre on 23.09.2021. The Assessing Officer sent the draft assessment order to the Assessee on 23.09.2021 bearing the same date without any notings/remarks. Thereafter, National Faceless Assessment Centre sent the said draft order to review unit on 23.09.2021. After reviewing the order, the Assessing Officer of Review Unit forwarded the report to Range Head for approval on 24.09.2021. The Range Head of Review Unit had approved the review report and forwarded it to the Assessing Officer of Review Unit on 24.09.2021 and on the same day Assessing Officer, Review Unit forwarded it to National Faceless

Assessment Centre. Assessing Officer of Assessment Unit received review report from Review Unit on 24.09.2021 and Assessing Officer of Assessment Unit forwarded the Assessment Order for approval to Range Head on 24.09.2021. Thereafter, on 27.09.2021 the final order, demand notice and penalty notice have been dispatched.

4. It is admitted that only draft assessment order was served upon the Assessee on 23.09.2021 without fixing any date for furnishing the reply and the final show cause notice availing the opportunity of hearing to the petitioner has not been served upon the Assessee. The Assessment Order was finalized and submitted for approval of Range Head on 24.09.2021. Thus, it is clear that as per the provision of

Income Tax Act, 1961 under Section 144B(1) (xvi) and 114B(1)(xx)(ii), the final notice along with the draft assessment order has not been served upon the petitioner.

5. This Court has heard the learned senior advocate, Mr.Soparkar along with learned advocate, Mr.Bandish Soparkar for the petitioner and learned senior standing counsel, Mr.Varun Patel for the respondents-department.

6. Matter has been taken up for final hearing at a initial stage noticing the clear admission in the affidavit-in-reply on behalf of the respondents. This Court in case of ***Gandhi Realty (India) Private Limited Versus Assistant /Joint/ Deputy/ Assitant Commissioner Of Income Tax/***

Income Tax Officer rendered in Special Civil Application No.7662 of 2021 has already dealt with this issue discussing Section 144B of the Income Tax Act, 1961. If there is any variation prejudicial to the assessee, final notice with the draft assessment order needs to be served necessarily as per the mandate of the statute and otherwise the order passed is non-est as provided under the said provisions itself. The Court in that matter has held thus:

“19.However, we direct that the respondent/revenue will be at liberty to proceed with the assessment process under the provisions of Section 144B of the Act, as permissible under the law obviously after issuance of the prior notice-cum-draft assessment order and on availing an opportunity to the petitioner. The petitioner shall file response and the objection to the same. Opportunity of hearing if is sought for, the same shall be accorded including opportunity of personal hearing. Let the procedure under section 144B of the Act be followed by the revenue scrupulously.”

7. In view of the above, present petition is allowed. The impugned order of assessment and consequent notice of demand is quashed and set aside. The respondent/revenue will be at liberty to proceed with the process of assessment under the provisions of Section 144B read with section 144C of the Income Tax Act, 1961 as permissible under the law obviously after issuance of the final notice-cum-draft assessment order and on availing an opportunity to the petitioner. The petitioner shall be given the opportunity to prefer response and the objection to the same, if it so desires. Opportunity of hearing if is sought for, the same shall be accorded including opportunity of personal hearing. Let the procedure under section 144B read with Section 144C of the Income

Tax Act, 1961 be followed by the revenue scrupulously the final order shall be filed as far as possible within a period of twelve weeks from the date of receipt of a copy of this order.

8. Over and above the regular mode of service, direct service is permitted through speed post as well as e-mode.



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(SONIA GOKANI, J)

THE HIGH COURT
OF GUJARAT

(NISHA M. THAKORE, J)

M.M.MIRZA

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