

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7461 of 2021

=====

DASTAN RESIDENCY THROUGH JOGA SINGH KALRA
Versus
NATIONAL E-ASSESSMENT CENTRE DELHI

=====

Appearance:

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

. for the Respondent(s) No. 1,2

MRS KALPANA K RAVAL(1046) for the Respondent(s) No. 2

SERVED BY RPAD (N)(6) for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 24/01/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant and assessee has prayed for the following reliefs:

“a. A Writ of Certiorari or writ, order, or direction in the nature of Certiorari quashing/setting aside the Assessment Order passed u/s 143(3) r.w.s.143(3A) and 143(3B) of the Act without providing adequate opportunity of being heard.

b. Pending hearing and final decision of the writ petition, to stay assessment order and consequent demand of Rs.3,05,74,515/-.

c. Pass any other order(s) as this Hon’ble Court may deem fit and more appropriate in order to grant interim relief to the Petitioner;

d. Any other and further relief deemed just and proper be granted in the interest of justice.

e. To provide for the cost of this petition.”

2. The facts in brief giving rise to this litigation may be summarized as follows:

2.1 The writ applicant is engaged in the business of real estate. During the year under consideration i.e. A.Y.2018-19, the writ applicant filed his return of income declaring total income `NIL`.

2.2 The case of the writ applicant was selected for complete scrutiny under the E-assessment Scheme 2019. It appears that the case was selected for complete scrutiny to ascertain the true and correct income of the writ applicant from the real estate business.

2.3 It appears that a show cause notice came to be issued dated 7.4.2021 calling upon the writ applicant to show cause as to why the amount of Rs.2,80,70,000/- (Rupees two crores eighty lakhs seventy thousand only) should not be treated as unexplained under Section 68 of the Income Tax Act, 1961 (for short `the Act, 1961`). The writ applicant was called upon to show cause as to why the said amount should not be added to the total income of the assessee under Section 68 of the Act read with Section 115BBE of the Act. The writ applicant was called upon to show cause as to why the penalty proceedings under Section 271AAC of the Act should not be initiated.

2.4 The writ applicant was given time upto 11.4.2021. The writ applicant was supposed to file his reply by 23:59 hours.

2.5 It appears that the writ applicant filed his reply dated

10.4.2021. In the reply, amongst manifold contentions raised, one of the requests made was that the writ applicant may be given an opportunity of personal hearing as the case was one of high-pitch assessment.

2.6 The reply to the show cause notice filed by the writ applicant did not find favour with the Assessing Officer and the Assessing Officer, in turn, proceeded to pass the final order of assessment assessing the total income of the writ applicant under Section 143(3) of the Act to the tune of Rs.2,80,70,000/-.

3. Being dissatisfied with the impugned assessment order, the writ applicant is here before this Court with the present writ application.

4. We have heard Mr.Hardik Vora, learned counsel appearing for the writ applicant and Ms.Kalpna Raval, learned senior standing counsel appearing for the revenue.

4.1 The principal argument canvassed on behalf of the writ applicant is that the impugned order passed by the Assessing Officer is in gross violation of the principles of natural justice as, despite a specific request been made to provide the writ applicant with an opportunity of personal hearing, the Assessing Officer failed to do so and proceeded to pass the impugned order. The second contention raised on behalf of the writ applicant is that the impugned order of assessment could be said to have been passed without any proper application of mind. It is submitted that the impugned assessment order is nothing but the verbatim reproduction of the draft assessment order/show cause notice. The third contention raised on behalf of the writ applicant is that the assessee had furnished the details about the source of the amount referred to

above. In other words, it is the case of the writ applicant assessee that he being in the business of real estate, had borrowed the amount from various individuals. Such amount has been shown in the statement of account. It is argued that the Assessing Officer, without proper verification as regards the source, has jumped to the conclusion that the said amount referred to above should be added as the income of the assessee as the source itself is doubtful. It is argued that the Assessing Officer could not be said to be justified in doubting the genuineness of the source without undertaking any inquiry in that regard. Without recording the statements of all those lenders, how could the Assessing Officer have jumped to the conclusion that the amount in question is nothing but rotation of money.

5. On the other hand, this writ application has been vehemently opposed by Ms.Raval, the learned senior standing counsel appearing for the revenue. Ms.Raval would submit that the impugned assessment order has been passed after due consideration of all the relevant aspects as pointed out by the assessee in his reply to the show cause notice. She would submit that it is not obligatory on the part of the Assessing Officer to provide a personal hearing. She would submit that if all the assessees would start insisting or requesting for personal hearing without any valid ground, then the very object with which this entire concept of faceless assessment has been introduced by virtue of Section 144B would be frustrated. The assessee may be justified in requesting for a personal hearing only in the rarest of rare cases, more particularly, if there are complex issues involved in the matter which needs to be explained threadbare. Ms.Raval also invited our attention to the averments made in the affidavit-in-reply filed on behalf of the revenue. In paragraphs 6,7 and 8 of the reply, following has been stated:

“6. In his petition, the applicant has submitted that impugned assessment order was passed on 13th April, 2021 whereas time to reply the show cause notice was given upto 15th April, 2021. The applicant has contended that the authority/Assessing Officer at NeAC could have waited till the show cause notice was replied and after considering the reply of the petitioner, the impugned order could have been passed, but since the assessment order was passed on 13th April, 2021, the same amounts to violation of principles of natural justice.

7. In this regard, it is pertinent to state that the assessment proceedings in case of the applicant for AY 2018-19 was conducted by the Assessing Officer through National E-Assessment Centre (NeAC) at Delhi in Faceless Manner and after passing the assessment order, the case was transferred back to its Jurisdictional Assessing Officer i.e. Income Tax Officer, Ward-1, Bardoli. All the records of the proceedings are available in electronic form in the ITBA system of the department. Further, in respect of the contention of the applicant that the principles of natural justice have been violated, it is to state that the order sheet entry maintained in the ITBA system of the assessment module in the case of applicant and it has been observed that the National E-Assessment Centre, Delhi had issued final show cause notice to the applicant on 07th April, 2021 and the date of hearing was clearly mentioned as ‘on or before 11th April, 2021’. Annexed herewith and marked as ‘Annexure R1’ is a copy of entire order sheet.

8. As per order sheet entry, after 07th April, 2021, no other show cause notice was issued by the National E-Assessment Centre, Delhi to the applicant requiring him to furnish any details or explanation with regard to finalization of assessment order. The applicant has also responded to the show cause notice on 10th April, 2021. Thereafter, the assessment order was passed by the Assessing Officer at National E-Assessment Centre, Delhi on 13th April, 2021. Annexed herewith and marked as ‘Annexure R2’ is a copy of Show Cause Notice dated 07.04.2021.”

In such circumstances referred to above, Ms.Raval prays that there being no material in this writ application, the same may be rejected.

6. Having heard learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the Assessing Officer committed any error in passing the impugned assessment order.

7. This is a case wherein the amount of Rs.2,80,70,000/- has been treated as unexplained and the same has been added to the total income of the assessee under Section 68 of the Act. The assessee in his own way has disclosed the source of this particular amount. He is said to have borrowed the amount from the various individuals over a period of time. The source includes the HUF of the assessee's father, loan from his mother, loan from his wife, loan from his friends and relatives, loan from his company etc. In the impugned assessment order also, the Assessing Officer has observed that the assessee seems to have taken unsecured loan from various persons. We do not find anything in the assessment order as to on what basis the Assessing Officer has doubted all such transactions of loan. We are saying so because prima facie, it appears that no inquiry has been undertaken by the Assessing Officer to verify the genuineness of the source. If an inquiry would have been undertaken and if the lenders would have been confronted about such loan transactions, then probably the picture would have been more clear.

8. Over and above the aforesaid infirmity in the impugned assessment order, there is one another good ground on which we are inclined to quash the impugned assessment order. Once a request is made by the assessee before the Assessing Officer to give him an opportunity of hearing having regard to the fact that the assessment is high-pitch assessment, then ordinarily such an opportunity should be given so that the assessee may not get a a chance to redress the grievance before the

higher forum that he was not given adequate opportunity of hearing. It would all depend on the nature of the issues involved in the matter. It is not necessary that in each and every case, the Assessing Officer has to provide personal hearing. Ultimately, it is the discretion of the Assessing Officer that should be exercised judiciously.

9. In the over all view of the matter, we have reached to the conclusion that we should quash the impugned assessment order so as to give one opportunity to the writ applicant to put forward his case before the authority concerned in a proper manner and to his satisfaction.

10. In the result, this writ application succeeds and is hereby allowed. The impugned order of assessment dated 13.4.2021 is hereby quashed and set aside. The matter is remitted to the respondent no.1. The respondent no.1 shall fix one particular date of hearing and shall give an opportunity of online hearing to the writ applicant. On the day that may be fixed by the respondent no.1, it shall also be open for the writ applicant to upload one more reply to the show cause notice dated 7.4.2021. Once the hearing is concluded, the respondent no.1 shall proceed to pass a fresh order of assessment.

11. Before we close this matter, we would like to observe something relevant. As far as possible, the revenue should ensure that the assessee does not get an unnecessary chance to redress any grievance by invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India. With the enactment of Section 144B, all assessments are now going to be faceless. In such circumstances, the revenue should be a little more careful and should not allow the assessee, more particularly, an unscrupulous assessee to have a cakewalk in the

matter. If on small issues, the assesseees are going to succeed and if every time, the matter is to be remitted, the same will not be in the interest of the revenue. Therefore, the revenue should ensure that:

(i) the impugned assessment order is not verbatim the draft assessment order/show cause notice.

(ii) The assessment order should reflect application of mind.

(iii) the assessment order should deal with by and large all the aspects which the assessee might have raised in his reply to the show cause notice.

If the aforesaid three things are kept in mind, then we are sure that there should not be any difficulties and litigation in the High Court can also be curtailed.

12. One copy of this order shall be furnished at the earliest to :

(i) Mr.M.R.Bhatt, the learned senior counsel for the revenue.

(ii) Ms.Kalpana Raval, the learned senior standing counsel for the revenue.

(iii) Mr.Varun Patel, the learned senior standing counsel for the revenue for its onward communication.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

SRILATHA