IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9766 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.J.DESAI

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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GUJARAT STATE FINANCIAL SERVICES LTD.
Versus
ADDITIONAL/JOINT/DEPUTY ASSISTANT COMMISSIONER OF INCOME TAX/INCOME-TAX OFFICER

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Appearance:
MR MANISH J SHAH(1320) for the Petitioner(s) No. 1
MR MUNJAAL M. BHATT FOR M R BHATT & CO.(5953) for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.J.DESAI**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 13/06/2022

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.J.DESAI)

1. Rule. Learned advocate Mr. Munjaal Bhatt waives service of rule on behalf of the respondents. With the consent of learned advocates appearing for the respective parties, the present petition is taken up for final disposal today itself.

2. By way of the present petition under Article 226 of the Constitution of India, the petitioner - assessee has prayed as under :-

> "(A) This Hon'ble Court be pleased to call for the records of the proceedings, look into them and be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the assessment order passed by Respondent u/s. 143 (3) r.w.s. 144B dated 8.6.2022 at Annexure - N and demand notice u/s.156 of even date at Annexure O.
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> (B) This Hon'ble Court be pleased to call for the records of the proceedings, look into them and be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondent to grant complete stay of demand arising out of assessment order passed u/s. 143 (3) r.w.s. 144 B dated 8.6.2021 at Annexure N.
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> (C) Pending the hearing and final disposal of this application, this Hon'ble Court be pleased to stay operation and implementation of assessment order passed u/s. 143(3) r.w.s. 144B dated 8.6.2021 at Annexure N and further stay the recovery of demand in pursuance of notice issued u/s.156 at Annexure O."

3. In response to the notice issued by this Court, the respondents have filed affidavit-in-reply dated 22.9.2021, to which affidavit-in-rejoinder dated 20.10.2021 has been filed by the petitioner.

4. Brief facts of the case are as under :-

4.1 The petitioner is a Company engaged in the business of providing financial assistance to various enterprises of Government of Gujarat and is being regularly assessed at PAN No.AAACG5581B under the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961').

4.2 The petitioner filed its return of income for the Assessment Year 2018-2019 declaring total income of Rs.172,99,73,890/- on 30.10.2018.

4.3 The case of the petitioner was selected for scrutiny assessment and for the said purpose, notice u/s.143 (2) was issued on 22.9.2019 by the respondent.

4.4 The petitioner vide letter dated 5.10.2019 responded to the above notice and submitted the explanations/details called for by the department. Thereafter, the petitioner received notice dated 10.1.2020 u/s. 142(1) from the respondent asking for certain details/

clarifications. The petitioner submitted its response vide reply dated 27.1.2020 and furnished the details / explanations called for. The petitioner also addressed yet another letter dated 13.2.2020 to respondent no.2 furnishing further details.

4.5 Meanwhile, the Income Tax Department introduced National Faceless Assessment Scheme from 13.8.2020 and accordingly, the assessment of the petitioner was transferred to National e-Assessment Centre, Delhi. Thereafter, the respondent No.1 issued a notice dated 27.11.2020 u/s.142 (1) asking the petitioner to provide the details of investment and expenditure incurred for earning income from investment. The petitioner submitted its response vide letter dated 11.12.2020. Respondent No.1 once again issued notice u/s.142 (1) dated 9.12.2020 asking the petitioner to submit further details, to which the petitioner responded to vide letter dated 23.12.2020.

4.6 Thereafter, show-cause notice dated 1.4.2021 was issued to the petitioner. The petitioner vide letter dated 12.4.2021 furnished detailed reply to the said show-cause notice and requested the respondent to provide opportunity of personal hearing. The petitioner received assessment order dated 8.6.2021 passed u/s.143 (3) r.w.s. 144B of the Act, 1961 making addition of Rs.175,45,38,914/- to the returned income of the petitioner and thereby, assessing the income of the petitioner at Rs.348,45,12,804/-. Hence this petition.

5. Learned advocate Mr. Manish J. Shah appearing for the petitioner submitted that the impugned order passed under section 143(3) read with sections 254 and 144B of the Act, 1961 is in violation of mandatory provisions of clauses (xiv), (xvi) and (xxii) of sub-section (1) of section 144B of the Act, 1961. It was submitted that as per the Scheme of Faceless Assessment as provided under section 144B of the Act, 1961, draft assessment order is to be provided to the assessee for the proposed addition so as to give an opportunity of hearing. It was submitted that the respondent authority has not provided the opportunity of hearing through video conference as envisaged under section 144B (7) (vii), (viii) and (ix) of the Act, 1961 and therefore, the impugned order is in violation of the principles of natural justice.

6. In support of his submissions, Mr. Shah has relied upon the decision of Bombay High Court in the case of **Golden Tobacco Limited v. NFAC and others**, rendered in Writ Petition No.1282 of 2021 dated 28.10.2021, **Mantra Industries Limited v. National Faceless Assessment Centre (NFAC or NeAC)** reported in [2021] 131 TAXMANN.COM 165

(Bombay), decision of this Court in the case of **Gandhi Realty (India) Private Limited v. Asst/Jt./Dy./ACIT/ITO** rendered in Specail Civil Application No.7662 of 2021 dated 5.10.2021 and decision of this Court in the case of **Index India Private Limited v. Addl./Jt./Dy./ACIT/ITO** rendered in Special Civil Application No.16690 of 2021 dated 14.12.2021. He, therefore, would submit that the present petition be allowed and the impugned order be quashed and set aside.

7. On the other hand, Mr. Munjaal M. Bhatt, learned advocate appearing for M. R. Bhatt & Co. for the respondents has opposed this petition and would submit that after examining the explanations of the petitioner, the impugned order has been passed by the respondents and, therefore, no interference is required by this Court. He, therefore, would submit that the present petition be dismissed.

8. 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;"

9. 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.

10. 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.

11. 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.

12. 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. Ratio laid down by the Bombay High Court as well this Court in the following decisions would squarely be applicable to the facts of this case :

1) **Golden Tobacco Limited v. The National Faceless Assessment Centre and others** (judgment dated 28.10.2021 in Writ Petition No.1282/2021)

2) **Mantra Industries Ltd. v. National Faceless Assessment Centre** reported in (2021) 131 taxmann.com 165(Bombay).

3) **Gandhi Reality (India) Private Limited v. Assistant/Joint/Deputy / Assistant Commissioner of Income tax/Income Tax Officer** (Order dated 05.10.2021 in Special Civil Application No.7662/2021)

4) **Idex India Private Limited v. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer** (order dated 14.12.2021 in Special Civil Application No. 16690/2021).

13. 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 dated 08.06.2021 at Annexure-N and demand notice under section 156 of the even date at Annexure-O 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.

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

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

(A.J.DESAI, J)

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR