

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14691 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.J.DESAI sd/-****and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

DEDIYASAN INDUSTRIAL CO OP CREDIT SOCIETY LIMITED

Versus

ADDITIONAL/ JOINT/ DEPUTY/ ASSISTANT COMMISSIONER OF INCOME
TAX/ INCOME TAX OFFICER

Appearance:

MR B S SOPARKAR(6851) for the Petitioner(s) No. 1

for the Respondent(s) No. 1

MR M.R.BHATT, LD.SENIOR COUNSEL WITH MR MUNJAAL BHATT,
LD.ADVOCATE WITH MR KARAN SANGHAVI, LD.ADVOCATE FOR M R
BHATT & CO.(5953) for the Respondent(s) No. 1**CORAM: HONOURABLE MR. JUSTICE A.J.DESAI**

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 20/06/2022****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE A.J.DESAI)**

1. Rule. Learned advocate Mr. Munjaal Bhatt waives service of rule on behalf of the respondent.

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 Articles 226, 19(1)(g) and 114 of the Constitution of India, the petitioner - assessee has prayed as under :-

"7. This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to :

(a) quash and set aside the impugned order dated 18.08.2021 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, notice of penalty at Annexure 'I' to this petition and stay recovery of tax for A.Y.2018-19;

(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. In response to the notice issued by this Court, the respondent has filed affidavit-in-reply dated 16.06.2022.

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

4.1 The petitioner, a cooperative credit society, registered under Gujarat Co-operative Society Act engaged in business of providing credit facilities to its members, filed its return of income for AY 2018-19 on 23.09.2018 offering Nil income after claiming deduction of Rs.2,79,77,018/- under 80P of the Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961').

4.2 The case of the petitioner was selected for scrutiny under CASS to verify some issues and for the said purpose, Show Cause Notice was issued on 05.04.2021 by the respondent producing draft assessment order therein.

4.3 The petitioner vide letter dated 10.04.2021 responded to the above notice and sought personal hearing through video conference and also requested for directions u/s 144A to be issued by the Range Head to the AO.

4.4 The Video Conference for personal hearing was scheduled on 26.04.2021 at 11:30 AM. He had difficulty for appearing and therefore he requested to adjourn the video conference to 23.04.2021. However, the petitioner received no response to such request. Thereafter, such video conference was scheduled on 26/04/2021, but the password for the meeting was received by the petitioner at 2:57 PM on 26.04.2021. The petitioner even attempted to join the meeting after receipt of the password and waited till 5:30 PM but the meeting did not take place. Thereafter, the

petitioner addressed communication dated 27.04.2021 to the respondent and asked for a personal hearing one more time. Eventually on 30.04.2021, much after the date fixed for virtual hearing, the petitioner received a response against the grievance filed by the petitioner on 23.04.2021.

4.5 Thereafter, the petitioner received notice dated 27.07.2021 at 6:00 PM seeking more details and scheduling personal hearing on 29.07.2021. On 29.07.2021 the petitioner requested that they have received notice only on 27.07.2021 along with requirement of submitting some details and therefore requested for time till 02.08.2021 to file the information asked for. The petitioner attempted to join the video conference on 29.07.2021 at given time but the petitioner was not sent the password through SMS on registered mobile number. The petitioner waited till 4:30 but no SMS was received. The petitioner also submitted the reply response to the information asked for vide letter dated 02.08.2021.

4.6 One more show cause notice was issued on 30.07.2021 in which offer was made to the petitioner that he could still avail the personal hearing through video conference. Time was given till 06.08.2021 to comply with the notice.

On 06.08.2021, the petitioner wrote to respondent No.2 explaining that the earlier conference could not be joined due to non-receipt of the password and further that Video Conference is still desired.

4.7 The petitioner however received the impugned Assessment order dated 18.08.2021 without providing the desired video conference. In the said assessment order, nothing is mentioned about letters dated 02.08.2021 or 06.08.2021 or the request for Video Conference.

Thereafter, Show Cause Notice under section 270A of the Income-Tax Act was issued on 26/08/2021 to initiate penalty proceedings against the petitioner. Hence this petition.

5. Learned advocate Mr.B.S.Soparkar appearing for the petitioner submitted that the impugned Show Cause Notice under section 270A 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.Soparkar 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 Special 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.M.R.Bhatt, learned advocate appearing for M. R. Bhatt & Co. 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.

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 subsection (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 dated 18.08.2021 passed by the respondent as well as notice dated 26.08.2021 under section 270A of the Income Tax Act, 1961 are hereby 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 as early as possible and preferably within a period of twelve weeks from the date of receipt of copy of this order. It is made clear that we have not examined the merits of the case. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

sd/-

(A.J.DESAI, J)

sd/-

(BHARGAV D. KARIA, J)

DIPTI PATEL