Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 239 OF 2018

Gopal Nihchaldas Pariani ...**Petitioner**

Versus

Income Tax Officer 23(1)-4 & Ors. ...**Respondents**

Mr. Firoze Andhyarajina, Senior Counsel, a/w Mr. Merchant, Mr. M.F. Andhyarajina, Mr. Ishwar Ahiya, Mr. Bharat Merchant, i/b Thakordas & Madgavkar, for the Petitioner.

Mr. Suresh Kumar, for the Respondents.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 25 January 2018

ORDER :

1. This Petition under Article 226 of the Constitution of India, challenges an order dated 29 December 2017 passed by

the Assessing Officer in regular assessment proceedings under Section 143(3) of Income Tax Act, 1961 ("***The Act***" for short). The impugned order dated 29 December 2017 disposes of the Petitioner's assessment for assessment year 2015-16.

2. A preliminary objection was raised by the Revenue to this Petition being entertained an account of an effective alternative remedy of an Appeal under Section 143(3) of the Act.

3. On the other hand, the Petitioner submits that this Court should exercise its writ jurisdiction as the impugned order dated 29 December 2017 under Section 143(3) of the Act was passed without hearing the Petitioner. Further, parallel proceedings under Section 148 of the Act were commenced by issuing of notice dated 13 September 2016 seeking to reopen the assessment year 2015-16. The withdrawal of the reopening notice dated 13 September 2016 was communicated to the Petitioner after passing of the impugned order dated 29

December 2017.

4. It is an undisputed position before us that for the subject assessment year 2015-16, an intimation under Section 143(1) of the Act had been issued. However, the time to complete regular assessment under Section 143(3) of the Act had not expired till passing of the impugned order dated 29 December 2017. The time was to expire on 31 December 2017. It is also not disputed before us that prior to passing of the impugned order dated 29 December 2017, a notice under Section 143(2) of the Act had been issued.

5. The primary grievance of the Petitioner to the impugned order dated 29 December 2017 is the same has been passed without granting an opportunity of personal hearing to the Petitioner. We note that in the assessment order, the Assessing Officer has made an observation that certain details were furnished by the Petitioner during the assessment year. This by itself would give rise to disputed questions on fact which

can be appropriately dealt with by the Appellate Authority under the Act.

6. So far as the Petitioner's grievance of two parallel proceedings being initiated by the Petitioner is concerned, we note that the proceedings under Section 148 of the Act have not culminated in any order being passed. Admittedly, the Revenue has withdrawn the reopening notice. *Prima facie* we see no confusion on the part of the Petitioner, as prior to passing of the impugned order, a Show Cause Notice was issued to the Petitioner and it was responded to. In any case the Petitioner's case that the reopening notice resulted in some misunderstanding is also an issue which could be agitated before Appellate Authority under the Act.

7. Therefore, in view of efficacious alternative remedy being available under the Act, we see no reason to exercise our extra ordinary jurisdiction under Article 226 of the Constitution of India to entertain this Petition.

8. All contentions left open to be urged before the authorities under the Act.

9. Accordingly, the Writ Petition is dismissed. No order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**