IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6094 OF 2023

Sanket Vinayak Nagvekar .. Petitioner

Versus

Income Tax Officer Ward 4(1),
Gurgaon, & Ors. .. Respondents

Adv. Dharan Gandhi for the Petitioner.
Adv. Akhileshwar Sharma for the Respondents.

CORAM: B. P. COLABAWALLA & FIRDOSH P. POONIWALLA, JJ.

DATE: JULY 20, 2026

P. C.

1. Rule. Rule made returnable forthwith. With the consent of the parties disposed finally.

2. The present Petition under Article 226 of the Constitution of India challenges the Notice issued under Section 148A(b) of the Income Tax Act, 1961 (**"the Act"**) dated 17th March 2022, the Order under Section 148A(d) dated 31st March 2022, the Notice issued under Section 148 dated 31st March 2022 for Assessment Year 2018-19, the Assessment Order dated 30th March 2023 passed under Section 147, read with Section 144, of the Act, the

consequential Notice of demand under Section 156, and the Notice issued under Section 274 read with Section 270A, of the Act. In brief, the challenge is that the impugned proceedings are without jurisdiction, in violation of Sections 144C and 144 of the Act, contrary to the Faceless Assessment Framework, violative of principles of natural justice, and perverse even on merits.

3. Brief facts of the case, as pleaded in the Petition, are brought out hereunder:

a. The Petitioner is an individual and a citizen of India. According to the Petitioner, he has been residing and working in the United Arab Emirates for several years and claims the status of a non-resident under the Act for the Assessment Year 2018-19.

b. On 17th March 2022, Respondent No. 1 issued a Notice under Section 148A(b) of the Act alleging that the Petitioner had purchased immovable property for Rs. 2,04,60,800/- during the year under consideration and had not filed any return of income. The Notice did not disclose the source of information, details of the property or the date of purchase, and continued to mention the Petitioner's old Virar address.

c. The said Notice was not replied to at that stage as the Petitioner, being based in UAE, was not then fully conversant with Indian tax procedures and had no regular consultant. It is the Petitioner's case that only in January 2023 did he approach a Chartered Accountant and thereafter began making compliances.

d. On 31st March 2022, Respondent No. 1 passed an Order under Section 148A(d) holding it to be a fit case to issue a Notice under Section 148. According to the Petitioner, even this Order did not specify the nature or address of the property and also carried the Petitioner's old Virar address. A Notice dated 31st March 2022, was issued under Section 148 to reopen the assessment for AY 2018-19, though it was digitally signed on 1st April 2022.

e. On 17th August 2022, an intimation was issued stating that the Petitioner's case for AY 2018-19 had been assigned to the faceless assessment unit and would be completed in faceless manner under Section 144B.

f. On 14th October 2022, a Notice under Section 142(1) was issued by the faceless assessment unit calling for details, including the return in response to Section 148, bank statements, property particulars and source of investment. The Petitioner states that this Notice remained unanswered for the reasons already mentioned earlier, i.e. that he was not conversant with the Indian tax procedures.

g. On 5th January 2023, a second Notice under Section 142(1) was issued seeking substantially the same information.

h. On 12th January 2023, the Petitioner filed his return of income for AY 2018-19 declaring total income of Rs. 740/-. On the same day, i.e. 12th January 2023, the Petitioner filed a detailed Reply to the Notice under Section 142(1), annexing computation, acknowledgment of return, stay calculation in India, passport extracts, bank statements and property documents. In that Reply, the Petitioner specifically stated that he had purchased only one agricultural property for Rs. 50,00,000/- and that the figure of, Rs. 2,04,60,800/- appeared to be four times the stamp valuation of Rs. 51,15,200/-. Further, in the said Reply, the Petitioner explained as to how he is a non-resident under the Act.

i. On 24th January 2023, a Notice was issued to the effect that the verification of the return was pending and, unless verified, the return would be treated as invalid. On 25th January

2023, another communication was issued alleging that no Reply had been filed to the earlier Notices. On 27th January 2023, the Petitioner replied that the return of income was duly verified on 24th January 2023. Further, the Petitioner replied on 8th February 2023 clarifying that his response to the Notice dated 5th January 2023 had already been filed on 12th January 2023 with relevant documents.

j. On 3rd February 2023, a further Notice under Section 142(1) was issued by the faceless unit seeking clarification regarding source of certain payments aggregating to Rs. 15,00,000/- and calling for the HDFC NRE account statement for FY 2016-17.

k. On 10th February 2023, a Notice under Section 143(2) was issued to the Petitioner taking cognizance of the return of income filed.

l. On 15th February 2023, the Petitioner filed a detailed Reply to the Notice dated 3rd February 2023 and also separately replied to the Notice under Section 143(2).

m. Thereafter, no further Notices were issued for over a month and all proceedings until then were being handled by the faceless assessment unit.

n. Suddenly, on 29th March 2023, a Show Cause Notice was issued not by the faceless assessment unit but by Respondent No. 1, i.e. the Income Tax Officer, Ward 4(1), Gurgaon. An SMS intimating such Notice was received only late in the night on 29th March 2023 and the Petitioner was asked to respond by 2:00 PM on 30th March 2023, thereby granting less than twenty-four hours. The Show Cause Notice alleged that the transaction could not be verified from the bank statements and that the copy of the sale deed earlier filed was not legible.

o. Despite the limited time, on 30th March 2023, the Petitioner filed a further detailed reply reiterating that he had purchased only one agricultural land for Rs. 50,00,000/-, re-submitting the payment statement, bank statements and legible copy of the purchase deed. He again asserted that the amount of Rs. 2,04,60,800/- represented four times the stamp valuation of Rs. 51,15,200/- and was therefore incorrect.

p. On 30th March 2023, Respondent No. 1 passed the impugned Assessment Order under Section 147, read with Section 144, treating the Petitioner as having failed to file return and failed to comply with Notices. In the said order, Respondent No. 1 added the entire amount of Rs. 2,04,60,800/-

q. Along with the Assessment Order, Respondent No. 1 issued a Notice of Demand under Section 156 raising a demand of Rs. 1,50,24,170/- and also issued a Notice under Section 274, read with Section 270A, initiating penalty proceedings.

4. It is in the aforesaid circumstances that the present Writ Petition is filed, *inter alia*, contending that the impugned proceedings are without jurisdiction, contrary to Sections 144C and 144 of the Act, violative of the faceless assessment scheme and arbitrary even on merits.

5. The Learned Counsel for the Petitioner raised four alternate contentions on behalf of the Petitioner.

a. Firstly, he submitted that the Petitioner is a non-resident and his status stood duly accepted in the final Assessment Order as well as in the computational sheet. In terms of Section 144C(15)(b)(ii) of the Act, a non-resident, not being a company, is an “eligible assessee”. Consequently, it was mandatory for the Assessing Officer to first issue a draft Assessment Order under Section 144C(1), thereby enabling the Petitioner to approach the Dispute Resolution Panel. He submitted that in the course of the assessment proceedings, the Petitioner had specifically disclosed his status as non-resident. In the Reply dated 12th January 2023 filed in response to the Notice under Section 142(1), the Petitioner had furnished a detailed working of his stay in India to demonstrate that he was a non-resident under Section 6 of the Act, and had also annexed copies of his passport. No contrary allegation was thereafter raised, nor was any further query put by the Assessing Officer on this aspect. On the contrary, in the final Assessment Order and computation, the status of the Petitioner is reflected as a "non-resident". He relied upon the Memorandum explaining the provisions relating to direct taxes in the Finance Bill, 2020, which records that the scope of Section 144C was expanded by defining "eligible assessee" to include a non-resident, not being a company or a foreign company. He also relied upon the decision of this Court in ***Classic Legends (P.) Ltd. v. Assessment Unit & Ors. [(2026) 484 ITR 550 (Bom)]*** in this regard. To buttress the contention that if no draft Order is passed in the case of an eligible Assessee, then the final Assessment Order is without jurisdiction, he relied upon many decisions of this Court and other High Courts, which are referred to later on.

b. Secondly, Mr. Gandhi submitted that the impugned Order is passed under Section 144 of the Act, i.e. as a best judgment assessment. According to him, Section 144 can be invoked only if one of the jurisdictional conditions under Section 144(1) is fulfilled, namely, where no return is filed, or there is failure to comply with Notices under Section 142(1), or failure to comply with the Notice under Section 143(2). In the facts of the present case, the Petitioner had filed a Return Of Income on 12th January 2023 in response to the Notice under Section 148, the same was acknowledged, and a Notice under Section 143(2) was thereafter issued on 10th February 2023. Except for the first Notice dated 14th October 2022, the Petitioner replied to all subsequent Notices under Section 142(1), and since the queries in the later Notice substantially repeated the queries raised earlier, complete replies were filed by the Petitioner. He submitted that in the impugned Order, the Assessing Officer incorrectly stated that the Assessee failed to furnish Return Of Income in response to the Notice and therefore best judgment assessment was invoked. This, according to him, is factually incorrect. In this regard, he relied upon the decision of this Court in ***Ashok Commercial Enterprises v. Assistant Commissioner of Income Taxation [[2023] 154 taxmann.com 144 (Bom); [2023] 459 ITR 100 (Bom)]*** to submit that the best judgment assessment is bad in law.

c. Thirdly, he submitted that the Petitioner was a non-resident and had his address in Maharashtra. Despite this, the Notice under Section 148 was issued by an officer at Gurgaon and the impugned Order also came to be passed by the Income Tax Officer, Ward 4(1), Gurgaon. Without prejudice to the earlier contentions, once the Assessee was a non-resident, the matter ought to have been handled by the International Tax Circle. He pointed out that this position is in fact accepted by the Department itself in paragraph 18 of the Affidavit-In-Reply, where it is stated that if the Petitioner is a non-resident, then the Jurisdictional Assessing Officer would be the one dealing with International Taxation. Since, this was not done, he submitted that the impugned Order is without jurisdiction. Further, being a non-resident as recorded in the Assessment Order, the Petitioner is an 'eligible assessee' in terms of Section 144C (15)(b)(ii) of the Act and therefore, the Assessing Officer under sec 144C (1) was required to issue draft of the proposed Order of Assessment [draft Order]. In the present case, no draft Order was issued by the Assessing Officer before finalizing the assessment.

d. Lastly, on merits, Mr. Gandhi submitted that the very information received by the Department was erroneous. According to the Department, the Petitioner had purchased an immovable property for Rs. 2,04,60,800/- and had not filed any return. The Petitioner consistently informed the Department that he had purchased only one agricultural property for Rs. 50,00,000/-, whose stamp valuation was Rs. 51,15,200/-. The Petitioner provided a copy of the purchase agreement and also Form 26AS to show that the same transaction had been reported four times by the Sub-Registrar, Guhagar, as even the dates and value of the transaction are identical, resulting in the figure of Rs. 2,04,60,800/-. In the Reply dated 12th January 2023, the Petitioner specifically pointed out that the figure of Rs. 2,04,60,800/- appeared to be exactly four times the stamp valuation of Rs. 51,15,200/-. This was reiterated again in response to the Show Cause Notice. He submitted that the faceless Assessing Officer did not dispute this position. On the contrary, as regards the actual purchase consideration of Rs. 50,00,000/-, although the Petitioner had furnished complete details of the payments made in the relevant year and the preceding year along with bank statements, the only query raised was regarding source of payments aggregating Rs. 15,00,000/-

in the preceding year, which was also answered. Therefore, the Petitioner had not only repeatedly explained that the figure of Rs. 2,04,60,800/- was incorrect and arose due to quadruple reporting, but had also furnished complete details of source of the actual purchase consideration of Rs. 50,00,000/- through remittances from UAE into his NRE account in India. Despite this, the Assessing Officer arbitrarily stated that the Assessee had not furnished documentary evidence and had not filed bank statements of SBI and UBI, and further observed that since the matter was getting barred by limitation, he had no option but to complete the assessment on the basis of material available on record. According to the learned Counsel for the Petitioner, this is ex facie arbitrary and in gross violation of the principles of natural justice.

6. Per contra, Mr. Akhileshwar Sharma, the learned Counsel for the Respondents, relied upon the Affidavit-in-Reply filed by Mr. Ramrao Chhapparghare, Income Tax Officer, Ward 3(2), Kalyan, affirmed on 1st April 2024. At the outset, he submitted that an alternate remedy by way of statutory appeal was available and ,therefore, the Writ Petition ought not to be entertained. Without prejudice to the aforesaid argument, in answer to the

four contentions of the Petitioner, Mr. Sharma submitted as follows:

a. On the first issue concerning Section 144C, he submitted that the Petitioner had not changed his status from resident to non-resident before the Department. Relying on Ground 5-C in the Affidavit-In-Reply on page 245, he submitted that the Petitioner had not taken such a ground during assessment proceedings and had not produced any material to show any formal change of status from resident to non-resident. He argued that mere mention of the words “non-resident” in the Assessment Order does not establish that the Assessing Officer had accepted such status, and it appears to be a mechanical reproduction from the return of income without due application of mind.

b. On the second aspect regarding invocation of Section 144, Mr. Sharma relied on Ground 5-F of the Affidavit-in-Reply and submitted that, although no comments were offered as the assessment was completed by Respondent No. 1, the Assessment Order itself refers to Notices dated 5th January 2023 and 12th January 2023 and, therefore, it cannot be said that Section 144 was wrongly invoked.

c. On the third contention relating to jurisdiction, Mr.

Sharma relied upon paragraphs 7 to 12 of the Affidavit-in-Reply and submitted that the PAN jurisdiction of the Petitioner had shifted from time to time between different wards and circles and, in light of Section 124(3) of the Act, the Petitioner was not entitled to call in question the jurisdiction of Income Tax Officer, Ward 4(1), Gurgaon, as he had not challenged the jurisdiction within one month of receipt of Notice under Section 142(1) or 143(2), whichever was earlier. However, he did not dispute the statement in paragraph 18 of the Reply that if the Petitioner is a non-resident, the jurisdictional officer would be the one in the International Taxation Circle.

d. On merits, he submitted that disputed factual issues arise and, therefore, even if this Court were to accept the contentions of the Petitioner, the proper course would be to set aside the Order and remand the matter to the Assessing Officer.

7. Accordingly, Mr. Sharma, submitted that the Petition, being devoid of merits, should be dismissed.

8. In rejoinder, Mr. Gandhi submitted that there is no separate provisions in the Act requiring an Assessee to make an independent

application for "change of status" from resident to non-resident, apart from correctly disclosing the status in the Return Of Income and substantiating the same. He submitted that the return of income was accepted by issuance of Notice under Section 143(2), and even in the Assessment Order the status is reflected as a non-resident. He further submitted that mere absence of discussion in the Assessment Order does not mean that the status was not accepted. On the contrary, where the Assessee has filed a Reply and no adverse comment is made in the Order, it must ordinarily be presumed that the issue has been accepted after application of mind. On the issue of jurisdiction, he submitted that it is the Department's own case in paragraph 18 of the Reply Affidavit that if the Petitioner is a non-resident, the matter had to go to the International Tax Circle. He further pointed out that till 29th March 2023 the assessment proceedings were handled by the Faceless Assessment Centre and, therefore, there was no occasion for the Petitioner to raise any jurisdictional objection. It is a known fact that the Faceless Assessing Officer has concurrent jurisdiction. He also submitted that within the Faceless Assessment Framework under Section 144B, the provisions of Section 124 have to be read harmoniously. On merits, he submitted that all material was already before the authorities and the Assessing Officer had not even properly appreciated the Replies and documents filed by the Petitioner. He finally submitted that if the Department had information that the

Assessee had purchased property of Rs. 2,04,60,800/-, the details of such information ought to have been furnished to the assessee for rebuttal, which was not done. Therefore, he submitted that the impugned Order and consequential Notices should be quashed and set aside.

9. We have heard the learned Counsel for the parties and carefully gone through the pleadings, the paperbook and the decisions relied upon. We are more than satisfied that the present case warrants interference under Article 226 for more than one reason.

10. Firstly, in so far as the issue under Section 144C is concerned, we find considerable substance in the submission of Mr. Gandhi. The Petitioner had specifically disclosed his status as a non-resident in the return of income filed on 12th January 2023. In the Reply dated 12th January 2023 filed before the Assessing Officer, the Petitioner gave a detailed tabulation of his period of stay in India and specifically reproduced Section 6 of the Act to explain why he was a non-resident for AY 2018-19. Copies of passport pages were also annexed. Thereafter, no further query disputing the Petitioner's residential status was raised by the Department. Significantly, in the Assessment Order as well as in the Computation Sheet, the status of the Petitioner is shown as "non-resident". We are unable to accept the submission of Mr. Sharma that

such description was a mere copy-paste without application of mind. Had there been any doubt in the mind of the Assessing Officer, he would either have assessed the Petitioner as a resident or at the very least dealt with the issue in the body of the Order. He could have raised this issue in the course of reassessment proceedings also. The complete absence of any discussion to the contrary in the impugned Order, coupled with the categorical description in the Order and computation, clearly indicates that the Assessing Officer accepted the Petitioner's status as a non-resident. Once this position is accepted, the Petitioner became an "eligible assessee" within the meaning of Section 144C(15)(b)(ii) of the Act, which reads as follows:

> *"144C(15) For the purposes of this section,—*
> *(a) …*
> *(b) "eligible assessee" means—*
> > *(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and*
> > *(ii) <u>any non-resident</u> not being a company, or any foreign company."*
>
> *(emphasis supplied)*

11. The Memorandum explaining the provisions of the Finance Bill, 2020, specifically records that the scope of Section 144C was expanded by defining "eligible assessee" as a non-resident, not being a company or a foreign company. Therefore, after the amendment, if the Assessing Officer

proposed to make any variation prejudicial to such Assessee, the procedure under Section 144C had mandatorily to be followed. The relevant paragraphs of the said Memorandum are set out hereunder:

> *"It is proposed to amend Section 144C of the Act so as to :-*
> *(A) include cases, where the AO proposes to make any variation which is prejudicial to the interest of the assessee, within the ambit of section 144C;*
> *(B) expand the scope of the said section by defining eligible assessee as a non-resident not being a company, or a foreign company.*
>
> *This amendment will take effect from 1st April, 2020. Thus, if the AO proposes to make any variation after this date, in case of eligible assessee, which is prejudicial to the interest of the assessee, the above provision shall be applicable."*
>
> *(emphasis supplied)*

12. The Department has not disputed the aspect that if the Petitioner is a non-resident then he is an eligible Assessee. Therefore, this aspect need not detain us further. Once the Petitioner is an eligible Assessee, then no Assessment Order prejudicial to the Assessee could be passed without first serving upon the Assessee a draft Order as contemplated under Section 144C(1). In the present case, the final Assessment Order dated 30th March, 2023 is passed without serving upon the Assessee any draft Order. Hence, the impugned final Assessment Order dated 30th March 2023 is without jurisdiction and therefore, has to be quashed and set aside. An identical view has been taken, very recently, in the following cases:

a. Barentz India (P.) Ltd. vs. Assessment Unit, National Faceless

Assessment Centre, New Delhi [2025] 179 taxmann.com 582;

b. Hansgrohe India (P.) Ltd. vs. Assessment unit Income-tax Dept. [2026] 310 Taxman 446 (Bombay).

13. We are not referring to the plethora of judgments on this issue, as the law is well settled. We may also note that the contention, that this is merely a procedural defect and not a jurisdictional infirmity, cannot be accepted. The entire statutory right of an eligible Assessee to approach the Dispute Resolution Panel stands defeated if a final Assessment Order is passed straightaway without first issuing a draft Order. Such a defect goes to the root of the matter. In our view, therefore, the impugned Assessment Order is liable to be set aside on this ground alone.

14. Even on the second aspect, namely the invocation of Section 144 of the Act, we find ourselves in complete agreement with the submissions of Mr. Gandhi. Section 144(1) permits a best judgment assessment only where the Assessee fails to file the return, or fails to comply with all the terms of Notice under Section 142(1) or directions under Section 142(2A), or having filed the return, fails to comply with all the terms of Notice under Section 143(2). The relevant extract of the provisions are brought out hereunder:

> *"144(1) If any person—*
> *(a) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under*

> *sub-section (4) or sub-section (5) or an updated return under sub-section (8A) of that section, or*
> *(b)fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or*
> *(c)having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of Section 143,*
>
> *the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment "*

15. None of these jurisdictional conditions stands fulfilled in the present case.

16. In so far as filing of return is concerned, the Petitioner duly filed his Return Of Income on 12th January 2023 in response to the Notice under Section 148. Thereafter, the Assessing Officer issued a communication dated 24th January 2023 pointing out that e-verification was pending, failing which the return would be treated as invalid. The Petitioner duly e-verified the return on 24th January 2023 and a Reply to that effect was filed on 27th January 2023. The filing of the return was not only acknowledged but also taken cognizance of by issuance of a Notice under Section 143(2) dated 10th February 2023, which itself refers to the return filed by the Petitioner on 12th January 2023. Therefore, the very foundation of the best judgment assessment, namely failure to furnish the return, is demonstrably absent.

Further, the observation in the Assessment Order that the Assessee failed to comply with Notices under Section 142(1) is equally contrary to the record. The first Notice under Section 142(1) dated 14th October 2022 admittedly remained unanswered. However, another Notice dated 5th January 2023 was issued seeking substantially the same details. In response thereto, the Petitioner filed the return on 12th January 2023 and also filed a detailed online submission on the same date together with annexures. Thereafter, as set out earlier, all communications or Notices have been replied to. Therefore, Section 144 could not have been invoked. In this regard, the decision of this Court in ***Ashok Commercial Enterprises v. Assistant Commissioner of Income Taxation [[2023] 154 taxmann.com 144 (Bom); [2023] 459 ITR 100 (Bom)]*** is directly applicable. The relevant paragraphs of the said judgment read as under :

> *"In the instant case, as paragraph 4 of the impugned assessment order for Assessment Year 2017-2018 clearly shows, <u>respondent has erroneously proceeded on the basis that no return had been filed by petitioner pursuant to the notice under section 153C of the Act, since he records that no return is available on the ITBA portal. This factual basis is demonstrably erroneous.</u> A return of income pursuant to notice issued under section 153C(1) of the Act has been filed on 15th August 2021 and an acknowledgment showing an e-filing acknowledgment number is on record. Non availability of return on the ITBA portal is the only basis on which respondent no. 1 seeks to exercise power under section 144 of the Act relying upon the provisions of section 144(1)(a) of the Act. <u>In view of the irrefutable fact that section 144(1)(a) of the Act cannot apply since petitioner has filed a return, no best judgment assessment under section 144 of the Act could have been passed;</u>*
>
> *(b) Respondent no. 1 has also, in the impugned order of*

assessment dated 28th September 2021, recorded that no Notice under section 143(2) of the Act was issued by him. Therefore, there is no question of the provisions of section 144(1)(c) of the Act being applicable;
(c) Insofar as, the provisions of section 144(1)(b) of the Act are concerned, as explained hereinabove, there has been no failure to comply with the terms of any notice issued under section 142(1) of the Act.
17.Therefore, the purported exercise of powers under section 144 of the Act cannot be sustained;"

(emphasis supplied)

18. Thirdly, as regards the issue of jurisdiction, we find that the Department's own stand substantially supports the Petitioner. In paragraph 18 of the Affidavit-in-Reply it is expressly stated that if the Petitioner is a non-resident, then the jurisdictional Assessing Officer will be the one dealing with International Taxation. The relevant extract in this regard reads thus :

"If the Petitioner is a non-resident, then the Jurisdictional Assessing Officer will (be) the one dealing with International Taxation"

19. We have already held above that the Petitioner was, in fact, treated and accepted as a non-resident. Once that is so, Respondent No. 1, i.e. Income Tax Officer, Ward 4(1), Gurgaon, had no jurisdiction to complete the assessment.

20. The contention founded on Section 124(3) also does not appeal to us in the peculiar facts of the present case. The matter, after reopening,

was being dealt with under the Faceless Assessment Regime and Notices were issued by the faceless authorities. The Petitioner had replied to the Notices issued in the faceless proceedings. It is only at the very fag end, on 29th March 2023, that Respondent No. 1 stepped in, issued the Show Cause Notice and passed the final Order on 30th March 2023 while granting less than twenty-four hours to respond. In such circumstances, it would be wholly unrealistic to non-suit the Petitioner on the ground that no jurisdictional objection was raised within the time-frame set out in Section 124(3). The Faceless Assessment Mechanism and the peculiar manner in which the case was dealt with have to be harmoniously construed with Section 124. We are, therefore, unable to accept the objection of the Respondents on this count.

21. Lastly, even on merits, we do not find any justification to sustain the impugned Order. The Petitioner had, as early as on 12th January 2023, specifically brought to the Notice of the Department that the figure of Rs. 2,04,60,800/- was erroneous and arose because the same transaction of stamp value Rs. 51,15,200/- dated 8th December 2017 had been reported four times in Form 26AS by the same reporting authority. The Petitioner also made it clear that he had purchased only one agricultural property for Rs. 50,00,000/- and produced the purchase deed. No meaningful dispute was thereafter raised by the faceless Assessing Officer on this aspect. The only

issue raised by the faceless unit was source of certain payments aggregating Rs. 15,00,000/- in the earlier period, which too was explained by the Petitioner with bank records. Despite this, Respondent No. 1 issued the Show Cause Notice for taxing the entire amount of Rs. 2,04,60,800/-, and though the Petitioner again reiterated on 30th March 2023 that there was no such purchase and that the actual transaction was only for Rs. 50,00,000/-, the same was brushed aside. The Assessing Officer incorrectly observed that the assessee had not furnished documentary evidence and had not produced bank statements. The Order further records that because limitation was expiring, there was no option but to complete the assessment on the basis of information available on record. In our view, this itself demonstrates a wholly arbitrary approach. Had the Assessing Officer even cursorily considered the material already on record, it would have been evident that only one property valued at Rs. 50,00,000/- had been purchased, that the stamp valuation was Rs. 51,15,200/-, and that the source of payment stood explained through remittances from UAE into the Petitioner's NRE account.

22. We are also not persuaded by the submission of the Respondents that the matter should now be remanded to the Assessing Officer. Having gone through the material placed before us, we are satisfied that this is not a fit case for remand. We are satisfied that the transaction was reported four

times, and nothing contrary was brought on record by Respondent No. 1 and that in so far as the source of one purchase transaction is concerned, the same was duly explained by the Petitioner to be out of the funds remitted from UAE in his NRE Account. Once, the source is explained then the value of transaction cannot be added as income from other sources.

23. The assessment is vitiated by foundational jurisdictional errors under Sections 144C and 144, apart from lack of proper jurisdiction in Respondent No. 1 and patent arbitrariness on merits. Therefore, we are inclined to exercise our discretionary jurisdiction under Article 226 and quash the impugned Order, rather than remand the matter. In similar facts, this Court in case of ***Kedaara Captial Fund II LLP vs. Assessment Unit, National Faceless Assessment Centre (NFAC), Delhi reported in [2025] 307 Taxman 19 (Bombay)***, [where one of us (B.P. Colabawalla J.) was a party], has quashed the Order and rejected the request for remanding the matter. The relevant paragraphs of this decision read as under :

> *"8. On the first objection of the Revenue that the Writ Petition ought not to be entertained because there is an alternate remedy available to the Petitioner, we find that in the peculiar facts and circumstances of this case, this Court can exercise its discretion under Article 226 of the Constitution of India and interfere in the above matter when an assessment order is completely illegal, contrary to the clear mandate of law would be, in our opinion, at least prima facie, without jurisdiction.*
>
> *9. Further, it is well settled that the jurisdiction of the High Court in entertaining the Writ Petition, despite alternate statutory*

remedies, is not affected in a case where the authority against whom the Writ is filed has usurped its jurisdiction without any legal foundation. Not entertaining a Writ Petition where statutory remedies are available, is really one of self-restraint, and it can never be argued that the Writ Petition is not maintainable. We, therefore, do not find any merit in the first argument canvassed on behalf of the Revenue

....

12. As far as the request made for remanding the matter back to the Assessing Officer is concerned, we find that there is no conceivable ground that has been brought on record based on which the request for remand has been made by the learned Advocate appearing for the Revenue. It is not as if the Assessing Officer was unaware that no deduction has been claimed by the Petitioner. During the assessment proceedings, on more than half a dozen occasions, the Petitioner had highlighted this fact. Nevertheless, the Assessing Officer proceeded to make the aforesaid addition, and that too by relying upon the treatment given in the books of account of the Petitioner/Assessee. Therefore, the addition made was a conscious act of the Assessing Officer and cannot be regarded as an error/oversight which would entail a remand. Accordingly, we are of the view that no purpose would be served if the matter is remanded to the Assessing Officer for a fresh consideration."

24. In the result the Petition succeeds. The Assessment Order dated 30th March 2023 passed under Section 147, read with Section 144, of the Act, the consequential Notice of demand and the Show Cause Notice for levy of penalty of the same date are hereby quashed and set aside.

25. The Petition is disposed of in the above terms. There shall be no order as to costs.

26. This Order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Mansi shelke