

\$~42

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5846/2021 & C.M. No.18310/2021

KETAN RIBBONS PVT LTD

..... Petitioner

Through: Mr.Mani Bhadra Jain, Advocate.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI

..... Respondent

Through: Mr.Abhishek Maratha, senior
standing counsel for the Revenue.

%

Date of Decision: 18th May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the assessment order dated 23rd May 2021 and also notice of demand issued under Section 156 of the Income Tax Act, 1961 [for short 'the Act'] and notice for initiating penalty proceedings issued under Section 274 read with Section 271AAC(1) of the Act, of even date for the AY 2018-19.

2. The relevant facts of the present case are that the Assessing Officer had extended the timeframe for filing response/objections to the show cause notice and draft assessment order dated 22nd April 2021 from 26th April 2021 to 17th May 2021. As, admittedly, no response/objection was filed by the

petitioner, the Assessing Officer proceeded to pass the impugned assessment order dated 23rd May 2021 under Section 143(3) read with Section 144B of the Act in violation of the principle of natural justice.

3. Learned counsel for the Petitioner contends that the Petitioner was unable to file reply due to the lockdown imposed in the NCT of Delhi on 19th April 2021 due to the Covid-19 pandemic. He emphasises that for reasons beyond the Petitioner's control and in particular COVID-19 pandemic, non-accessibility to login credentials and material documents, unavailability of the Chartered Accountant, the Petitioner could not file objections and produce records and documents before the Respondent. He contends that the Respondent ought to have granted more time to the Petitioner for the said purpose. In support of his contention, he relies upon the affidavit of the Petitioner's Chartered Accountant-Mr. Shyam Aggarwal, which has been placed on record. The relevant portion of the said affidavit reads as under:-

"5. I say that the records of the login credentials of the Income Tax E-Portal of all my clients are maintained at my office at 211, Aditya Complex, C-3, Yamuna Vihar, Delhi-53. However, due to non accessibility of the Income Tax E-portal login Credentials of the Petitioner, even a request for adjournment could not be placed on the Income Tax E-portal consequent to which, the impugned Assessment Order dated 23.05.2021 came to be passed.

6. I say that after the imposition of lockdown from 19.04.2021, till the date of impugned assessment order for AY 2018-19, I was unable to access the Income Tax E-Portal and as such, I did not file any response, document or exchanged any communication with the Respondent on the Income Tax E-Portal."

4. Learned Counsel for the Respondent states that the Petitioner/Assessee has an alternative efficacious remedy of filing an appeal before the Commissioner of Income Tax (Appeals) under Section 246 of the Act. He further states that the Petitioner has concealed the fact the Petitioner did not file its reply to the show cause notice and draft assessment order dated 22nd April, 2021 between 26th April, 2021 to 17th May, 2021. He contends that there is no violation of principle of natural justice as the Petitioner had filed its responses on more than five occasions previously.

5. Having perused the paper book, this Court is of the view that there has been violation of principle of natural justice as the Petitioner was unable to reply to the show cause notice and draft assessment order due to Covid-19 pandemic. The Petitioner's Chartered Accountant has filed a sworn affidavit confirming that he was unable to provide the Petitioner with the Login Credentials of the Income Tax E-Portal and the official records as they were maintained in his office at 211, Aditya Complex, C-3, Yamuna Vihar, Delhi-53 and he was unable to access them due to Covid-19 pandemic.

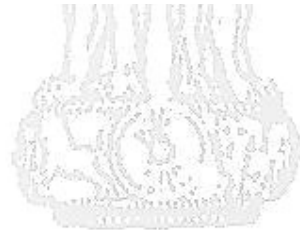
6. This Court also takes judicial notice of the difficulties faced by the society, in general, and the Assessee, in particular, in filing replies to show cause notices. This Court is further of the view that the filing of earlier replies is of no relevance as the Petitioner had an independent statutory right to file a reply to the show cause notice and draft assessment order. Consequently, in the present case there has been a violation of principle of natural justice.

7. This Court is further of the opinion that an alternative remedy is not a bar to the exercise of the writ jurisdiction of the High Court if the writ petition is filed for enforcement of a fundamental right protected by Part III

of the Constitution; where there has been a violation of the principles of natural justice; where the order or the proceedings are wholly without jurisdiction; or when the *vires* of a legislation is challenged. Accordingly, the present writ petition is maintainable.

8. Consequently, the impugned assessment order, notice of demand and notice for initiating penalty proceedings, all dated 23rd May 2021 for the Assessment Year 2018-19 are set aside. The Petitioner is directed to file its reply to the show cause notice and the draft assessment order dated 22nd April, 2021 within two weeks. The Respondent/National Faceless Assessment Centre is directed to pass the fresh assessment order within four weeks thereafter, in accordance with law.

9. With the aforesaid directions, the present writ petition along with pending application stands disposed of.



MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

**MAY 18, 2022
KA**

सत्यमेव जयते