

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2172 OF 2023

SHRI VENKATESH REFINERIES LIMITED THROUGH ITS
MANAGING DIRECTOR PRASAD DINESH KABRE
VERSUS
DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 1
AND OTHERS

...
Advocate for the Petitioner : Shri Ajay R. Singh i/by Shri Pawar
Ajay D.
Advocate for Respondents 1 to 3 : Shri A.R. Kale
Advocate for Respondent 5 : Shri R.R. Bangar
...

CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

DATE :- 23rd June, 2023

Per Court :-

1. The Petitioner has put forth prayer clauses A, B, C
and D as under:-

“A) *that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to passing of the impugned order and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned assessment order dated: 17th December 2022 (Exhibit - 'P') passed under section 143 (3) rws 144B of the Income tax Act, 1961 by the Respondent No. 2 as well*

- as the notice of demand dated: 17th December 2022 (Exhibit - 'Q') issued under section 156 of the Income-tax Act, 1961 by the Respondent No. 2 and penalty notice dated 17th December 2022 (Exhibit - 'R' & 'S') issued under section 270 A and 271AAC(1) of the Income - tax Act, 1961 by the Respondent No. 2;*
- B) *That this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction under Article 226 of the Constitution of India, ordering and directing Respondent No. 2 to withdraw the impugned assessment order dated: 17 December 2022 (Exhibit 'P') passed under section 143 (3) r.w.s. of the Income-tax Act, 1961 by the Respondent No. 2 as well as the notice of demand dated: 17th December 2022 (Exhibit - 'Q') issued under section 156 of the Income-tax Act, 1961 by the Respondent No. 2 and penalty notices dated 17 December 2022 (Exhibit 'R' & 'S') issued under section 270 A and 271AAC(1) of the Income-tax Act, 1961 by the Respondent No. 2;*
- C) *That this Hon'ble Court be pleased to issue a Writ, Order or Direction under Article 226 of the Constitution of India ordering and directing Respondents not to take any action in furtherance to the impugned assessment order dated 17th December 2022 (Exhibit - 'P') as well as the notice of demand dated: 17th December 2022 (Exhibit-'Q') issued under section 156 of the Act and penalty notice dated 17 December 2022 (Exhibit- 'R' & 'S') issued under section 270 A of the Income - tax Act, 1961 by the Respondent No. 2;*
- D) *That pending the hearing and final disposal of this petition the Respondents, their successors in office, subordinates, servants and agents be restrained by an order and injunction of this Hon'ble Court from taking any steps pursuant to the impugned assessment order dated 17th December 2022 (Exhibit - 'P') as well as the*

notice of demand dated: 17th December 2022 (ExhibitQ) and penalty notices dated 17 December 2022 (Exhibit 'R' & 'S');.”

2. We have considered the submissions of the learned Advocates appearing for the respective sides and have gone through the petition paper book with their assistance.

3. For the Assessment Year 2021-22, the Petitioner has filed it's Income Tax Returns on 28.02.2022. The computed income under Section 143(1) of the Income Tax Act, 1961, was Rs.3,83,86,700/-. The Department did not agree with the computation and, therefore, issued the show cause notice under Section 144-B r/w Section 143(2), on 02.12.2022. Section 143(2) and Section 144-B, read as under:-

“143(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of [three] months from the end of the

financial year in which the return is furnished.”

“144B. (1) Notwithstanding anything to the contrary contained in any other provision of this Act, the assessment, reassessment or recomputation under sub-section (3) of section 143 or under section 144 or under section 147, as the case may be, with respect to the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:-

- (i) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system;*
- (ii) the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;*
- (iii) a notice shall be served on the assessee, through the National Faceless Assessment Centre, under sub-section (2) of section 143 or under sub-section (1) of section 142 and the assessee may file his response to such notice within the date specified therein, to the National Faceless Assessment Centre which shall forward the same to the assessment unit:*
- (iv) where a case is assigned to the assessment unit, under clause (i), it may make a request through the National Faceless Assessment Centre for-*
 - (a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;*
 - (b) conducting of enquiry or verification by verification unit;*
 - (c) seeking technical assistance in respect of determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter by referring to the technical unit;*
- (v) where a request under sub-clause (a) of clause (iv) has been initiated by the assessment unit, the*

National Faceless Assessment Centre shall serve appropriate notice or requisition on the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit and the assessee or any other person, as the case may be, shall file his response to such notice within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre which shall forward the reply to the assessment unit;

(vi) where a request-

(a) for conducting of enquiry or verification by the verification has been made by the assessment unit under sub-clause (b) of clause fix the request shall be assigned by the National Faceless Assessment Centre to a verification unit through an automated allocation system or

(b) for reference to the technical unit has been made by the assessment unit under sub-clause (c) of clause (iv), the request shall be assigned by the National Faceless Assessment Centre to a technical unit through an automated allocation system;

vii) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, as the case may be based on the request referred to in clause (vi) to the concerned assessment unit;

(viii) where the assessee fails to comply with the notice served under clause jor notice issued under sub-section (1) of section 142 or the terms of notice issued under sub-section (2) of section 143, the National Face less Assessment Centre shall intimate such failure to the assessment unit;

(ix) the assessment unit shall serve upon such assessee, as referred to in clause (vi), a notice, through the National Faceless Assessment Centre, under section 144, giving him an opportunity to show-cause on a date and time as specified in such notice as to why the assessment in his case should not be completed to the best of its judgment;

(x) the assessee shall within the time specified in the notice referred to in clause fix) or such time as may be extended on the basis of an application in this

- regard, file his response to the National Faceless Assessment Centre which shall forward the same to the assessment unit;
- (xi) where the assessee fails to file response to the notice served under clause fix) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;
- (xii) the assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing-
- (a) an income or loss determination proposal, where no variation prejudicial to assessee is proposed and send a copy of such income or loss determination proposal to the National Faceless Assessment Centre; or
- (b) in any other case, a show cause notice stating the variations prejudicial to the interest of assessee proposed to be made to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the National Faceless Assessment Centre;
- (xiii) the assessee shall file his reply to the show cause notice served under sub-clause (b) of clause (xii) on a date and time as specified therein or such time as may be extended on the basis of an application made in this regard, to the National Faceless Assessment Centre, which shall forward the reply to the assessment unit;
- (xiv) where the assessee fails to file response to the notice served under sub-clause (b) of clause (xii) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;
- (xv) the assessment unit shall, after considering the response received under clause (xiii) or after receipt of intimation under clause (xiv), as the case may be, and taking into account all relevant material available on record, prepare an income or loss determination proposal and send the same to the National Faceless Assessment Centre;
- (xvi) upon receipt of the income or loss determination

proposal, as referred to in sub-clause (a) of clause (xii) or clause (xv), as the case may be, the National Faceless Assessment Centre may, on the basis of guidelines issued by the Board,-

(a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order; or

(b) assign the income or loss determination proposal to a review unit through an automated allocation system, for conducting review of such proposal;

(xvii) the review unit shall conduct review of the income or loss determination proposal assigned to it by the National Faceless Assessment Centre, under sub-clause (b) of clause (xvi), whereupon it shall prepare a review report and send the same to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving the review report under clause (xvii), forward the same to the assessment unit which had proposed the income or loss determination proposal;

(xix) the assessment unit shall, after considering such review report, accept or reject some or all of the modifications proposed therein and after recording reasons in case of rejection of such modifications, prepare a draft order;

(xx) the assessment unit shall send such draft order prepared under sub-clause (a) of clause (xvi) or under clause (xix) to the National Faceless Assessment Centre;

(xxi) in case of an eligible assessee, where there is a proposal to make any variation which is prejudicial to the interest of such assessee, as mentioned in sub-section (1) under section 144C, the National Faceless Assessment Centre shall serve the draft order referred to in clause (xx) on the assessee;

(xxii) in any case other than that referred to in clause (xxi), the National Faceless Assessment Centre shall convey to the assessment unit to pass the final assessment order in accordance with such draft order, which shall thereafter pass the final

- assessment order and initiate penalty proceedings, if any, and send it to the National Faceless Assessment Centre;
- (xxiii) upon receiving the final assessment order as per clause (xx), the National Faceless Assessment Centre shall serve a copy of such order and notice for initiating penalty proceedings, if any, on 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;
- (xxiv) where a draft order is served on the assessee as referred to in clause (xxi), such assessee shall,-
- (a) file his acceptance of the variations proposed in such draft order to the National Faceless Assessment Centre; or
- b) file his objections, if any, to such variations, with-
- (I) the Dispute Resolution Panel, and
- (II) the National Faceless Assessment Centre,
- within the period specified in the sub-section (2) of section 144C;
- (xxv) the National Faceless Assessment Centre shall,-
- (a) upon receipt of acceptance from the eligible assessee; or
- (b) if no objections are received from the eligible assessee, within the period specified in sub-section (2) of section 144C, intimate the assessment unit to complete the assessment on the basis of the draft order;
- (xxvi) the assessment unit shall, upon receipt of intimation under clause (xxv), pass the assessment order, in accordance with the relevant draft order, within the time allowed under sub-section (4) of section 144C and initiate penalty proceedings, if any, and send the order to the National Faceless Assessment Centre;
- (xxvii) where the eligible assessee files objections with the Dispute Resolution Panel, under sub-clause (b) of clause (xxiv), the National Faceless Assessment Centre shall send such intimation along with a copy of objections filed to the assessment unit;
- (xxviii) the National Faceless Assessment Centre shall, in a case referred to in clause (xxvii), upon receipt of the

- directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward directions to the assessment unit;*
- (xxix) *the assessment unit shall, in conformity with the directions issued the Dispute Resolution Panel under sub-section (5) of section 144C complete the assessment within the time allowed in sub-section (13) of section 144C and initiate penalty proceedings, if any, and send a copy of the assessment order to the National Faceless Assessment Centre;*
- (xxx) *the National Faceless Assessment Centre shall, upon receipt of the assessment order referred to in clause (xxvi) or clause (xxix), as the case may be, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or the amount of refund due to, the assessee on the basis of such assessment;*
- (xxxi) *the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act;*
- (xxxii) *if at any stage of the proceedings before it, the assessment unit having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the National Faceless Assessment Centre stating that the provisions of sub-section (2A) of section 142 may be invoked and such case shall be dealt with in accordance with the provisions of sub-section (7).*
- (2) *The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be*

specified by the Board.

(3) *The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:-*

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

(ii) such assessment units, as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under this Act, seeking information or clarification on points or issues so identified. analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment, and the term "assessment unit, wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(iii) such verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification and the term "verification unit, wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board:

Provided that the function of verification unit under this section may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned through the National Faceless Assessment Centre to such verification unit;

(iv) such technical units, as it may deem

necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing data analytics, management or any other technical matter under this Act or an agreement entered into under section 90 or 90A, which may be required in a particular case or a class of cases, under this section and the term "technical unit", wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;

(v) such review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the income determination proposal assigned under sub-clause (b) of clause (xvi) of sub-section (1), which includes checking whether the relevant and material evidence has been brought on record, relevant points of fact and law have been duly incorporated, the issues requiring addition or disallowance have been incorporated and such other functions as may be required for the purposes of review and the term "review unit" wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board.

(4) The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:-

(i) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(iii) such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.

5) All communications,

(i) among the assessment unit, review unit,

verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;

(ii) between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and

(iii) between the National Faceless Assessment Centre and various units shall be exchanged exclusively by electronic mode:

Provided that the provisions of this subsection shall not apply to the enquiry or verification conducted by the verification unit in the circumstances as may be specified by the Board in this behalf.

(6) For the purposes of faceless assessment-

(i) an electronic record shall be authenticated by –

(a) the National Faceless Assessment Centre by way of an electronic communication;

(b) the assessment unit or verification unit or technical unit or review unit, as the case may be, by affixing digital signature;

(c) assessee or any other person, by affixing his digital signature of under electronic verification code, or by logging into his registered account in the designated portal;

(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of-

(a) placing an authenticated copy thereof in the registered account of the assessee; or

(b) sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or

(c) uploading an authenticated copy on the Mobile App of the assessee,

and followed by a real time alert;

(iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;

(iv) the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgment is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;

(v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000):

(vi) a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before any unit set up under this section;

(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft 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 such income or loss determination proposal, 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 of the relevant unit;

(viii) where the request for personal hearing has been received, the income- tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;

(ix) subject to the proviso to sub-section (5), any examination or recording of the statement of the assessee or any other person (other than the statement recorded in the course of survey under section 133A) shall be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;

(x) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;

(xi) the Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre and the units set up, in an automated and mechanised environment.

(7)(a) The Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the National Faceless Assessment Centre shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of sub-section (2A) of section 142 may be invoked in the case,

(i) forward the reference received from an assessment unit under clause (xxxii) of sub-section (1) to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case,

and inform the assessment unit accordingly;

(ii) transfer the case to the Assessing Officer having jurisdiction over such case in accordance with sub-section (8);

(b) where a reference has been received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under sub-clause (i) of clause (a), he shall direct the Assessing Officer, having jurisdiction over the case, to invoke the provisions of sub-section (2A) of section 142;

(c) where a reference has not been forwarded to the Principal Chief Commissioner Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over the case, in a case referred to in sub-clause 6) of clause (a), the assessment unit shall proceed to complete the assessment in accordance with the procedure laid down in this section.

(8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General, as the case may be in-charge of National Faceless Assessment Centre may, at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.

(9) [Omitted by the Finance Act, 2022, w.r.e.f. 1-4-2021.]

(10) [Omitted by the Finance Act, 2022, w.r.e.f. 1-4-2022.]

Explanation. In this section, unless the context otherwise requires-

(a) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2% of the Information Technology Act, 2000 (21 of 2000);

(b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288;

(c) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;

(d) "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;

(e) "computer resource" shall have the same meaning as assigned to it in clause (4) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(f) "computer system" shall have the same meaning as assigned to it in clause of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(g) "computer resource of assessee" shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered email address of the assessee with his email service provider;

(h) "digital signature shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2" of the Information Technology Act, 2000 (21 of 2000);

(i) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre;

(j) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of section 144C;

(k) "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;

(l) "electronic record" shall have the same meaning as assigned to it in clause (1) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(la) "electronic verification code" means a code generated for the purpose of electronic verification as per the data structure and standards specified by the Principal Director General or Director General, as the case may be in-charge of information technology;

(m) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of section 144C;

(n) "email" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(o) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);

(p) "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;

(q).

(r) "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;

(s) "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;

(t) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee,

including-

(i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or

(ii) the e-mail address available in the last income-tax return furnished by the addressee; or

(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

(vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority.

(u) "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;

(v) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time."

4. The undisputed factors are as under:-

(a) The show cause notice is dated 02.12.2022 and time granted to the Petitioner to tender it's reply online, was up to 09.12.2022.

(b) On 08.12.2022, the Petitioner emailed an

adjournment request on the Income Tax Department's Portal and sought time till 16.12.2022.

(c) On 16.12.2022, the Petitioner attempted to upload it's answer/ explanation. However, the portal window was closed.

(d) Therefore, on 16.12.2022 itself, the Petitioner emailed the National Faceless Assessment Centre (NFAC) and sent a further email on the same date to the Samadhan Faceless Assessment Portal. On the same day, the Petitioner was intimated that it's emails were forwarded to the Assessment Unit.

(e) On 17.12.2022, an Assessment Order was passed.

(f) The Department concedes that the window was closed on 09.12.2022, as the proceedings were closed.

(g) There is no communication to the Petitioner in response to his email dated 08.12.2022 as to whether, the Department was extending time or not.

5. We have reproduced Section 144-B herein above. Section 144B(1)(xii)(b) indicates that after the show cause notice is issued stating the variations prejudicial to the interest of the assessee, which are proposed to be made to the income of the assessee, he has to be called upon to submit as to why the

proposed variation should not be made. Such show cause notice shall be served on the assessee through the National Faceless Assessment Centre. Clause (xiii) of Section 144B(1) mandates the Assessee to file his reply to the show cause notice on the date and time as specified therein or such time as may be extended on the basis of the application made in this regard to the NFAC, which shall forward the reply to the Assessment Unit.

6. It is an open and shut case before us that the Petitioner indeed sought an adjournment till 16.12.2022 vide his email dated 08.12.2022, which is not denied by the Department. Clause (xiii) of Section 144B(1) indicates that the Assessee can file a reply on the date and time as specified or also within the extended time on the basis of his request application. There is no dispute that the Department shutdown the window on 09.12.2022 and neither accepted the request of the Petitioner, nor rejected it.

7. In view of the above, **this Writ Petition is allowed.** The impugned Assessment Order dated 17.12.2022 is quashed and set aside.

8. Considering the peculiar facts as noted above, we are issuing the following directions:-

(a) The Department shall open the window portal to

enable the Petitioner to submit it's explanation along with the documents, forthwith.

(b) If the portal is opened by 30.06.2023, the Department would intimate the Petitioner through an email.

(c) Once such portal is opened, the Petitioner shall upload it's reply along with all attachments and annexures, as may be desired, on or before 10.07.2023.

(d) In the reply, if the Petitioner seeks an opportunity for personal hearing on the National Faceless Assessment Centre, considering Section 144B(6)(vii) and (viii), which binds the Department to allow the faceless hearing, such personal hearing would be granted to the Petitioner with proper intimation giving at least five days period for preparation.

(e) The "Standard Operating Procedure" (SOP) of the Department dated 03.08.2022 issued by the NFAC, Delhi, shall be followed.

kps

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)