



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3937 OF 2022

Fayeza Muffadal Contractor

...Petitioner

*Versus*National Faceless Assessment Centre (Formerly
known as National E Assessment Centre) & Ors.

...Respondents

Mr. Devendra H. Jain with Mr. Ashwin Jain i/by Ms. Radha Halbe
for Petitioner.

Mr. Suresh Kumar for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
NEELA GOKHALE, JJ.

DATED: 31st October 2023

PC:-

1. Petitioner is impugning an assessment order dated 26th March 2022 passed under Section 147 read with Section 144 read with Section 144B of the Income Tax Act, 1961 (“**the Act**”) on the principal ground that no notice was issued prior to passing the assessment order. It is Petitioner’s case that notice was not sent even to the updated email id. In the affidavit in reply, it is stated that the assessment proceedings were carried out in accordance with the guidelines/Standard of Proceedings issued by the Central Board of Direct Taxes from time to time. It is also stated that in the PAN Database of Petitioner, no email id has been registered and it cannot be ascertained whether Petitioner had registered her email id prior to reassessment proceedings or during reassessment proceedings for

Assessment Year 2014-15 which is the relevant year for the matter at hand. There is nothing to indicate, notice, in fact was served.

2. Since the assessment order makes an addition of a large sum of Rs.8,09,04,900/-, in our view, Petitioner should have been given an opportunity to explain by serving the notice upon Petitioner. If email id was not available in the portal, it should have been served physically upon Petitioner at least by courier or speed post and acknowledgment filed. There have been SOPs in place and the last one which is in force before the assessment order was passed is dated 23rd November 2020. After the assessment order was passed, a fresh/revised SOP has been released on 3rd August 2022 for assessment units under the Faceless Assessment provisions of Section 144B of the Act. Clause G.3 of the SOP dated 3rd August 2022 reads as under:

“G.3 Centralised Communication to improve compliance of notice under section 142(1)

G.3.1 In all cases where assessee is not responsive to the notice under section 142(1), on directions of NaFAC, Insight shall:

G.3.1.1 Prepare centralized communication, as per format, about non-responsiveness;

G.3.1.2 Send physical letter at the latest known address through Speed Post;

and

G.3.1.3 Send SMS about non-responsiveness, on the latest available mobile number of the assessee.

G.3.2 All attributes of the communication, including PAN, AY, address at which the letter is sent, speed post tracking ID, date on which letter is sent, mobile number on which SMS is sent along with the date and time of sending, will be updated in the database accessible to AU on Insight;

G.3.3 To ensure completeness of record, the AU shall enter all the details referred in Para G.3.2 above, along with the date of delivery, if any, of the Speed Post letter in the Case History.”

3. We would direct Respondents to strictly comply with the SOP dated 3rd August 2022 in all cases, not just restricted to Faceless Assessment Proceedings under Section 144B of the Act so that assesseees get a reasonable opportunity to make out their case before the Assessing Officer.

4. In the case at hand, Mr. Jain states that the notice of personal hearing be sent to his postal address and email at “devendra@dhjlegal.in” and also to “nk.client28@gmail.com”.

5. Accordingly, we hereby quash and set aside the assessment order and remanded for *de novo* consideration. Within two weeks of the portal being opened, Petitioner shall respond to the notice dated 24th November 2021 received under Section 142(1) of the Act.

6. The Assessing Officer shall pass further orders in the matter as he deems fit in accordance with law after giving a personal hearing to Petitioner, notice whereof shall be communicated at least five working days in advance. The proceedings to be completed by 31st January 2024.

7. In view of the above, the consequential demand notice under Section 156 of the Act and penalty show cause notice under Sections 271 and 271F of the Act, both dated 26th March 2022, are also

quashed and set aside.

8. Petition disposed.

9. We clarify that we have not made any observations on the merits of the case.

(NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)