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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12317 OF 2022

Vimal Trading (PAN: AAJFV7604A), a partnership firm having office at B-13, Narayan Bhavan Tense Society, Rajaji Path Cross Road, Dombivali (East) 421201, Maharashtra. … Petitioner

Versus

1. National Faceless Assessment Centre (formerly known as) National E-Assessment Centre),

   Income Tax Department,

   New Delhi.

2. Income Tax Officer, Ward 3(1) Kalyan

   2nd Floor, Rani Mansion, Above Canara Bank, Murbad Rd, Kalyan,

   Maharashtra 421301.

3. Principal Commissioner of Income Tax-Thane

   Ashar I.T. Park, 6th Floor, Road No. 16, Wagle Indl. Estate, Thane (W)-400604.

4. The Central Board of Direct Taxes, North Block,

   New Delhi-110002.

5. The Union of India

   Through the Secretary, Ministry of Finance, Government of India, North Block,

   New Delhi-110001. … Respondents

Ms. Radha Halbe, for the petitioner.
Mr. Akhileshwar Sharma, for respondents.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

Pallavi Wargaonkar, P.S

RESERVED ON: 3 DECEMBER 2024
PRONOUNCED ON: 27 FEBRUARY 2025

Judgment (Per Advait M. Sethna, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition is filed by the petitioner under Article 226 of the Constitution of India, assailing the following :- (i) the assessment order dated 9 September 2022, passed under Section 143(3) of the Income Tax Act, 1961 ("**IT Act**" for short)("**impugned final assessment order**" fort short); (ii) the notice of demand dated 9 September 2022, issued under Section 156 of the IT Act ("**impugned demand notice**" for short); and (iii) two show cause notices dated 9 September 2022, proposing the initiation of penalty proceedings under Section 274 read with Section 270A and Section 271AA(1) of the IT Act ("**impugned show cause notices**" for short). The substantive prayers are reproduced below:-

> "(a) *that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the impugned assessment order passed under section 143(3) read with section 144B dated 09.09.2022 (Exhibit 'E1') and the impugned notice of demand issued under section 156 dated 09.09.2022 (Exhibit 'E2'), show Cause Notices dated 09.09.2022 for initiating penalty proceedings under section 270A (Exhibit 'E3') and under section 271AA(1) ('Exhibit 'E4'), as null and void.*
>
> *(b) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, directing the Respondents, its servants, subordinates, agents*

and successors in office to:

i) quash the impugned assessment order passed under section 143(3) read with section 144B dated 09.09.2022 (Exhibit 'E1') and the impugned notice of demand issued under section 156 dated 09.09.2022 (Exhibit 'E2'), show Cause Notices dated 09.09.2022 for initiating penalty proceedings under section 270A (Exhibit 'E3') and under section 271AA(1) (Exhibit 'E4'), as null and void.

ii) to forthwith forbear from taking any steps whatsoever, including recovery of the impugned demand pursuant to in implementation of the impugned assessment order passed under section 143(3) read with section 144B dated 09.09.2022 (Exhibit 'E1')and the impugned notice of demand issued under section 156 dated 09.09.2022 (Exhibit 'E2'), show Cause Notices dated 09.09.2022 for initiating penalty proceedings under section 270A (Exhibit 'E3') and under section 271AA(1)('Exhibit 'E4').”

A) Issue before the Court :

3. Whether the final impugned assessment order is rendered a nullity in law, and *non est* in light of non-compliance of the principles of natural justice, which is a jurisdictional requirement intrinsic under Section 144B of the IT Act. Consequently, if the very foundation, i.e., the said impugned final assessment order is *ex-facie* without jurisdiction, whether such illegality can be allowed to perpetuate in the form of subsequent impugned demand notice issued under Section 156 of the IT Act read with the impugned show cause notices dated 9 September 2022 invoking penalty issued under Section 274, 270A read with Section 271AA(1) of the IT Act.

B) Factual Matrix :

The relevant facts necessary for adjudication of the present proceedings are:

4. The petitioner is the partnership firm engaged in trading/investment activity in capital market. The petitioner filed its NIL return of income dated 29 December 2020 for the Assessment Year 2020-2021 ("**A.Y. 2020-21**" for short).

5. Respondent no. 1 issued a notice dated 29 June 2021 to the petitioner under Section 143(2) of the IT Act. According to such notice, the primary issues on which the respondent no. 1 sought further clarification from the petitioner were in the context of Unsecured Loans and for Verification of Transactions.

6. The respondent no. 1 issued several notices under Section 142(1) of the IT Act. These were dated 12 November 2021, 6 December 2021, 17 January 2022 and 17 March 2022 seeking details and documents from the petitioner. The petitioner by its letter 26 November 2021, 13 December 2021, 10 January 2022, 24 January 2022 and 22 March 2022 responded to the aforesaid notices, respectively.

7. It was on 18 August 2022 the respondent no. 1 proceeded to issue a show cause notice-cum-draft assessment order to the petitioner asking to show cause as to why the proposed additions as set out in such notice should not be made to the petitioner's total income. The petitioner was directed to reply to such show cause notice-cum-draft assessment order by 18:00 hours on 26 August 2022.

8. Thereafter, the petitioner duly replied to the said show cause notice-cum-draft assessment order dated 18 August 2022 issued by respondent no. 1 on

26 August 2022, by filing its written submissions along with relevant and material documentary evidences in support thereof.

9. The petitioner, in terms of the instructions as categorically set out in paragraph no. 3(c) of the said show cause notice-cum-draft assessment order dated 18 August 2022 issued by respondent no. 1, made an application with requisite documents on 27 August 2022. The petitioner further sought for an opportunity of personal hearing through video conferencing on the e-filing portal of the respondents.

10. On 9 September 2022, the respondent no. 1 proceeded to pass the impugned final assessment order under Section 143(3) read with Section 144B of the IT Act directing aggregate addition of Rs. 4,58,74,139/-. The respondent no. 1 issued a demand notice of Rs. 2,21,98,176/- under Section 156 of the IT Act and also issued two show cause notices for initiating penalty against the petitioner under Section 270A, 274 read with Section 271AA(1) of the IT Act. The petitioner being aggrieved by the final assessment order dated 9 September 2022, the demand notice and the show cause notices for initiating penalty proceedings, approached this Court by filing the present Writ Petition on 6 October 2022.

C) Rival contentions :

The case of the petitioner :

11. Ms. Radhika Halbe, learned counsel for the petitioner would in

assailing the impugned final assessment order, the demand notices and the notice for penalty initiated against the petitioner would urge that the same are bad and illegal on patent illegality, perversity, arbitrariness and non-application of mind on the part of the respondents.

12. Ms. Halbe would contend that the very objective for which the Central Government initially introduced the faceless assessment scheme was to usher greater transparency, efficiency, and accountability in income tax assessment. All the provisions sought to be introduced under such scheme or under Section 144B of the IT Act were framed with the avowed objective to : (a) eliminate the interface between the assessing officer and the assessee during the course of the assessment proceeding to the extent, i.e., technologically feasible; (b) optimize the utilization of resources through economies of scale and functional specialization and; (c) introduce a team-based determination of arms length pricing with dynamic jurisdiction. However, under the pretext of eliminating such interface between the assessee and the assessing officer under the faceless assessment scheme the basic jurisprudential principle of *audi alteram partem* is being compromised by the respondents, to the detriment of the assessee like the petitioner. It is on such breach of principles of natural justice that the petitioner is constrained to knock on the doors of this Court, in writ jurisdiction.

13. Ms. Halbe would then place due reliance on Section 144B of the IT Act to emphasize that the mandatory procedure provided for therein had to be

followed by the respondents not only during assessment proceedings but also whilst issuing the impugned final assessment order dated 9 September 2022 upto issuance of the impugned demand notices and impugned show cause notices to initiate penalty proceedings against the petitioner. In this context, she would refer to paragraph 3 of the show cause notice-cum-draft assessment order dated 18 August 2022 to contend that the petitioner was directed to file its response to such notice/order by 18:00 hours of 26 August 2022. The said draft assessment order also expressly stated that the petitioner was entitled for personal hearing through video conferencing. Accordingly, the petitioner insisted on an opportunity for personal hearing to be granted to the petitioner as set out in the said show cause notice-cum-draft assessment order dated 18 August 2022. Despite such specific request by the petitioner to the respondents for personal hearing the respondent no. 1 proceeded to pass the final impugned assessment order without granting such personal hearing to the petitioner. She submits that such refusal for the grant of personal hearing despite glossing over the mandatory requirement under Section 144B of the IT Act caused grave and irreparable prejudice to the petitioner.

14. Ms. Halbe taking recourse to the provisions of Section 144B of the IT Act and the mandatory procedure prescribed thereunder which contemplates grant of reasonable opportunity to include personal hearing to the assessee would submit that there is no discretion conferred on the respondents by such provision. The amendment under Section 144B of the Finance Act, 2022 effective from 1 April

2022 mandates by the use of the expression 'shall', for grant of personal hearing through video conferencing more particularly under Section 144B(6)(viii). These mandatory/statutory requirements were thrown to the winds by the respondents who went ahead and passed the impugned final assessment order, contrary to law.

15. Ms. Halbe would further submit that the illegality in the actions of the respondent does not end at this, to submit that even after passing the impugned final assessment order, respondent no. 1 continued to issue the demand notice dated 9 September 2022 under Section 156 of the IT Act coupled with two show cause notices for invoking penalty under Section 270A read with Section 274 and Section 271AA(1) of the IT Act. She would, thus contend that the impugned final assessment order being bad in law on the ground of gross violation of the principles of natural justice, in violation of Section 144B of the IT Act, all consequential notices including the demand notice and the notice invoking penalty are rendered illegal and non-est.

16. Ms. Halbe would strenuously urge that the request for personal hearing was made by the petitioner on 27 August 2022 whereas, the final impugned assessment order was passed on 9 September 2022. At this juncture, she would emphasize on the fact that the impugned final assessment order was passed by respondent no. 1 a little before the assessment in the present proceedings which would have got time-barred on 30 September 2022. The respondent therefore, acted in haste with a clear intent to save the assessment from getting time-barred

and acting unreasonably, arbitrarily and in contravention of express mandate under Section 144B of the IT Act.

17. In support of her submissions, Ms. Halbe specifically relied on the judgment of the Delhi High Court in the case of **Divya Capital One Pvt. Ltd. v. Assistant Commissioner of Income-Tax & Anr**[1]**.** In the said case the High Court was dealing with a situation where an order was passed under Section 148A(d) of the IT Act without considering the submissions filed by the assessee which was available on record of the assessing officer, before passing such order. The Delhi High Court considering such facts held that the submissions which are available on record as on the date of passing of the impugned assessment order must be considered. Thus, drawing an analogy, Ms. Halbe would contend that in the present case the application of the petitioner for the grant of personal hearing was very much before the assessing officer before passing the impugned final assessment order dated 9 September 2022. However, the respondent no.1 chose to overlook the statutory mandate under Section 144B(6)(viii) which categorically prescribes for a grant of hearing, to the assessee.

18. Ms. Halbe then placed reliance on various decisions of Supreme Court in **Cantonment Board, Dinapore and Ors v. Taramani Devi**[2]**; Delhi Transport**

[1] (2022) 445 ITR 436

[2] AIR 1992 SC 61

Corporation v. DTC Mazdoor Union[3]**; Maneka Gandhi v. Union of India & Ors.**[4] to emphasize that well-settled legal principle of *audi alteram partem* is ingrained and ordained under Article 14 of the Constitution of India.

19. Ms. Halbe would assail the additions by the respondents on the alleged ground of misreporting, under reporting of income by the petitioner to the extent of Rs. 4,58,74,139/- and adjustment of brought forward loss of Rs. 2,43,14,139/-, resulting in the assessment of total income of Rs.2,15,60,000/- under Section 115BBE of the IT Act leading to issuance of show cause notices for imposing penalty under Section 274 read with Section 270A and Section 271AA(1) of the IT Act on the petitioner for said A.Y. 2020-21. Ms. Halbe would urge that such actions of the respondents unilaterally and arbitrarily making such additions without even hearing the petitioner, despite making a request for hearing under the statutory provisions noted (supra) deprived the petitioner of an opportunity of representing itself, before the respondents causing grave prejudice.

Submissions of the Respondents :

20. Mr. Akhileshwar Sharma, learned counsel for the respondents would at the very outset emphatically support the impugned final assessment order, the impugned demand notice issued under Section 156 and the impugned show cause

[3] AIR 1999 SC 564
[4] AIR 1978 SC 597

notices for invoking penalty under Section 270A, Section 274 read with Section 271AA(1) of the IT Act, all dated 9 September 2022, being within the four corners of law. According to him, no interference with any of these is warranted in the given facts and circumstances. Mr. Sharma would rely on and adopt the averments, submissions made in the affidavit-in-reply filed by one Jitendra Godbole, Income Tax Officer, Ward-3, Kalyan, dated 7 December 2022, which is on record.

21. Mr. Sharma would submit that the show cause notice-cum-draft assessment order clearly stated the following :-

> "*3. Kindly submit your response through your registered e-filing account at www.incometax.gov.in by 18:00 hours of 26/08/2022, whereby you may either:-*
>
> *a. accept the proposed variation; or*
>
> *b. file your written objecting to the proposed variation; or*
>
> *c. If required, in addition to filing written reply you may request for personal hearing so as to make oral submissions or present your case. The request can be made by clicking the Seek Video Conferencing button available against the SCN, in the view notices of this proceeding in the e-proceedings tab on efiling portal. **The request can be made only before expiry of compliance date & time through video conference.***
>
> *4. **In case no response in received by the given time and date, the assessment shall be finalized taking into account the variation(s) stated above.**"*

Hence, according to Mr. Sharma, this would show that several opportunities were given to the petitioner. He submits that despite categorically informing the petitioner about the specific date and time to submit the request, the petitioner failed to comply with the same. As a result, the respondent no. 1 had no alternative

but to proceed by considering all the relevant material on record. It is submitted that the petitioner requested for hearing through video conferencing only on 27 August 2022 instead of the stipulated date of 26 August 2022 as mentioned in the show cause notice-cum-draft assessment order of the said date. It is hence submitted that the contention of the petitioner that the petitioner was not heard is a complete afterthought which cannot be accepted.

22. Mr. Sharma would further submit that the show cause notice-cum-draft assessment order dated 26 August 2022 specifically called upon the petitioner to submit its response along with supporting documents and/or with request for personal hearing on or before the said date. However, the petitioner chose to not abide by such clear and specific timelines and therefore, for its own conduct, it cannot put the blame on the respondents. In this context, he would submit that just as the assessing officer is bound to act within the framework of law, the taxpayer also shoulders the same responsibility to act accordingly, which it failed to do, knowing that the time to conclude the assessment was 30 September 2022. In such facts and circumstances, there is no legal basis for the petitioner to contend that the impugned final assessment order, consequential impugned demand notice and the impugned show cause notices to invoke penalty, violate the principles of natural justice.

23. Mr. Sharma would further submit that it is not the petitioner's case alone where the assessment proceedings were to be completed on or before the

date of 30 September 2022 on which such proceedings would be time-barred. There were several such other cases. In view thereof, the submission of the assessee that there was ample time for the respondents to hear the petitioner and pass the impugned final assessment order is neither correct nor justifiable. He would reiterate that it is because of the petitioner's own conduct that the clear deadline of submitting the response along with the documents and request for personal hearing set out in the show cause notice-cum-draft assessment order 18 August 2022 could not be complied with. Thus, for such non-compliance and that too without justification the petitioner cannot hold the respondent responsible for its own omissions, to act within the time frame.

24. In view of the above, Mr. Sharma would submit that there is no violation on the part of the respondents of the statutory provisions under Section 144B of the IT Act, as sought to be made out by the petitioner. He would urge that there is no breach of the principle of *audi alteram partem* by the respondents as the petitioner was given reasonable and sufficient opportunity which it failed to avail without any justification.

25. Mr. Sharma would then submit that the decisions of various Courts relied on by the petitioner are in the context of completely different and distinct facts and circumstances. Thus, the same have no application in the given case.

26. On merits Mr. Sharma would submit that certain discrepancies

emerged warranting certain additions to the petitioner's total income during the course of assessment. This was in the nature of investments amounting to Rs. 2,43,14,139/-; discrepancies in capital account of one of the partner resulting in addition of Rs. 50,60,000/-; discrepancies in transaction (loan) with M/s. Total Holding & Finvest Pvt. Ltd. resulting in addition of Rs.2,00,00,000/-. Upon total making addition of Rs.4,58,74,139/- an adjustment of loss brought forward of Rs.2,43,14,139/-. The total income of the petitioner was correctly assessed at Rs. 2,15,60,000/- for the A.Y. 2020-21 at special rate under Section 115BBE of the IT Act. Accordingly, on a demand notice of Rs.2,21,98,176/- was issued to the petitioner under Section 156 of the IT Act for said A.Y. 2020-21 on 9 September 2022.

27. Mr. Sharma would submit that, all such proposed additions to the total income of the petitioner are within the framework of the IT Act. Consequently, according to Mr. Sharma, the penalty notices issued under Section 274 read with Section 270A and Section 271AA(1) of the IT Act Act for under-reporting, misreporting of income and for failing to disclose/explain the source of such income were in accordance with law which warrants no interference.

D) **Analysis and Conclusion :**

28. Considering the issue to be decided in the present petition, it is pertinent to refer to certain relevant and undisputed facts. Firstly, a notice dated 29

June 2021 was issued by respondent no. 1 to the petitioner under Section 143(2) of the IT Act, seeking clarification from the petitioner in regard to unsecured loans and for verification of the petitioners transactions. This was followed by several notices issued by the respondents under Section 142(1) of the IT Act as noted above from 12 November 2021 onwards seeking details and documents from the petitioner. The last of such notice by the respondent was dated 17 March 2022. The petitioner duly responded to all of such notices, the last one being of 22 March 2022. It was on 18 August 2022 that the respondent no. 1 proceeded to issue a show cause notice-cum-draft assessment order under Section 143(3) of the IT Act. The petitioner was directed to respond by 18:00 hours on 26 August 2022 either by a written reply or making a request for personal hearing through video conferencing. The petitioner accordingly replied to such notice-cum-draft assessment order on 26 August 2022 by filing such written submissions. The petitioner further in terms of paragraph 3(c) as set out in the notice-cum-draft assessment order dated 18 August 2022 made an application dated 27 August 2022 for personal hearing through video conferencing on e-filing portal. It was on 9 September 2022 that the respondent no. 1 proceeded to pass the impugned final assessment order under Section 143(3) read with Section 144B of the IT Act directing aggregate addition of Rs.4,58,74,139/- to the petitioner's total income. This was followed by another demand notice of Rs.2,21,98,176/- issued under Section 156 of the IT Act and thereafter, two show cause notices both dated 9

September 2022 for initiating penalty proceedings against the petitioner under Section 274, 270A of the IT Act read with Section 271AA(1) of the IT Act.

29. In the aforesaid factual backdrop, it is imperative to refer to Section 143 of the IT Act. Section 143(3) reads thus :-

> "*(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment……..*"

In the above context, we may now refer to the show cause notice-cum-draft assessment order dated 18 August 2022 issued by respondent no. 1 more particularly paragraphs no. 3 and 4 of the said notice reproduced (Supra). A plain reading of the above paragraphs makes it clear that besides granting an option to the assessee to file its reply objecting to the proposed variation of the respondents, in writing a further opportunity is required to be given to the assessee by offering a personal hearing through video conferencing. Such response was required to be submitted by the petitioner, on the e-filing portal by 18:00 hours of 26 August 2022, which was in fact submitted by the petitioner on 27 August 2022. The contents of paragraph 3 of the said show cause notice-cum-draft assessment order are to be construed in the light of the clear legislative intent in Section 143(3) of

the IT Act. In other words, the requirement of hearing the assessee being categorically provided for in the above statutory provision, the same ought to be followed in letter and spirit. Thus, on a proper reading and interpretation of Section 143(3) of the IT Act, one cannot by-pass such statutory mandate of granting an opportunity of hearing the assessee which is required to be followed before passing the assessment order.

30. We find that in the facts of the present case, the last response from the petitioner was dated 22 March 2022 to one of the notices under Section 142(1) of the IT Act issued by the respondents dated 17 March 2022. Thereafter, the respondent no. 1 had sufficient time to issue the draft assessment order which was not passed until 18 August 2022. In the said order, the respondent no. 1, inter alia, expressly provided to the petitioner an opportunity to seek personal hearing through video conferencing, in terms of the mandate of Section 144B(6)(viii) of the IT Act. Further, the time to respond to such show cause notice-cum-draft assessment order dated 18 August 2022 including making request by the petitioner for personal hearing was stipulated at 18:00 hours of 26 August 2022. The petitioner in compliance with such timelines did submit its response with requisite documents and uploaded a request for personal hearing on the e-filing portal of the respondents on 27 August 2022. However, the facts reveal that without considering such categorical request made by the petitioner for grant of personal hearing to it, before passing the impugned final assessment order was turned down

by the respondents. Instead, the respondents proceeded to pass the impugned final assessment order dated 9 September 2022 without hearing the petitioner, overlooking the salutary principle of *audi alteram partem,* according to which the petitioner cannot be condemned unheard.

31. We may observe that the compliance of such principles of natural justice assumes special significance in the facts of the present case, as such requirement of personal hearing is also intrinsic and ingrained under Section 144B of the IT Act. The respondents have invoked the said provision of Section 144B read with Section 143(3) of the IT Act in passing the impugned final assessment order dated 9 September 2022. In this context, we refer to a judgment of the Supreme Court in the case of **Tin Box Co v. Commissioner of Income-Tax**[5]**,** where the Supreme Court held that placing evidence before the first appellate authority or before the Tribunal is of no consequence, as it is the assessment order that counts. Such order must be made after the assessee has been given a reasonable opportunity of presenting his case. Clearly, in the facts of the given case such principle has not been followed by the respondents.

32. It would be apposite to refer to a decision of a co-ordinate bench of this Court in the case of **Teerth Builders and Realties JV (AOP) vs. The Additional/Joint/Deputy/Assistant Commissioner of Income Tax/ Income Tax**

[5] [2001] 116 Taxman 491

Officer[6]**,** (of which G.S. Kulkarni, J. was a member). Paragraph 15 of this judgment reads thus :-

> "15. *We may also observe that the principles of natural justice are statutorily recognized in the provisions of Section 144B of the IT Act. Any non-adherence to the mandatory requirement of the statutory provisions and such principles as recognized by it, would render the assessment order patently illegal. The action of the respondents which is contrary to the mandate of the statutory provisions or in breach of the principles of natural justice would be rendered illegal and invalid. It needs no elaboration that when an order under a statute is to be passed which would entail civil consequences, causing a prejudice to the person, against whom it is being passed, such order would be required to be passed in strict adherence to the principles of natural justice i.e. after issuance of a show cause notice and an opportunity of a hearing being granted. It is well settled that an order passed in breach of the principles of natural justice would be required to be held to be vitiated, non-est and a nullity.*"

It is discernible that from the above judgment that this Court has categorically held that the action of the respondents which is contrary to the mandate of the statutory provisions or in breach of principles of natural justice would be without jurisdiction, hence non est and a nullity in law.

33. We are in agreement with Ms. Halbe who submitted that even on merits, the various additions proposed by the respondents to the total income of the assessee for which notices were issued under Section 143(2) of the IT Act were duly responded to by the petitioner but not considered by the respondents. In fact, the petitioner specifically asked for personal hearing to place on record the documentary evidence after personal hearing as also set out in the draft assessment

[6] 2024 SCC OnLine Bom. 3621

order dated 18 August 2022. Section 144B of the IT Act, as noted above, statutorily recognizes the right of hearing of an assessee before passing the impugned final assessment order.

34. In our view, even if one has to test the correctness or otherwise of the proposed additions to the total income of the petitioner, it would be all the more incumbent upon the respondents to grant to the petitioner a reasonable opportunity of being heard on such variations, before passing the impugned assessment order. In the present case, the respondents proceeded to make unilateral additions to the total income of the petitioner, without hearing the petitioner which the law does not countenance.

35. We find merit in the submission of Ms. Halbe to the effect that *audi alteram partem* is a part of Article 14 of the Constitution of India. In this regard, more particularly, the judgment of the Supreme Court in the case of **Delhi Transport Corporation** (Supra) read with **Union of India v. Tulsiram Patel**[7] holding that the principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 of the Constitution of India. In view thereof, depriving the petitioner of the right to be heard would violate their fundamental right under Article 14. Therefore, even on such count, the impugned final assessment order lacks legal foundation.

36. In light of the above, we are unable to agree with the submissions

[7]. (1985) 3 SCC 398

advanced by Mr. Sharma, one on the ground of availability of alternate statutory remedy to the petitioner which ought to have been exhausted before approaching this Court in writ jurisdiction. Such submission, in the given facts, would fall foul of the statutory mandate under Section 144B of the IT Act, which embraces the right to be heard, failing which the order would be without jurisdiction and *non est*. In the given facts and circumstance, it would be unfair and unjust to the petitioner to be left entangled in litigation before the appellate authority and thereafter, in further appeals which are available, as the foundational illegality in a situation like the present, would have to be nipped in the bud. In such situation, the appellate remedy may not be effective or efficacious, considering the patent illegality in the impugned final assessment order.

37. We express our inability to agree with the submission of Mr. Sharma to the effect that the petitioner in this case did not comply with the timelines clearly set out in paragraph 3(c) of the draft assessment order to submit its response on the e-filing portal on or before 18:00 hours of 26 August 2022. In fact, the petitioner did submit such response with a categorical request dated 27 August 2022 to be heard through video conferencing. Thus, according to Mr. Sharma, when such specific timelines are not adhered to by the petitioner, the consequences ought to follow. The sequel to such submissions would mean shutting the doors of this Court to the petitioner merely because of a delay of merely one day in submitting its response as provided in the show cause notice-cum-draft assessment order. Also,

accepting such submissions of Mr. Sharma would tantamount to bypassing the clear statutory mandate under Section 143(3) read with 144B of the IT Act, as interpreted by the decisions cited above. We, therefore, cannot accept justice becoming a casualty to technicalities by adopting a hyper-technical approach.

38. We may now refer to Section 156 of the IT Act which provides for the demand notice to be issued in case of any failure to pay tax by the assessee. In the present case, it is pertinent to note that such demand notice dated 9 September 2022 is issued pursuant to the impugned final assessment order of the said date. Therefore, when such demand notice is premised upon the impugned assessment order which itself is without jurisdiction and *non est* as observed (Supra), any actions including issuance of consequential notices would not stand legal scrutiny.

39. In regard to the penalty notices is said under Section 274, 270A read with Section 271AA(1) of the IT Act, we note that notice/order under a statutory provision which would entail civil consequences causing prejudice to the person, ought to be passed in strict adherence to the principles of natural justice to include opportunity of being heard. At this juncture, we may refer to a decision of the Supreme Court in the case of **UMC Technologies Private Limited v. Food Corporation of India and Another**[8], to state that it is the first principle of civilized jurisprudence that a person against whom any action is sought to be taken or

[8]. (2021) 2 SCC 551

interest are being affected should be given a reasonable opportunity to defend himself to include the right to be heard, before an order entailing such consequence is passed. In view thereof, we are unable to accept the submission of Mr. Sharma on the penalty notices (Supra) issued by the respondents.

40. In light of the above discussion, this petition must succeed.

41. Rule is made absolute in terms of prayer clause (a) and (b). No order as to costs.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI , J.)

Pallavi Wargaonkar, P.S