



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.15940 OF 2024

Pico Capital Private Limited

...Petitioner

Versus

Deputy Commissioner of
Income-Tax Circle 8(2)(1) & Ors.

...Respondents

Mr. Dharan V. Gandhi for Petitioner.

Mr. Dhanajay B. Deshmukh for Respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

DATED: 7 January 2025

ORAL JUDGMENT:- (Per M. S. Sonak J)

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.
3. The challenge in this petition is to the assessment order dated 26 March 2024 and notice dated 31 March 2023 disposing of objections under Section 148A(d) of the Income Tax Act, 1961.
4. At the outset, we clarify that we are not considering the challenge to the notice dated 31 March 2023, but we propose to consider the challenge to the assessment order dated 26 March 2024 on the ground that it was made in breach of the principles of natural justice.
5. The Petitioner, in reply to the show cause notice, had explicitly sought for a personal hearing. There is no dispute on this aspect.

6. However, the impugned order in paragraph 11 records the following:-

“Now, the assessee has asked for video conferencing, which is not required because 'time and again' the objections were removed properly and the assessee was also show-caused for which it was duly stated that the carry forward losses of amalgamating companies are not set off during the year and i.e. why there is no escapement of income. It is again brought to kind knowledge that even though the carry forward losses of amalgamating companies has not been set off during the year but the assessee company was not eligible for claiming the carry forward loss of the amalgamating companies amounting to Rs. 10,84,44,017/- and Rs. 30,16,33,824/- (i.e. Rs. 41,00,77,841/-) and which can be set off in the coming years. The balance sheet is also a part of books of account.”

7. The above means that though a personal hearing was sought, the same has been denied to the Petitioner on the ground that the Petitioner would have nothing further to add to the reply already filed by the Petitioner. Such an approach, in our judgment, would not be appropriate. If the law requires the grant of a personal hearing, then the same should not be ordinarily denied on the grounds that nothing further could be said in the personal hearing. The Petitioner must be allowed to convince the Assessing Officer of the merits of its version. This is more so when a law provides for a personal hearing when requested by the Assessee.

8. Megarry, J., discussed a somewhat similar question in **John v. Rees**¹. He said (on p. 402): *"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. When something is obvious, they may say, why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start. Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which,*

¹ (1970) 1 Ch D 345

in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

9. In the additional affidavit filed by the Respondents, the contentions based on the failure of natural justice are dealt with in paragraph 6(e), which reads as follows: -

"6(e). In the March ending time, the assessee demanded hearing through video conferencing. In this regard, it is to submit that the hearing through video conferencing is available when the assessment proceedings are pending before the faceless assessing officer (FAO). In this case, as already mentioned, the proceedings have been transferred from faceless assessing officer (FAO) to the Jurisdictional Assessing Officer (JAO) on 20.02.2024. Hence, the facility of video conferencing was not available and the assessee was at liberty to approach the office of the Jurisdictional Assessing Officer (JAO) if personal hearing was required because the assessee has already been informed about the change of proceedings from FAO to JAO."

10. Mr. Gandhi has invited our attention to Circular No.FNo.225/97/2021/ITA-II dated 6 September 2021 in the context of approval for the transfer of assessments/penalties proceedings to jurisdictional Assessing Officers. This Circular provides that the request for personal hearings shall generally be allowed to the assessee with the approval of the Range Head, mainly after the assessee has filed a written submission to the show cause notice. Personal hearings may be allowed for the assessee, preferably through video conference. If Video Conference is not technically feasible, personal hearings may be conducted in a designated area in the Income-Tax Office. The hearing proceedings may be recorded. Given this Circular, the defence raised, or

the justification offered in paragraph 6(e) of the Respondents' affidavit cannot be accepted.

11. In this case, though the assessment order was appealable, we have entertained this petition because a case of complete failure of natural justice was made out. No personal hearing was granted to the Petitioner, and such denial was not for valid reasons.

12. On the above short ground, we set aside the impugned assessment order dated 26 March 2024 and remand the matter to the concerned Respondent to dispose of the show cause notice issued to the Petitioner following the law and after granting the Petitioner a personal hearing. The concerned Respondent should complete the assessment proceedings within three months of uploading this order on this Court's website. Now that we have set aside the impugned assessment order dated 26 March 2024, the consequential demand notice and penalty notice based on this order are also set aside. However, all contentions of all parties are left open for consideration of the Assessing Officer in the first instance.

13. The Rule is made absolute in the above terms without any costs order.

14. All concerned to act on an authenticated copy of this order.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)