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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3430 OF 2022

Madhuri Sameer Gokhale
Age – 50 years, Occ. Homemaker
Room No. 171-A, Twin Tower Society
Off. Veer Savarkar Marg, Prabhadevi,
Mumbai 400 025.
PAN: AGAPG1851F … Petitioner

Versus

1. The Addl. Joint/Deputy/Asst. Commissioner of Income Tax/ Income Tax Officer,
National Faceless Assessment Centre,
Through the Principal Chief Commissioner of Income Tax (National Faceless Assessment Centre), Delhi
Room No.401, 2nd Floor,
E-Ramp, Jawaharlal Nehru Stadium,
New Delhi – 110 003.
Email: delhi.pccit.neac@incometax.gov.in

2. Assistant Commissioner Of Income Tax,
Circle 22(1) Mumbai.
322, 3rd Floor, Piramal Chamber, Lalbaugh,
Parel, Mumbai - 400012
Email: mumbai.dcit22.1@incometax.gov.in

3. Principal Commissioner of Income Tax-20
Piramal Chamber, Lalbaugh, Parel, Mumbai-400012.
Email: mumbai.pcit20@incometax.gov.in

4. The Union of India
Through the Principal Secretary, … Respondents
Department of Revenue, Ministry
of Finance, Room No. 128-B, North
Block, New Delhi – 110001.

WITH

WRIT PETITION NO.3460 OF 2022

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Email: mumbai.pcit20@incometax.gov.in

4. The Union of India
Through the Principal Secretary,
Department of Revenue, Ministry of Finance, Room No. 128-B, North Block, New Delhi – 110001. … Respondents

Mr. Mihir Naniwadekar, Rucha Vaidya i/b. Ruturaj H. Gurjar, for the Petitioner.

Mr. Akhileshwar Sharma, for the Respondents-State.

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

JUDGMENT RESERVED ON : 25 NOVEMBER 2024

JUDGMENT PRONOUNCED ON : 07 MARCH 2025

JUDGMENT (Per Advait M. Sethna, J.) :

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

2. As the issues and reliefs involved in both the petitions are identical, with consent of learned counsels for the parties, we dispose of these petitions by this common order, taking Writ Petition No. 3430 of 2022 as the lead petition.

3. This petition is filed under Article 226 of the Constitution of India. The petitioner is primarily aggrieved by the order dated 29 March 2022 passed by the Assessing Officer, National Faceless Assessment Centre, New Delhi ("*NFAC*" for short) under Section 147 read with Section 144 and 144B of the Income Tax Act, 1961 ("*IT Act*" for short) and consequential demand notice dated 30 March 2022 issued under section 156 of the IT Act (**"Impugned Demand notice"** for short). The substantive prayers read thus:-

"(a) Declare that the Impugned Order and Demand Notice dated 29 March 2022 (Exhibit A) are illegal, arbitrary, in breach of natural justice, and liable to be quashed and/or set aside;

(b) Issue a Writ of Certiorari, or a writ in the nature of Certiorari, or any other appropriate Writ, order or direction under Articles 226 and 227 of the Constitution of India quashing the Impugned Order and Demand Notice dated 30 March 2022 (Exhibit A);"

Issue before the Court:-

4. The basic issue for consideration revolves around the legality and validity of impugned assessment order dated 29 March 2022 read with the impugned demand notice which according to the petitioner is in violation of mandatory unamended provisions under Section 144B, read with the first proviso to Section 147 of the IT Act rendering such assessment, ex facie without jurisdiction and a nullity in law.

Factual Matrix:-

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

6. The petitioner is an individual. The assessment year in question is A.Y. 2014-2015. Respondent no.1 is the National Faceless Assessment Centre through the assessing officer which has passed the impugned assessment order dated 29 March 2022. Respondent no.2 is the jurisdictional assessing officer who issued the notice under section 148 of the IT Act to the petitioner for A.Y.

2014-15. Respondent no.3 is the Principle Commissioner having administrative supervision over petitioner's assessment and is also the sanctioning authority for issuance of the notice under Section 148 of the IT Act.

7. Respondent no. 2 issued a notice under Section 148 of the IT Act dated 23 March 2021 to the petitioner for AY 2014-15, recording that there were reasons to believe that the income of the petitioner chargeable to tax for AY 2014-15, had escaped assessment which justified reopening under Section 147 of the IT Act. The petitioner filed her return of income dated 29 April 2021, in response to the notice issued under Section 148 of the IT Act, which was duly acknowledged by the respondent no.2.

8. Respondent no. 2 thereafter issued a notice dated 9 December 2021 under Section 143(2) read with Section 147 of the IT Act to the petitioner supplying reasons for reopening of her assessment. The notice stated that the petitioner had not filed her return of income for the AY 2014-15, but had entered into financial transactions amounting to Rs. 11,61,22,771/-, the source of which was not explained. On such basis, the assessment of the petitioner was sought to be reopened. The return of income of the petitioner for the said assessment year was not filed. However, the petitioner had paid

advance tax as reflected in the Form 26AS filed by the petitioner for the AY 2014-15.

9. Respondent no. 1, NFAC, issued notices to the petitioner under Section 142(1) of the IT Act for the AY 2014-15 dated 28 December 2021 and 8 January 2022, respectively. Respondent no. 1 through such notices sought details from the petitioner in respect of the amount of Rs. 11,61,22,771/- (11.61 Crores approx.) which according to the respondents had escaped assessment for AY 2014-15.

10. The petitioner through her chartered account addressed a letter dated 14 January 2022 to the respondent no. 1 requesting for an adjournment of 15 days to file her reply to the above notices, in the light of the difficulties faced by her during the Covid pandemic period, coupled with the fact that the partner of her chartered accountant firm was recuperating after a serious surgery.

11. Further to the above, there was no formal order on the request for adjournment, nor there was any extension granted on the online portal of the Income Tax. In view thereof, the petitioner was unable to upload any document or replies even after the 15 days' adjournment period that was sought by her. As seen from the record, no fresh show cause notice was issued to the petitioner.

12. Respondent no.1 issued a show cause notice-cum-draft assessment order dated 16 March 2022 to the petitioner under Section 144 of the IT Act. It was stated therein that there had been non-compliance by the petitioner with the earlier notices issued by the respondent no. 2 dated 28 December 2021 and 8 January 2022. Respondent no. 1 by such show cause notice-cum-draft assessment order proposed to make a best judgment assessment under Section 144 of the IT Act bringing to tax the entire amount of Rs.11,61,22,771/-, which according to the respondent had escaped assessment for the A.Y. 2014-15. Respondent no.1 granted time till 19 March 2022 (23.59 hours) to the petitioner, to file her reply to the said show cause notice-cum-draft assessment order.

13. Pursuant to the above, the petitioner filed her detailed reply dated 24 March 2022 along with all annexures which was duly acknowledged by respondent no.1. The petitioner through her letter dated 24 March 2022 submitted detailed explanation in regard to the amount of Rs. 11,61,22,771/-. Accordingly, the petitioner submitted that the petitioner's major source of income was the income received from Suresh V. Vaze Family Trust in the capacity of a beneficiary and the income received from Suresh Vinayak Vaze, HUF. The petitioner also submitted that she was the daughter of Mrs. Sushma S. Vaze, who was the settler of the said Trust.

14. According to the petitioner, the entire amounts were in the nature of receipts from such Trust and HUF on which tax had already been paid by the Trust and HUF for the earlier years. Such letter/reply dated 24 March 2022 of the petitioner was supported by detailed documentation and annexures with details to show that such amounts had already been brought to tax in the hands of the Trust and HUF. Bank summary was also enclosed to the said letter by the petitioner to support the receipt of the funds, with an explanation that such funds had been invested by the petitioner in different mutual funds and bonds, giving detailed break-up of such investments. The petitioner in the said letter also stated that the capital gains and/or other income derived from the said investments of the petitioner were offered to tax, from time to time.

15. Respondent no.1 proceeded to pass the impugned assessment order dated 29 March 2022 proceeding to make a best judgment assessment under Section 144 of the IT Act, justifying the reopening of the petitioner's assessment under Section 147 of the IT Act and the conclusion that the amount of Rs. 11,61,22,771/- invested by the petitioner for the AY 2014-15 escaped assessment. This was followed by the issuance of impugned demand notice dated 30 March 2022. The reassessment was accordingly justified directing initiation of penalty proceedings under Section 271(1)(b) read with Section 271F of the IT Act.

Rival Submissions :

Case of the Petitioner :

16. Mr. Naniwadekar, learned counsel for the petitioner in support of his submissions primarily assailed the impugned order dated 29 March 2022. According to him, the said order was arbitrary, illegal, irrational in as much as it was passed without following the mandatory procedure under Section 144B of the IT Act, in gross violation of the well settled principles of natural justice.

17. Mr. Naniwadekar would then submit that a bare perusal of Section 144B(1)(xvi) of the IT Act clearly contemplates for providing an opportunity to the assessee in case any variation prejudicial to the interest of the assessee is proposed by serving a show cause notice as to why the proposed variation should not be made. He would also submit that clause (xiv) of the above provision would require that the assessment unit shall take into account all relevant material available on record before passing the draft assessment order. Adverting to the facts of the present case, he would submit that the letter dated 14 January 2022 addressed by the petitioners to the respondent requesting for an adjournment to respond to the notices issued under Section 142(1) of the IT Act dated 28 December 2021 and 8 January 2022. The said letter dated 14 January 2022 was not acted upon or given effect to, in as much as there was no formal order on the request of the adjournment nor any

extension granted on the online portal. In view thereof, the petitioner was unable to upload any documents or replies, neither was any fresh notice being issued to the petitioner, even after her specific request for 15 days adjournment. According to him, this has caused grave prejudice to the petitioner as she has been suddenly without an opportunity confronted with a show cause notice-cum-draft assessment order dated 16 March 2022 which is contrary to the purpose, intent and spirit of Section 144B of the IT Act.

18. Mr. Naniwadekar would next refer to the notice dated 9 December 2021 issued to the petitioner for the A.Y. 2014-15, under Section 143(2) read with 147 of the IT Act which was itself defective as it was issued beyond 4 years period, thus is hit by first proviso to Section 147 of the IT Act, which is a jurisdictional requirement. According to him, the respondent no.1 wrongly resorted to section 144 of the IT Act by undertaking the best judgment assessment which, without considering detailed reply of the petitioner dated 24 March 2022 was wholly unwarranted in the given facts and circumstances. Thus, no opportunity was granted to the petitioner to furnish relevant material for the Assessing Officer to come to an informed decision.

19. According to Mr. Naniwadekar, the respondents were not justified in concluding that the income of the petitioner for A.Y. 2014-15 to the extent of Rs. 11,61,22,771/- escaped assessment. In this regard, the relevant material

in support of her case which she specifically sought for in her letter dated 14 January 2022, was not glossed over by the respondents who instead rushed to issue the show cause notice-cum-draft assessment order dated 16 March 2022.

20. He would then point out that the petitioner had submitted a detailed reply dated 24 March 2022 at the first available opportunity in response to the same, setting out the reasons as to why the income of the petitioner for the relevant A.Y. 2014-15 had not escaped assessment to tax. However, the respondents failed to consider such reasons in the impugned assessment order. He would emphasize that in any event, under the clear provisions stipulated under proviso to Section 147 of the IT Act, there could not have been reassessment, in respect of the petitioner for the A.Y. 2014-15 after expiry of 4 years from such period specially when the petitioner made true and full disclosure of facts necessary for assessment. In view thereof, Mr. Naniwadekar would argue that the impugned assessment order dated 29 March 2022 resulting in the reopening the assessment of the petitioner for the A.Y. 2014-15, was clearly without jurisdiction thus, legally untenable.

21. Mr. Naniwadekar would emphasize on the following submissions of the petitioner which were made in the reply dated 24 March 2022 with detailed supporting documents referred to in the facts narrated (Supra) in the form of annexures being : (a) Petitioner's major source of income is the income

received from "Suresh V. Vaze family trust" in the capacity of a beneficiary on which tax had already been paid by the trust in earlier years; (b) A Central Board of Direct Taxes ("CBDT" for short) Circular was relied on to state that in such circumstances, there could be no question of bringing the amount to tax again in the hands of petitioner; (c) Detailed supporting documentation in the form of nine annexures were also uploaded. The annexures included details of how the amounts had already been brought to tax in the hands of the trust and the HUF earlier. Bank summaries were also enclosed to show the receipt of the funds.; (d) These funds had been invested in different mutual funds and bonds. A detailed break-up of the said investments was also enclosed in the annexure to the reply of the petitioner dated 24 March 2022; (e) The petitioner had paid tax on such income from investments which failed to be assessed in the earlier assessment years. The petitioner was deprived from furnishing such relevant material during the assessment proceedings and straight away confronted with a draft assessment order dated 16 March 2024. She, as mentioned (Supra) was given no opportunity to deal with object to the notice dated 9 December 2021 recording reasons for reopening, issued by respondent no.2. None of this was considered by the assessing officer in the impugned assessment order, which thus is discriminatory and suffers from complete non-application of mind.

22. Mr. Naniwadekar in support of his submissions would place reliance on the decision of the Delhi High Court in the case of **Smart Vishwas Society v. NFAC**[1]. This is to buttress the proposition that non-adherence to the procedure mandated under section 144B of the IT Act would result in rendering the impugned order a nullity in law. Thus, on such ground it ought to be set aside. Also he would submit that even under the amended provisions of section 144B of the IT Act effective from 1 April 2022, the action of the respondents is vitiated in law as the impugned order is passed without following the mandatory provisions under section 144B of the IT Act. Even though the said amended provisions do not apply *stricto sensu* to the given facts and circumstances, he would submit that the legislature makes it mandatory to consider the petitioner's response and the material placed by her in the form of documents, before coming to any conclusion. This is particularly so in a situation of reopening the petitioner's assessment for A.Y. 2014-15 without granting her any opportunity to respond to the reasons for reopening vide notice dated 9 December 2021 and instead confront her with a draft assessment order dated 16 March 2022, followed by impugned assessment order dated 28 March 2024.

23. He would further place reliance on a decision of coordinate bench of this Court in the case of **Cheftalk Food and Hospitality Services (P) Ltd v.**

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Income Tax Officer[2] of which one of us (G.S. Kulkarni, J.) was a member. In the said decision, it was held that where the assessment was passed without giving 7 days time to the assessee to file objection in response to the show cause notice issued the impugned order was in breach of the principles of natural justice and thus deserves to be quashed and set aside. The Court had relied upon Standard Operating Procedure ("**SOP**" for short) issued under Section 144B(6)(xi) of the IT Act which provides for a response time given to the assessee to file reply to the show cause notice. Mr. Naniwadekar would submit that the respondents were in breach of such SOP in the given case which has resulted in violation of the principles of natural justice *qua* the petitioner. In view thereof, the impugned assessment order dated 29 March 2022 passed without jurisdiction also devoid of merit ought to be set aside.

Submissions of the Respondents:-

24. On the other hand, Mr. Akhileshwar Sharma, the learned counsel for the respondents supported the impugned assessment order dated 29 March 2022, coupled with the actions of the respondents, which led to the passing of such order. According to him, the assessment order considers the submissions made by the petitioner in totality and thus deserves no interference.

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2. 2024 SCC OnLine Bom 2634

25. Mr. Sharma would rely on an affidavit-in-reply of the respondents dated 1 June 2023 filed by one Jaibhim T. Narnaware, Deputy Commissioner of Income Tax, Circle -22 (Mumbai). Mr. Sharma would adopt the stand taken in such reply affidavit. At first, he would submit that the assessment was completed on 29 March 2022 and the said order was served to the petitioner through email on the same day. According to him, the said order is appealable under the provisions of the IT Act before the Commissioner of IT (Appeal). However, as the statutory period for filing such appeal had expired the petitioner chose to approach this Court by way of writ petition, which is not maintainable in light of the alternative and efficacious remedy available to the petitioner, against the impugned assessment order.

26. Mr. Sharma would submit that during the A.Y. 2014-15 the petitioner had undertaken huge financial transaction, but filed no return of income for the said assessment year. It was thus rightly concluded that such financial transactions set out in the chart in the reply at para 5 thereof were unexplained, leading to reopening of the petitioner's assessment for A.Y. 2014-15, under Section 148 of the IT Act. Accordingly, a notice dated 23 March 2021 under Section 148 was rightly issued to the petitioner after taking prior approval of the specified authorities under section 151 of the IT Act. Thus, he would submit that the procedure under the Act was duly followed.

27. Mr. Sharma would then submit that in response to the above notice the petitioner filed her return of income on 29 April 2021 declaring total income of Rs.98,71,780/-. Thereafter, a statutory notice dated 9 December 2021 was issued under Section 143(2) of the IT Act to the petitioner and the copy of reasons recorded for reopening of the assessment was furnished to the petitioner. However, no objections with respect to reasons recorded for reopening was filed by the petitioner. Thereafter, a notice under section 142(1) of the IT Act was issued to the petitioner fixing hearing of the said matter on 6 January 2022. However, even after the lapse of the stipulated period, the petitioner failed to comply with the terms of the notice issued under Section 142(1) dated 28 December 2021. Thereafter, another notice dated 8 January 2021 under Section 142(1) of the IT Act was issued to the petitioner communicating the date of hearing to be held on 14 January 2022. In response to such letter the petitioner addressed a letter dated 14 January 2022 through e-filing portal requesting for an adjournment for 15 days. That the letter dated 14 January 2022 filed by the petitioner was duly considered and no proceedings were initiated by the respondents against the petitioner, during the adjourned period. Thus, according to Mr. Sharma, the petitioner is not right in submitting that the letter of the petitioner dated 14 January 2022 seeking for adjournment was not considered and or no formal order was passed on such adjournment request. In this context, Mr. Sharma would urge that the

SOP and requirements under section 144B of the IT Act were duly complied with and the entire procedure as stipulated under the said statutory provision was followed. Consequently, there is no breach of the principles of natural justice as wrongly alleged by the petitioner.

28. Mr. Sharma would then refer to show cause notice-cum-draft assessment order dated 16 March 2022 issued to the petitioner. In response to such order, the petitioner did file details vide her reply dated 24 March 2022 through e-filing portal. It was after consideration of such reply that the impugned order 29 March 2022 was passed by the assessing officer of NFAC, New Delhi. According to him the assessing officer was justified in undertaking the best judgment assessment under Section 144 of the IT Act. The impugned order rightly considered that the financial transaction of the petitioner for the earlier financial years i.e. A.Y. 2014-15 were completely unexplained and the source of such income arising out of such transactions was unknown. Accordingly, the total income of the petitioner which was determined at Rs.11,61,22,771/- was rightly added to the total income of the petitioner to be offered to tax. Such income as set out in the impugned assessment order had escaped assessment in light of which the provisions under section 147 of the IT Act to reopen the assessment of the petitioner for the A.Y. 2014-15 was rightly invoked. Thus, Mr. Sharma would vehemently submit that there is no infraction of procedure much less any irregularity and or illegality in the

impugned assessment order. Thus, he would submit that the said order warrants no interference by the Court.

29. Mr. Sharma placing emphasis on paragraph 9 of the affidavit in reply would submit that it was after lapse of almost 3 months from the date of service of the impugned assessment order dated 29 March 2022, that the petitioner chose to file this writ petition on 30 June 2022. He would reiterate that the petitioner has failed to avail the effective alternate remedy of filing appeal under Section 246 of the IT Act before CIT (Appeals) for reasons best known to her. Such writ petition is filed to mask her own fault of not availing the alternate remedy and approaching the Writ Court which is not permissible. In this regard, he would place reliance on the decision of Supreme Court in the case of **A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani & Anr.**[3] where it was held that the remedy under Article 226 of the Constitution of India is purely discretionary. The present petitioner who has failed to avail such alternate remedy is not permitted to take recourse to the extraordinary remedy available under Article 226 of the Constitution of India. Mr. Sharma would, in support of his submissions would rely on the decisions of the Supreme Court in the case of **CIT v. Chhabil Dass Agarwal** [4] read with another decision in the case of **Assistant Collector of Central Excise,**

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3. AIR 1961 SC 1506

4. (2014) 1 SCC 603

Chandan Nagar, West Bengal v. Dunlop India Limited and Others[5] to infer that the petitioners are precluded from invoking the writ jurisdiction under Article 226 of the Constitution of India when alternate statutory remedies under Section 246A and Section 264 are clearly available. He would thus submit that the petition deserves to be dismissed on this ground alone.

Analysis and Conclusion :

30. At the very outset, to holistically appreciate and adjudicate on the disputes that arise in this petition it would be necessary to refer to provisions of Section 144 of the IT Act as applicable, under which the Assessing officer can take recourse to best judgment assessment in the situations specified in the said provision, the relevant portion of which is extracted below:-

> *"Faceless Assessment*
>
> *Section 144B (1) Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:-*
>
> *…….*
>
> ***(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;***

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5. (1985) 1 SCC 260

(xv) …….

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to-

(a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to 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; or

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or

(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order.

(xvii) ……...

(xix) the National Faceless Assessment Centre shall upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;

(xx) …..

(xxi) …..

(xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub- clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any."

(**emphasis supplied**)

31. Applying the above provisions of the IT Act to the facts of the present case, it is discernible that the respondent no.1 failed to consider all the relevant material more particularly, the detailed reply of the petitioner dated 24 March 2022 along with annexures, filed in response to the show cause notice-

cum-draft assessment order dated 16 March 2022. A bare perusal of the said reply would reveal that the assessment officer had all the information available before him as disclosed by the petitioner necessary for assessment proceedings, as mandated under first proviso to Section 147 of IT Act. However, respondent no. 1 overlooking all of the above, rushed to invoke Section 144 of IT Act for best judgment assessment. The jurisdictional assessing officer proceeded further, failing to consider much less deal with the petitioner's letter dated 14 January 2022 in response to notice issued by respondents dated 9 December 2021 recording reasons for reopening assessment for A.Y. 2014-15.

32. As submitted by Mr. Naniwadekar, a careful perusal of the draft assessment order dated 16 March 2022 and final assessment order dated 29 March 2022 would show that the only substantive addition in the impugned order relates to the following three lines:-

> "*After initiation of final show-cause notice, assessee replied dtd. 24/3/2022. Assessee's, submission received and go through all submissions uploaded by the assessee. But assessee's submissions are not acceptable in respect of assessment proceeding u/s.147 of the Income Tax Act.*"

Such approach of the assessing officer denotes mechanical reproduction, non-application of mind leading to arbitrariness, which is writ large in the impugned order.

33. We now advert to the aspect of the unamended provisions of Section 144B of the IT Act as applicable to the given facts dealing with faceless assessment. The mandatory procedure stipulated under the said statutory provision has been breached by respondent nos.1 and 2. This is in as much as there was no response to the letter dated 14 March 2022 requesting for adjournment of 15 days on bonafide grounds of COVID -19 pandemic prevailing then. The said response was uploaded by the petitioner on the IT portal. However, the petitioner was not given any reply or documents, nor was a fresh hearing notice issued to the petitioner. Further, turning a blind eye to all of this, respondent no.1 proceeded to issue draft assessment order on 16 March 2022 giving the petitioner only 3 days' time to file a reply to such show cause notice-cum-draft assessment order dated 16 March 2022, upto 23.59 hours of 19 March 2022. However, it needs to be noted that, the petitioner did file a detailed reply with documentary annexures dated 24 March 2022 to explain her stance in regard to the notice dated 9 December 2021 for re-opening to which also no opportunity to respond was given to the petitioner in total breach of principles of natural justice inherent under section 144B of the IT Act.

34. We would turn to the standard operating procedure for Assessment Unit ("**AU**" for short) under the faceless assessment provisions of

Section 144B of the IT Act issued by CBDT dated 3 August 2022. The relevant extract of the said SOP is reproduced as thus :

> "N.1.3. To ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the SCN shall be :
>
> N.1.3.1 Response time of 7 days from the issue of SCN.
>
> N.1.3.2 Response time of 7 days may be curtailed, keeping in view the limitation date for completing the assessment."

It is hence clear that respondent nos. 1 and 2 have acted in breach of the above SOP under section 144B of the IT Act. This is as much as the petitioner was given only 3 days' time to reply to the show cause notice-cum-draft assessment order dated 16 March 2022, up to 23:59 hours of 19 March 2022, as against the clear response time of 7 days in the SOP ex facie contrary to such SOP. Also, the petitioner's letter dated 14 January 2022 was not even considered nor any fresh notice issued by the respondent no. 1 to the petitioner, before straightaway issuing the show cause notice-cum-draft assessment order dated 16 March 2022. This makes it amply clear that the respondents have deprived the petitioner of a reasonable opportunity of placing all the relevant material, documentation necessary for the respondents to take a legally informed decision. Respondent nos.1 and 2 have thus acted in breach of the principles of

natural justice which are inbuilt and ingrained in the statutory SOP issued under Section 144B of the IT Act.

35. We find that the decision relied upon by Mr. Naniwadekar in the context of the SOP issued under Section 144B of the IT Act in the case of **Cheftalk Food and Hospitality Services (P) Ltd.** (Supra). Reproduced below is the relevant paragraph of the said decision :

> *"8. Having heard Learned Counsel for the parties and on perusal of the record, we find much substance in the contention as raised on behalf of the Petitioner. It may be observed that the SOP, as issued under the provisions of Section 144B(6)(xi) of the Act, in paragraph N.1.3 clearly provides a response time of seven days from the issuance of the Show Cause Notice to the assessee to submit his reply. In the present case, the Show Cause Notice was issued on 22 March, 2024. It is also clear that sufficient time was available to the Assessing Officer to pass an assessment order even if he was to grant seven days time to the Petitioner to file reply to the Show Cause Notice. However, the Assessing Officer granted only two days time at the first instance and thereafter extended the same by another two days, which apart from being not sufficient, was certainly, not in accordance with the time to respond the Show Cause Notice, as prescribed under the SOP (supra). The Assessing Officer, therefore, appears to have arbitrarily exercised jurisdiction by granting an extension of only two days. In our opinion, such approach on the part of the Respondents was clearly in breach of the SOP, which has also resulted in breach of the principles of natural justice, which guaranteed to the Petitioner a fair and reasonable opportunity to respond to the Show Cause Notice under the procedure prescribed, in undertaking the assessment proceedings. This has surely caused a prejudice to the Petitioner."*

Applying the above to the given facts, it is apparent that respondents have acted contrary to the SOP under section 144B of the IT Act violating the principles of natural justice, *qua* the petitioner, causing grave prejudice to her.

36. We would gainfully refer to a recent decision of a coordinate bench of this Court in the case of **Jyostna Mehta v. Principal Commissioner of Income Tax and Others**[6] to which one of us (G. S. Kulkarni, J.) was a member. The relevant observations in paragraphs 6 to 8 of the said judgment reads thus :-

> "6. *In our opinion, the approach of PCIT appears to be quite mechanical, who ought to have been more sensitive to the cause which was brought before him when the petitioner prayed for condonation of delay. In such context, we may observe that it can never be that technicalities and rigidity of rules of law would not recognize genuine human problems of such nature, which may prevent a person from achieving such compliances. It is to cater to such situations the legislature has made a provision conferring a power to condone delay. These are all human issues and which may prevent the assessee who is otherwise diligent in filing returns, within the prescribed time. We may also observe that the PCIT is not consistent in the reasons when the cause which the petitioners has urged in their application for condonation of delay was common.*
>
> *7. We may observe that it would have been quite different if there were reasons available on record of the PCIT that the case on delay in filing returns as urged by the petitioners was false, and/or totally unacceptable. It needs no elaboration that in matters of maintaining accounts and filing of returns, the assessees are most likely to depend on the professional services of their Chartered Accountants. Once a Chartered Accountant is engaged and there is a genuine dependence on his services, such as in the present case, whose personal difficulties had caused a delay in filing of the petitioners returns, was certainly a cause beyond the control of the petitioners/assessees. In these circumstances, the assessee, being at no fault, should have been the primary consideration of the PCIT. It also cannot be overlooked that any professional, for reasons which are not within the confines of human control, by sheer necessity of the situation can be kept away from the professional work and despite his best efforts, it may not be possible for him to attend the same. The reasons can be manifold like illness either of himself or his family members, as a result of which he was unable to timely discharge his professional obligation. There could also be a likelihood that for such reasons, of impossibility of any services being provided/performed for his clients when tested on acceptable materials. Such human factors necessarily require a due consideration when it*

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> *comes to compliances of the time limits even under the Income Tax Act. The situation in hand is akin to what a Court would consider in legal proceedings before it, in condoning delay in filing of proceedings. In dealing with such situations, the Courts would not discard an empathetic /humane view of the matter in condoning the delay in filing legal proceedings, when law confers powers to condone the delay in the litigant pursuing Court proceedings. This of course on testing the bonafides of such plea as may be urged. In our opinion, such principles which are quite paramount and jurisprudentially accepted are certainly applicable, when the assessee seeks condonation of delay in filing income tax returns, so as to remove the prejudice being caused to him, so as to regularise his returns. In fact, in this situation, to not permit an assessee to file his returns, is quite counter productive to the very object and purpose, the tax laws intend to achieve. In this view of the matter, we have no manner of doubt that the delay which is sufficiently explained in the present case would be required to be condoned.*
>
> *8. Resultantly, the impugned order is quashed and set aside. The respondents are directed to permit the petitioners to file returns with penalty, fees and interest, if any, within a period of two weeks from today. All contentions of the parties on the merits of the returns are expressly kept open."*

Juxtaposing the above, to the given facts, we may observe that the petitioner by her letter dated 14 January 2022 had sought adjournment of 15 days to reply to the notices dated 9 December 2021 with set out reasons for reopening of petitioner's assessment along with letters dated 28 December 2021 and 8 January 2022 issued under Section 142(1) of the IT Act by the respondents to the petitioner. Time to respond was sought by the petitioner, primarily on the ground of the then prevalent Covid-19 pandemic coupled with the fact that the partner of the firm of chartered accountants of the petitioner was recuperating after a serious surgery. The reasons appear to be bonafide attributable to human factors which necessarily require due consideration when it comes to compliance of timelines even under the IT Act.

In our view, the foundational principles of *audi alteram partem* are not just paramount but jurisprudentially accepted in the IT Act as noted by us above. One cannot take a pedantic view by not permitting the assessee to file her returns, which would be counter to the very object and purpose the tax laws intend to achieve, as held by us in the judgment of **Jyotsna Mehta** (Supra).

37. Another aspect for consideration in this case is that of re-opening of assessment in the context of section 147 of the IT Act. On this, we may observe that the supporting documents annexed to the reply of the assessee dated 24 March 2022, indicates that the amount of Rs. 11,61,22,771/-, that formed part of re-opening of the assessment of the petitioner was already brought to tax in the earlier assessment year. The respondents have not disputed the fact that the said amount could be sourced to the income of the petitioner received from one family trust in the capacity of beneficiary, on which tax was already paid by the said Trust in the earlier assessment years. There is no fresh tangible material on record shown by the respondents to justify such re-opening of the petitioner's assessment. Considering such uncontroverted factual position, the decision of respondent no. 2 to reopen the assessment for A.Y. 2014-15, in the given facts and circumstances that too beyond 4 years would fall foul to first proviso to Section 147 of the IT Act.

38. The law on the above is settled by two recent decisions of this court in **Imperial Consultants and Securities Ltd v. Deputy Commissioner of Income Tax, Circle-6(1)(2)**[7] and **Crystal Pride Developers v. The Assistant Commissioner of Income Tax, Circle-22(1)**[8] to which one of us (G.S. Kulkarni, J.) was a member. This court in such decisions held that the re-opening in such cases lacked compliance of the jurisdictional requirements as ordained by the provisions of Section 147 of the IT Act. It was so held that considering the settled principles of law, that the writ petitions under Article 226 of the Constitution certainly would be entertained and adjudicated. Applying such principles, in the facts and circumstances of the present case, we are unable to accept the submission of Mr. Sharma in asserting maintainability of this petition on the ground of an alternate remedy.

39. On the submission of alternate statutory remedy urged by Mr. Sharma, it is also apposite to refer to a decision of the Supreme Court in **Tin Box Co. v. Commissioner of Income-tax**[9] where the Supreme Court in similar factual matrix as in the given case held thus:-

> *"1. It is unnecessary to go into great detail in these matters for there is a statement in the order of the Tribunal, the fact-finding authority, that reads thus :*

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7 Writ Petition (Original) No. 1783 of 2022 dt 20 December 2024

8 Writ Petition (Original) (L) No. 12546 of 2022 dt. 27 February 2025

9 (2001) 9 SCC 725

> *"We will straightaway agree with the assessee's submission that the Income-tax Officer had not given to the assessee proper opportunity of being heard."*
>
> *2. That the assessee could have placed evidence before the first appellate authority or before the Tribunal is really of no consequence for it is the assessment order that counts. That order must be made after the assessee has been given a reasonable opportunity of selling out his case. We, therefore, do not agree with the Tribunal and the High Court that it was not necessary to set aside the order of assessment and remand the matter to the assessing authority for fresh assessment after giving to the assessee a proper opportunity of being heard.*
>
> *3. Two questions were placed before the High Court, of which the second question is not pressed. The first question reads thus :*
>
> > *"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not setting aside the assessment order in spite of a finding arrived at by it that the Income-tax Officer had not given a proper opportunity of hearing to the assessee ?"*
>
> *4. In our opinion, there can only be one answer to this question which is inherent in the question itself : in the negative and in favour of the asses-see.*
>
> *5. The appeals are allowed. The order under challenge is set aside. The assessment order, that of the Commissioner (Appeals) and of the Tribunal are also set aside. The matter shall now be remanded to the assessing authority for fresh consideration, as aforestated. No order as to costs."*

40. The above has been followed by a coordinate bench of this court in the case of **Teerth Developers and Teerth Realties v. Additional/ Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer and Ors**[10] of which one of us (G.S. Kulkarni, J.) was a member to hold that section 144B of the IT Act inherits the principles of natural justice, which embraces the reasonable opportunity of representation to the assessee, being discernibly

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absent in the given case, as noted by us above. In view thereof, accepting the submissions of Mr. Sharma would be contrary to and the teeth of these judgments referred to supra. Considering that the impugned order is legally unsustainable, as a sequel the impugned demand notice dated 30 March 2022 would not survive and has to be set aside.

41. In light of the above discussion, we are of the clear opinion that the petitioner has become entitled to the reliefs as prayed for. Accordingly, the petition deserves to be allowed. Rule made absolute in terms of prayer clauses (a) and (b). No order as to costs.

WRIT PETITION NO.3460 OF 2022

42. Parties are *ad idem* that our aforesaid decision would also govern the proceedings of this Writ Petition No.3460 of 2022. Accordingly, this petition would also be required to be allowed. It is made absolute in terms of prayer clauses (a) and (b). No costs.

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