Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1147 OF 2023

Anandkumar Dhanraj Rathod …Petitioner
Versus
Union of India and ors. …Respondents

Mr Mahaveer Jain, a/w Mr Shobhit Mishra, i/b. Ms Neha Anchlia, for Petitioner.

Mr Arjun Gupta, for Respondent-Revenue.

CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **23 January 2025**

PC:- (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.

2. The Petitioner challenges the impugned assessment order dated 26 December 2022 issued under Section 143(3) read with Section 144B of the Income Tax Act, 1961 ("IT Act") for Assessment Year 2021-2022 made by the second Respondent.

3. Admittedly, the impugned order is appealable. However, the Petitioner contended that since this was a clear case of breach of principles of natural justice, the rule for the exhaustion of alternate remedies should not be applied, and this Court should entertain this Petition. To support this

contention, Reliance is placed on **Whirlpool Corporation vs. Registrar of Trademarks, Mumbai and other**[1].

4. Mr Mahaveer Jain, learned counsel for the Petitioner, submitted that hardly two to three effective days were granted to the Petitioner to reply to the show cause notice. Secondly, he submitted that there was a variation between the show cause notice and the final order. He pointed out that the show cause notice had required the Petitioner to show cause why the addition of Rs.4,28,18,944/- should not be made, but the final order makes an addition of Rs.11,93,06,116/- *inter alia* due to unaccounted sales. Mr Jain finally contended that though the Petitioner had requested for personal hearing through video conferencing, even this request was arbitrarily denied. For all these reasons Mr Jain submitted that this was a case of gross violation of principles of natural justice and fair play and therefore, the impugned order may be set aside, and the matter remanded to the Assessing Officer for fresh consideration.

5. Mr Arjun Gupta, learned counsel for the Respondents submitted that there was no violation of principles of natural justice in this case. More than ample opportunities were granted to the Petitioner. The Petitioner was only interested in laying a foundation to urge the ground of breach of natural justice. He submitted that detailed reply was filed by the Petitioner and there was no complaint in the reply about inadequate opportunity.

---

[1] AIR 1999 SC 22

6. Mr Gupta submitted that, in any event, this was not a suitable case to deviate from the rule of exhaustion of alternate remedies.

7. The rival contentions now fall for our consideration.

8. In this case, there is no allegation that no show cause notice was served upon the Petitioner. The allegation is, therefore, not about this case being one of "no notice" but of "inadequate notice". In such a situation, the Petitioner must plead and establish that this was indeed a case of inadequate notice and, further, about the prejudice occasioned on account of such inadequate notice.

9. The Petitioner was served with the show cause notice dated 14 December 2022 but digitally signed on 15 December 2022 at 12:55 p.m. The Petitioner applied for some time, and the Petitioner was granted the same. The Petitioner filed a reply to this show cause notice on 20 December 2022. Significantly, in this reply, which is fairly detailed, there is no grievance about inadequate notice or consequent prejudice. The Petitioner has raised all points in its defence, and there was no complaint about any serious prejudice on account of the alleged short notice.

10. Regarding the variation between the demand in the show cause notice and the demand made in the Assessment Order, we note that the addition of Rs.11,93,06,116/- was mainly because of unaccounted sales. This component came to Rs.8,79,20,820/-.

11. From the show cause notice issued to the Petitioner, details regarding the unaccounted sales were furnished to the Petitioner. The show cause notice then observed as follows:-

> "From the facts discussed above, it is ample clear that the figures Sales considerations of the assessee as per the Sales register cannot be relied upon and hence liable to be rejected.
>
> For the purpose of assessment, it is proposed to derive the sales consideration of gold ornaments by adding making charge of Rs.400/- per gram of gold ornament to the 22 carat gold price as on the date of sales.
>
> You are hereby given an opportunity to show cause as to why your assessment should not be completed as proposed above."

12. Thus, the show-cause notice clearly informed the Petitioner that the sales figures could not be relied upon. The methodology by which the correct figures were proposed to be assessed was also clearly indicated in the notice itself. Thus, it is clear that the notice referred to a tentative assessment. Still, the Petitioner was clearly put on guard regarding the tentative opinion that the sales figures were unreliable. An assessment exercise was to be carried out according to the methodology indicated.

13. Therefore, at least prima facie, this is not a clear case of the impugned assessment order travelling beyond the show cause notice or a case where it could be ex-facie concluded that the Petitioner was prejudiced on account of the variation in the tentative figures suggested in the show cause notice and the final determination.

14. Finally, this is also not a case in which the Petitioner, in response to the show-cause notice and the further

submissions, clearly and categorically requested a personal hearing. In the response dated 20 December 2022, in the last three lines, the Petitioner stated that it hoped the reply would satisfy the authorities, and if any further clarification is required in the matter, a video conferencing opportunity may please be given to clarify the stand.

15. Since the Assessing Officer may not have required any further clarification, no video conferencing opportunity was granted to the Petitioner. Again, based on this material, we cannot hold that this is a case of patent violation of natural justice based on which the rule of exhaustion of alternate remedies ought to be bypassed.

16. Learned counsel for the Petitioner had relied upon **Cheftalk Food and Hospitality Services Pvt. Ltd. vs. Income Tax Officer, ward (9)(2)(1) Mumbai and others**[2] to submit that the breach of natural justice would be inferred where the assessee was granted less than 24 hours to respond to the show cause notice. In the facts of the present case, it is not as if less than 24 hours' notice was granted to the Petitioner. The show cause notice was served on 15 December 2022, and the Petitioner filed the reply on 20 December 2022. The reply was fairly detailed and did not even complain about the lack of time to collect particulars and effectively respond to the show cause notice. Accordingly, the decision in *Cheftalk Food and Hospitality Services Pvt. Ltd.* (supra) cannot assist the Petitioner.

17. Even upon adopting a liberal view of the contentions raised on behalf of the Petitioner, we can hold the issue of

[2] 2024(8) TMI 884 – Bombay High Court

breach of natural justice and consequent prejudice is an arguable or debatable issue. To decide this debate one way or the other, the remedy of the appeal which is available to the Petitioner would be the most appropriate remedy. The summary jurisdiction under Article 226 of the Constitution is not appropriate to decide such factual issues regarding whether there was any breach of natural justice and if so, any prejudice was indeed occasioned to the Petitioner. There is nothing like a mere technical breach of the principles of natural justice. A case will have to be made out about such breach and consequent prejudice. All such matters can best be decided in a statutory appeal provided by the law.

18. In the case of **Oberoi Constructions Limited vs. The Union of India and others**[3] we have summarised several precedents on the issue of exhaustion of alternate remedies. By adopting the reasoning in the said decision we decline to entertain this Petition. But we leave it open to the Petitioner to resort to the alternate remedy of an appeal.

19. Learned counsel for the Petitioner states that an appeal will be instituted within four weeks of the uploading of this order. If such appeal is indeed instituted within four weeks of the uploading of this order, the Appellate Authority should consider that this Petition was instituted on 23 January 2023 i.e. within the limitation period prescribed for instituting an appeal. Further, the Petitioner was bona fide in prosecuting this Petition.

20. Therefore, if the appeal is indeed instituted within four weeks of the uploading of this order, the Appellate Authority

---

[3] Writ Petition (L) No.33260 of 2023 decided on 11/11/2024.

should decide such appeal on merits without adverting to the limitation issue.

21. Further, we add that our observations, even in the context of a breach of principles of natural justice, are made only to determine whether the Petitioner should be relegated to the alternate remedy of an appeal. Therefore, it will be open to the Petitioner to argue, inter alia on the grounds that there was indeed any breach of natural justice and consequent prejudice. Such arguments must be considered uninfluenced by the observations made by us in this decision.

22. With the above liberty we dispose of this Writ Petition. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J) (M.S. Sonak, J)