

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 13012 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

SYMPHONY LIMITED

Versus

ADDITIONAL/JOINT/DEPUTY/ASSISTANT COMMISSIONER OF INCOME
TAX/INCOME TAX OFFICER

Appearance:

MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

MR MR BHATT WITH MR KARAN SANGHANI FOR M R BHATT & CO.
(5953) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 28/03/2022

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution

of India, the writ applicant has prayed for the following reliefs:

- “(a) quash and set aside the impugned order at ‘Annexure A’ to this petition;*
- (b) pending the admission, hearing and final disposal of this Petition, to stay the implementation and operation of the order at ‘Annexure A’ to this petition, notice of penalty at ‘Annexure F’ to this petition and stay recovery of tax for A.Y. 2018-19;*
- (c) any other and further relief deemed fit and proper be granted in the interest of justice;*
- (d) to provide for the cost of this petition.”*

2. We have heard Mr. Bandish Soparkar, the learned counsel appearing for the writ applicant – assessee and Mr. M.R. Bhatt, the learned senior counsel assisted by Mr. Karan Sanghani, the learned counsel appearing for the Revenue.

3. It appears from the materials on record that the writ applicant herein filed its return of income for the A.Y. 2018-19 on 28.11.2018 at Rs.197,12,28,420/-. Later the return was revised on 30.03.2019 at Rs.197,12,28,420/-. The case of the writ applicant was selected for scrutiny under the CASS to verify few issues.

4. A notice under Section 143(2) was issued to the writ applicant on 22.09.2019 and thereafter, notices under Section 142(1) were issued from time to time. Those were replied by the writ applicant accordingly.

5. In the meantime, with the introduction of Faceless Assessment Scheme, a fresh notice under Section 142(1) was issued on 03.12.2020 and the same was replied by the writ

applicant accordingly. Thereafter, a notice was issued on 27.01.2021 and the same was replied on 08.02.2021. Thereafter, a “show-cause-before-assessment” was issued on 17.04.2021. The reply was filed by the writ applicant on 28.05.2021.

6. It appears that the writ applicant received a communication dated 30.05.2021 by which the respondent granted adjournment as prayed for by the writ applicant. Time was granted till 07.06.2021. Again vide letter dated 11.06.2021, further time was granted till 16.06.2021. The writ applicant vide the letters dated 30.05.2021 and 01.07.2021 respectively brought to the notice of the respondent that it had already submitted its response against the notice dated 17.04.2021.

7. The writ applicant received the impugned assessment order dated 30.07.2021. The writ applicant also received a notice of penalty under Section 274 read with Section 270A of the Act dated 30.07.2021.

8. In such circumstances referred to above, the writ applicant is here before this Court with the present writ application.

9. The principal argument of Mr. Soparkar is that the impugned assessment order came to be passed without taking into consideration the reply filed by the writ applicant and also without affording any opportunity of video conferencing. Mr. Soparkar would submit that the impugned order passed under Section 143(3) read with Section 144B of the Act could be said to be passed in violation of the principles of natural justice.

10. Mr. M.R. Bhatt, the learned senior counsel appearing for the

Revenue would submit that the averments made in the memorandum of the writ application on facts are unassailable.

11. It is by now well settled that the issuance of a show cause notice along with the draft assessment order is *sine qua non* before passing an order under Section 144B of the Act. Undisputedly, in the case on hand, no show cause notice came to be issued along with draft assessment order and in such circumstances, the final order of assessment could be said to be without jurisdiction. We are of the view that the matter should be remitted to the Assessing Officer for *de novo* proceedings.

12. In the result, this writ application succeeds and is hereby allowed. The impugned assessment order dated 30.07.2021 for the A.Y. 2018-19 is hereby quashed and set aside. The matter is remitted to the Assessing Officer. The Assessing Officer shall issue a show cause notice with the draft assessment order so that the writ applicant can respond to the same by an appropriate reply.

Let this entire exercise be undertaken at the earliest and a fresh assessment order be passed after giving due opportunity of hearing to the writ applicant.

With the aforesaid directions, this writ application stands disposed of. Direct service is permitted.

(J. B. PARDIWALA, J)

SAG
SPECIAL AGENT

(NISHA M. THAKORE, J)

Y.N. VYAS