

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 11053/2021

Rati Ram Babelwal, S/o, Prabhati Lal Babelwal, Aged About 55 Years, R/o - 0578, Malpura Krishi Upaj Mandi Malpura, Tonk, 304502, Rajasthan.

----Petitioner

Versus

1. National Faceless Assessment Centre, Delhi Through Its Income Tax Officer.
2. Principal Chief Commissioner Of Income Tax, (National Faceless Assessment Centre), Delhi, Room No 356 C.r. Building, Ip Estate, New Delhi, Delhi 110002.
3. Income Tax Officer, Ward Tonk, Malpura Gate, Kala Baba, Tonk, Rajasthan - 304001.

----Respondents

For Petitioner(s) : Mr. Javed Khan
For Respondent(s) : Mr. Nikhil Simlote on behalf of
Mr.R.B.Mathur(Sr.Advocate) through VC

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

15/02/2022

1. Heard learned counsel for the parties.
2. Petitioner has challenged an order of assessment dated 15.09.2021 passed by the Assessing Officer for the assessment year 2013-14. Briefly stated the facts are as under:-
3. The petitioner is an individual and is engaged in the business of trade of jewel commodities. For the assessment year 2013-14 the petitioner had filed return of income on 19.08.2013 declaring total income of Rs.2,41,610/-. The return filed by the petitioner was taken in scrutiny. The assessing officer passed an order of

assessment under Section 143(3) of the Income Tax Act, 1961 (for short 'the Act') accepting the assessee's declared income.

4. To reopen such assessment the Assessing Officer had issued a notice under Section 148 of the Act. This was followed by notices issued under Section 142(1) of the Act. Since the petitioner did not reply to these notices, the Assessing Officer issued a final notice on 03.09.2021 under Section 144 of the Act and put the petitioner to notice that since he had not responded to the earlier notices, the Assessing Officer desired to complete the assessment by way of best judgment. He also outlined his broad proposals for completing such assessment and in paragraph 6 of the notice stated that the assessee should submit the response through registered e-mail account by 10.09.2021 and as per paragraph 7 of the notice in case the assessee failed to make such a response, the assessment shall be finalized under Section 144 of the Act.

5. The assessee replied to the said notice dated 03.09.2021 under a response dated 10.09.2021. This is borne out from a copy of the e-proceedings response acknowledgment produced by the petitioner at Annexure-8. This document indicates the name of the petitioner, the assessment year concerned, it refers to notice under Section 144 of the Act dated 03.09.2021 and records 10.09.2021 as due date for submission. In response, it indicates that the reply was received.

6. We may therefore proceed on the basis that petitioner had filed reply to the last notice issued by the Assessing Officer on 03.09.2021. Despite this, the assessment which was carried out through faceless assessment system, did not acknowledge such reply and the contents thereof. This is clear from a bare perusal of

the order of assessment in which the Assessing Officer has indicated that there was no response from the petitioner to the notice under Section 148, under Section 142(1) as well as his notice issued under Section 144 of the Act. He therefore proceeded to complete the assessment by making certain addition and assessing total income of the petitioner to Rs.72,14,490/- with the proposal to initiate penalty proceedings.

7. Having heard learned counsel for the parties and having perused the documents on record, the order of assessment suffers from violation of principles of natural justice. As noted in response to the notice issued by the Assessing Officer under Section 144 the petitioner had filed a response within time permitted. Perusal of the reply of the petitioner would show that he opposed the proposal for making any addition to his declared income. He also disputed the statements of persons on which the Assessing Officer wanted to rely upon. He asked for their cross-examination. It was open for the Assessing Officer to accept or to reject the stand of the petitioner including his request for cross-examination of the witnesses. However he could not have ignored the reply and proceeded to finalize the assessment as if there was no response from the petitioner whatsoever. Unfortunately this is what the Assessing Officer has done and in process caused injustice.

8. Only on this ground we are inclined to set aside the order of assessment. Ordinarily when against an order statutory appeal is available, the Court would be slow in interfering in a writ petition bypassing such appeal route. This is more so in fiscal matters. However when it comes to the clear cut case of breach of principles of natural justice and denial of fair hearing, this self-imposed restriction is not applied.

9. Under the circumstances the impugned order of assessment dated 15.09.2021 is set aside. The assessment is reopened and shall be completed by the respondents after taking into account the response of the petitioner dated 10.09.2021 to the notice issued by the Assessing Officer under Section 144 of the Act.

10. The petition is disposed of accordingly.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

KAMLESH KUMAR/4

RAJASTHAN HIGH COURT

