

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1625 OF 2021

Mantra Industries LimitedPetitioner

V/s.

National Faceless Assessment Centre
(NFAC or NeAC) & Ors.Respondents

Mr. Devendra H. Jain for petitioner.
Mr. Akhileshwar Sharma for respondents – Revenue.

CORAM : K.R. SHRIRAM, &
AMIT B. BORKAR, JJ.
DATED : 11th OCTOBER 2021

P.C. :

1 Since pleadings are completed, we decided to dispose this petition at the admission stage itself by consent of the parties.

Rule.

Rule made returnable forthwith.

2 Petitioner is impugning the assessment order dated 8th June 2021 read with the notice of demand dated 8th June 2021 issued under Section 156 read with show cause notice dated 8th June 2021 for initiating penalty proceedings under Section 274 read with Section 270A of the Income Tax Act, 1961 (the said Act). According to petitioner, the assessment order has been passed without following the principles of natural justice in as much as petitioner's request for an adjournment has not been considered,

request for personal hearing has not been considered and most importantly the reply/objection filed in response to the show cause notice with the draft assessment order has not been considered.

3 Coming straight to the point, petitioner received a notice dated 22nd April 2021 (a Friday) for Assessment Year 2018-2019 calling upon to show cause as to why assessment should not be completed as per the draft assessment order. Petitioner was to submit its response by 23:59 hours of 24th April 2021 (4th Saturday). Petitioner was also advised that they may request for personal hearing.

4 On 23rd April 2021 petitioner filed its response mentioning therein, *inter alia*, that due to increase in COVID-19 cases, traveling was a problem, staff were not able to attend and offices in Mumbai are generally closed. Respondents were informed that petitioner wishes to object to the modification and also a request to give personal hearing was made. Petitioner sought 20 days time to fulfill the requirements as per the notice.

5 On 27th April 2021 petitioner filed its response giving the quantitative details which was sought for in the show cause notice issued. Almost six weeks later (though only two days was given to reply to the show cause notice), the assessment order dated 8th June 2021 came to be passed which is impugned in this petition. The assessment order is an exact

reproduction of the draft assessment order except one sentence which has been added “*Regarding this show cause notice issued to assessee on 22.04.2021 but assessee has not given any justification for non-furnishing of quantitative details in form 3CD.*”

6 This itself shows that respondents have passed the assessment order without application of mind, without considering the two replies dated 23rd April 2021 and 27th April 2021 filed by petitioner and without considering the request for personal hearing also sought by petitioner. Strangely in the affidavit in reply filed by one Yashpal Singh affirmed on 29th July 2021, it is stated that “the noting records show that the submission dated 23rd April 2021 and 27th April 2021 both taken on record and considered”. But the assessment order does not reflect this. We wonder how does the affiant know something which the assessment order does not reflect. Another point raised in the affidavit in reply is that petitioner/assessee has not furnished the quantitative details in item 35(b) in Form 3CD and petitioner/assessee has not given any justification for non furnishing quantitative details in Form 3CD and on failure of petitioner/assessee to furnish the details in the prescribed Form 3CD, the assessment is completed as per the provisions under Section 144 of the Income Tax Act, 1961 on 8th June 2021. This is contrary to what is stated in

the same affidavit that the noting records show that the submission dated 27th April 2021 has been taken on record and considered.

7 We have perused with the assistance of Mr. Jain the statement dated 27th April 2021 which gives the quantitative details. Mr. Sharma tried to justify the stand of respondents by stating that the quantitative details filed on 27th April 2021 are not strictly according to the format prescribed. We have compared the details provided by petitioner and Form 35(b) annexed to the affidavit in rejoinder. We do not find any difference except that in the response dated 27th April 2021 the product manufactured, viz., Wet Grinders, is mentioned. We have to also note that this is not the case in the assessment order which has proceeded on the basis that no response at all has been filed to the notice dated 22nd April 2021. There cannot be anything far from truth.

8 We are, therefore, compelled to set aside the impugned order dated 8th June 2021 and also the consequential notices. Sub Section 9 of Section 144B of the Act provides that any assessment made shall be *non-est* if such assessment is not made in accordance with the procedure laid down under this section. Therefore, the order impugned being *non-est*, the Assessing Officer may take such steps as advised in accordance with law. We are not making any observations on the merits of the case.

9 Respondents are put to notice, and Mr. Sharma to circulate this order right from the Revenue Secretary to everybody in the Finance Ministry, that if such orders are continued to be passed, this Court will be constrained to impose substantial costs on the concerned Assessing Officer to be recovered from his/her salary and also direct the department to place such judicial orders in the career records of such Assessing Officer.

10 Petition disposed.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)