

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14177 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR.JUSTICE D.N.RAY**

Approved for Reporting		Yes	No

GFL LIMITED**Versus****ASSESSMENT UNIT, INCOME TAX DEPARTMENT & ANR.****Appearance:****MR. S.N.SOPARKAR, SR.ADVOCATE WITH MR B S SOPARKAR(6851) for the Petitioner(s) No. 1****MR. KARAN SAGHANI, SR.STANDING COUNSEL FOR MR NIKUNT K RAVAL(5558) for the Respondent(s) No. 1,2****CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR.JUSTICE D.N.RAY****Date : 22/04/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

Leave to amend to join the Central Board of Direct Taxes as Respondent No.3

1. Heard learned Senior Advocate Mr. S.N.Soparkar with learned advocate Mr.B.S.Soparkar for the Petitioner and learned Senior Standing Counsel Mr. Karan Sanghani for the Respondents.

2. The Petitioner has challenged the order dated 29th March, 2023 passed under Section 271AA(1) of the Income Tax Act, 1961 (for short “**the Act**”) levying penalty of Rs.14,64,82,243/- on the Petitioner.

3. Rule returnable forthwith. Learned Senior Standing Counsel Mr. Karan Sanghani waives service of notice of rule for the Respondents.

4. Having regard to the controversy arising in the petition, which is in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

5. The brief facts of the case are as follows:

5.1 The Petitioner filed its return of income for the Assessment Year 2018-19 on 30.11.2018 declaring Rs.4,03,46,32,880/- as the total income.

5.2 The return of income was selected for scrutiny and the reference was also made by the National Faceless E-Assessment

Centre (for short “**NFAC**”) for determining the Arm’s Length Price under Section 92CA(3) in respect of the International Transactions entered into by the Petitioner during the Financial Year 2017-18.

5.3 Thereafter, the Transfer Pricing Officer (TPO) passed the order under Section 92CA(3) dated 31.07.2021 computing the upward adjustment of Rs. 21,77,87,672/- and downward adjustment of Rs.181,48,41,229/-. The TPO also recommended that a penalty under Section 271AA may be levied.

5.4 Thereafter, the Draft Assessment Order was passed by the NFAC on 29.09.2021. The Petitioner approached the Dispute Resolution Panel (for short “**DRP**”) against the Draft Assessment Order by filing objection which was heard by the DRP and the directions were issued on 25.06.2022. Thereafter, the final Assessment Order was passed by the Respondent No.2 – Assistant Commissioner of Income Tax, Circle 1(1)(1), Vadodara, determining the income of the Petitioner at Rs.441,89,42,071/- under normal provisions and Book Profit of Rs.640,59,20,029/-.

Thereafter, a show cause notice dated 11.03.2022 under Section 271G read with Section 92D(3) was issued by the TPO. The Petitioner filed the reply dated 13.07.2022. Considering the submissions of the Petitioner by Order dated 26.09.2022, the proceedings under Section 271G of the Act were dropped.

5.5 Thereafter, the notice dated 31.07.2022 was issued for levy of penalty under Section 271AA(1) read with Section 274 of the Act by the Respondent No.2 on the ground that the Petitioner has failed to keep and maintain information and document in respect of certain international transactions as required under Section 92D of the Act and the Petitioner failed to report such transactions and/or maintain or furnish an incorrect information or document.

5.6 The Petitioner filed a detailed the reply dated 10.08.2022 in response to the said notice. Thereafter, the show cause notice dated 18.10.2022 was issued by the Respondent No.1-Assessment Unit to levy penalty under Section 271AA(1) of the Act. The Petitioner filed reply dated 01.11.2022 in response to the show cause notice and also prayed for personal hearing to explain the details. Vide

communication dated 09.03.2023, the Petitioner was intimated about the personal hearing through video conferencing to be conducted on 13.03.2023 at 12:30 p.m. The Petitioner was heard on the date of personal hearing and thereafter, the Petitioner filed further submissions on 14.03.2023.

5.7 Thereafter, the impugned order dated 29.03.2023 was passed imposing penalty of Rs.14,64,82,243/- under Section 271AA(1) of the Act.

6. Being aggrieved by the penalty order, the Petitioner has preferred this petition.

7. Learned Senior Advocate Mr. S.N.Soparkar for the Petitioner submitted that there is violation of principles of natural justice and invited the attention of the Court to Paragraph No.3.5 of the impugned penalty order, wherein, it is recorded that the video conferencing was provided by the Assessing Officer on 13.03.2023, and the said officer has proceeded on leave with effect from 17.03.2023 and therefore, the another officer has taken forward the

proceedings relying upon the Note regarding the video conferencing conducted as uploaded by the previous officer in case history/notings.

7.1 Learned Senior Advocate Mr.Soparkar therefore submitted that the impugned penalty order was passed by the another officer who has not heard the Petitioner during the video conferencing. It was therefore submitted that there is clear breach of principles of natural justice as there is general rule that “he who hears should decide”, or “one who decides must hear”. It was submitted that this is a salutary principle based on the proper administration of justice because if one person hears and another decides then personal hearing becomes an empty formality. It was submitted that even the written arguments are no substitute for an oral hearing. The reliance was placed on the decision of the Hon’ble Apex Court in case of **Automotive Tyre Manufacturers Association Vs. Designated Authority and others** reported in **(2011) 2 SCC 258**.

7.2 It was submitted that the impugned order is passed in violation

of the principles of natural justice. Though the Petitioner has very good case on merits, the matter may be remanded to the Respondent No.1 to pass fresh order after providing personal hearing to the Petitioner by the officer who has to passed the order and thereafter the same officer should pass the penalty order.

7.3 Learned Senior Advocate Mr. Soparkar also reffered to and relied upon the Notification No. S.O. 117(E)[No.2/2021/F.No.370142/51/2020-TPL] dated 12.01.2021 issued by the Central Government in exercise of the powers conferred by sub-section (2A) of Section 274 of the Act being the Scheme “Faceless Penalty Scheme, 2021”. The reference was also made to the NOTIFICATION NO.S.O. 2425 (E) [NO. 54/2022/F. NO. 370142/51/2020-TPL(PART III)] dated 27.05.2022, whereby, the aforesaid scheme was amended.

7.4 Referring to the above said Scheme, it was submitted that though the Respondent No.1 -Assessment Unit is not authorized to pass the penalty order, the Petitioner in view of the fact that there is

violation of principles of natural justice and considering the Paragraph 4(4) of the Scheme, the said issue is not pressed at this stage. It was further submitted that as per the scheme, the Penalty Unit/Assessment Unit after considering the material on record including the response furnished by the Asseessee as per Clauses (viii),(x) and (xii), or report, if any as referred to in the Clause (xiv) propose for imposition of penalty. When such penalty imposition is proposed, the reasons are required to be send to the National Faceless Penalty Centre and thereafter, the National Faceless Penalty Centre in accordance with the guidelines issued by the Board where the imposition of penalty has been proposed, to convey the penalty unit to pass the penalty order as per the penalty imposition proposal. It was therefore submitted that the impugned penalty order passed by the Respondent No.1-Assessment Unit has to be passed by the persons who has heard the Petitioner in Video Conference.

8. Per contra, learned Senior Standing Counsel Mr.Karan Sanghani for the Respondents submitted that the Petitioner is already

granted the opportunity of hearing through Video Conferencing on 13.03.2023 and thereafter, the impugned Assessment penalty order is passed by the Respondent No.1 after taking into consideration the submissions made by the Petitioner in Video Conferencing as per noting which are uploaded by the person who had heard the Petitioner during the Video Conference and on perusal of such notes as stated in the penalty order, the decision is arrived at. It was therefore submitted that there is no violation of principles of natural justice as canvassed by the Petitioner as the submissions made by the Petitioner are duly heard and considered while passing the impugned penalty order and therefore, the Petitioner should be relegated to avail the alternative remedy by preferring an appeal as per the provision of the Act so as to challenge the Order on merits instead of remanding the matter to the Respondent No.1 for *de novo* proceedings.

9. We have considered the submissions made by the learned advocates appearing for the respective parties and also the decision of the Hon'ble Apex Court in the case of **Automotive Tyre**

Manufacturers Association (Supra) in which the reliance was also placed on the decision of **Gallapalli Nageswara Rao Vs. A.P.SRTC** reported in **AIR 1959 SC 308**.

10. The Hon'ble Apex Court in the case of **Gallapalli Nageswara Rao** (Supra), the constitutional Bench of the Hon'ble Apex Court in case of **Automotive Tyre Manufacturers Association** (Supra), by majority view has held as under :-

“(31) The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

11. Considering the above decision of the Hon'ble Apex Court in the case of **Automotive Tyre Manufacturers Association** (Supra),

it was held as under :-

“83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli, if one person hears and other decides, then personal hearing becomes an empty formality.

84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly.”

12. In view of the above dictum of law, it is law of the land that the personal hearing before taking a final decision in the matter is no substitute for written arguments and personal hearing enables the authority concerned to watch the demeanour of the witnesses etc. and also clear up his doubts during the course of the arguments and as held by the Constitutional Bench of the Hon’ble Apex Court in case of **Gullapalli** (supra), if one person hears and other decides,

then personal hearing becomes an empty formality. In the facts of the case as stated in Paragraph No. 2.5 of the impugned penalty order, admittedly the hearing was granted by the previous incumbent of the person who has passed the penalty order and therefore, he had no occasion to hear the Petitioner resulting into the breach of basic principle of natural justice.

13. We would have stopped our discussion at this stage by remanding the matter back to the Respondent No.1-Assessment /Penalty Unit to grant fresh opportunity of hearing to the Petitioner by the Assessing Officer to whom such matter is allocated and to pass fresh penalty order in accordance with law by such Assessing Officer.

14. However, with the advent of faceless hearing, we are of the view that it would be difficult to implement such directions more particularly as per the provision of Section 144B of the Act read with sub-section (2A) of Section 274 of the Act either by the Assessment Unit or the Penalty Unit who passes the Assessment Order or Penalty Order. Section 144B(6)(vii) as well as Section

274(1) provides to stipulate the mandate to grant or provides opportunity of hearing to the Assessee before passing the Assessment Order or Penalty Order as the case may be. Therefore, the question arises as to how the aforesaid decisions of the Hon'ble Apex Court can be pressed into service that the person who hears the matter passes the order or the person who passes the order must hear the Assessee. In such circumstances, it would be germane to refer to the various provisions of Section 144B(3) of the Act which provides for setting up the various Centre and units by the Central Board of Direct Taxes and to specify their functions and jurisdiction. Section 144B(3) reads as under :-

“Section 144B(3):- The Board may, for the purposes of faceless assessment, set up the following Centre and units and specify their functions and jurisdiction, namely:-

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner;

(ii) such assessment units, as it may deem necessary to conduct the faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under this Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions

as may be required for the purposes of making faceless assessment, and the term "assessment unit wherever used in this section, shall refer to an Assessing Officer having powers so assigned by the Board;"

15. Similarly, sub clause (iii),(iv) and (v) provides for setting up of verification units, technical units, review units on the same line as setting up of assessment unit. Sub-section (4) of Section 144B provides as under:-

“(4) of Section 144B :- The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:-

(i) Additional Commissioner or Additional Director Commissioner or Joint Director, as the case may be; or Joint

(ii) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(iii) such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.”

16. Thus, the Assessment Unit and other similar Units are comprising of the Assessing Officer and in hierarchy as per Sub Section (4) of Section 144B of the Act.

17. Similarly, Section 274 of the Act prescribed the procedure of levy of penalty which reads as under :-

“274. **Procedure.**-(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) No order imposing a penalty under this Chapter shall be made-

(a) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(b) by the [Assistant Commissioner or Deputy Commissioner], where the penalty exceeds twenty thousand rupees,

except with the prior approval of the [Joint Commissioner].

(2A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of imposing penalty under this Chapter so as to impart greater efficiency, transparency and accountability by-

(a) eliminating the interface between the (income-tax authority and the assessee or any other person) to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale functional specialisation;

(c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

(2B) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (2A), by

notification in the Official Gazette, direct that any of the provisions of this Act relating to jurisdiction and procedure for imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022:

[Provided further that the Central Government may amend any direction, issued under this sub-section on or before the 31st day of March, 2022, by notification in the Official Gazette.]”

18. Sub-section (2A) of Section 274 of the Act empowers the Central Government to frame the scheme for setting up the faceless procedure and accordingly the Central Government by Notification dated 12.01.2021 framed the Faceless Penalty Scheme, 2021, which was amended by the Notification dated 27.05.2022 as Faceless Penalty (Amendment) Scheme, 2022.

19. As per Faceless Penalty Scheme 2021, the penalty unit is set up under paragraph Nos.3 and 4 of the said Scheme of 2021, which reads as under :-

“NOTIFICATION

S.O.

117(E)

[NO.2/2021/F.NO.370142/51/2020-TPL], DATED 12-1-2021

Scope of the Scheme:-

3. *The penalty under this Scheme shall be imposed in respect of such territorial area, or persons or class of persons, or income or class of income or cases or class of cases, or penalties or class of penalties as may be specified by the Board.*

Faceless Penalty Centres

4. (1) *For the purposes of this Scheme, the Board may set up -*

(i) a National Faceless Penalty Centre to facilitate the conduct of faceless penalty proceedings in a centralised manner and vest it with the jurisdiction to impose penalty in accordance with the provisions of this Scheme;

(ii) Regional Faceless Penalty Centres, as it may deem necessary, to facilitate the conduct of faceless penalty proceedings, which shall be vested with the jurisdiction to impose penalty in accordance with the provisions of this Scheme;

(iii) penalty units, as it may deem necessary, to facilitate the conduct of faceless penalty proceedings, to perform the function of drafting penalty orders, which includes identification of points or issues for imposition of penalty under the Act, seeking information or clarification on points or issues so identified, providing opportunity of being heard to the assessee or any other person, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of imposing penalty;

(iv) penalty review units, as it may deem necessary, to facilitate the conduct of faceless penalty proceedings, to perform the functions of review of draft penalty order, which includes checking whether the relevant material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which penalty is to be imposed have been discussed in the draft order, whether the applicable

judicial decisions have been considered and dealt with in the draft order, checking arithmetical correctness of computation of penalty, if any, and such other functions as may be required for the purposes of review, and specify their respective jurisdiction.

(2) All communication among the penalty unit and penalty review unit or with the assessee or any other person, as the case may be, or any income-tax authority or the National Faceless Assessment Centre, with respect to the information or documents or evidence or any other details as may be necessary for the purposes of imposing penalty under this Scheme, shall be through the National Faceless Penalty Centre.

(3) The penalty unit and the penalty review unit shall have the following authorities, namely:-

(a) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(b) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(c) such other income-tax authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.

(4) The Board for the purposes of this Scheme shall, until the date on which the National Faceless Penalty Centre or the Regional Faceless Penalty Centres, the penalty units or the penalty review units are set up, direct the National Faceless Assessment Centre, Regional Faceless Assessment Centre, assessment unit and review unit to also act as the National Faceless Penalty Centre, Regional Faceless Penalty Centre, the penalty unit and the penalty review unit, respectively)”

9. By the Faceless Penalty (Amendment) Scheme, 2022, paragraph No. 4 is amended as under :-

“NOTIFICATION NO.S.O. 2425 (E) [NO. 54/2022/F. NO. 370142/51/2020-TPL(PART III)], DATED 27-5- 2022

(i) in paragraph 4,-

(A) in sub-paragraph (1),-

(I) in clause (1), the words "and vest it with the jurisdiction to impose penalty in accordance with the provisions of this Scheme" shall be omitted;

(II) clause (ii) shall be omitted;

(III) in clause (iii), for the words "as may be required for the purposes of imposing penalty", the words "as may be required for the purposes of imposing penalty and the term "penalty unit", wherever used in this Scheme, shall refer to an Assessing Officer having powers so assigned by the Board" shall be substituted;

(IV) in clause (iv), for the words "and such other functions as may be required for the purposes of review, and specify their respective jurisdiction", the words "and such other functions as may be required for the purposes of review and the term "penalty review unit", wherever used in this Scheme, shall refer to an Assessing Officer having powers so assigned by the Board" shall be substituted;

(B) in sub-paragraph (4), the words "the Regional Faceless Penalty Centres,", "Regional Faceless Assessment Centre," and "Regional Faceless Penalty Centre," shall be omitted;”

20. Paragraph No.5 of the said Scheme, 2021 provides for the Procedure of penalty. Clause 15 of the Paragraph No.5 provides

for making proposal by penalty against imposition of penalty to send such proposal to the National Faceless Penalty Centre, which was amended by the Scheme of 2022 as under :-

"(xv) the penalty unit shall, after considering the material on record including response furnished, if any, as referred to in clauses (viii), (x) and (xii) or report, if any, as referred to in clause (xiv), propose for,-

(a) imposition of the penalty and prepare a penalty imposition proposal for imposition of such penalty;

(b) non-imposition of the penalty, for reasons to be recorded in writing,

and send the penalty imposition proposal or reasons, as the case may be, to the National Faceless Penalty Centre

(xvi) the National Faceless Penalty Centre, in accordance with the guidelines issued by the Board, may,-

(a) in a case where imposition of penalty has been proposed, convey to the penalty unit to pass the penalty order as per penalty imposition proposal referred to in sub-clause (a) of clause (xv); or

(b) in a case where non-imposition of penalty has been proposed, convey to the penalty unit to drop the penalty proceedings under intimation to the assessee or any other person, as the case may be; or

(c) assign the case to a penalty review unit through an automated allocation system, for conducting review of such proposal or reasons, as the case may be;"

21. From the above schemes, it is apparent that the Penalty Unit or Assessment Unit, as the case may be, is empowered to levy the penalty after giving an opportunity of hearing to the Petitioner. Therefore, it is necessary that the person who hears the Assessee only is required to pass the order, being part of such penalty or assessment unit as the case may be.

22. In view of the above discussion, following directions are issued :-

(1) Respondent No.3 is therefore directed to issue necessary instructions to all the Assessment Units/Penalty Units pursuant to the provision of Section 144B(3) of the Act or as per the Scheme 2021 as amended by Scheme of 2022 to ensure that the Assessing Officer who provides for the Video Conferencing to the Assessee only will require to pass such Assessment Order or Penalty Order as per the decision of the Hon'ble Apex Court in case of **Gallapalli Nageswara Rao** (Supra) reiterated in the case of **Automotive Tyre Manufacturers Association** (Supra).

22. With the aforesaid directions, this petition is disposed of by quashing and setting aside the impugned Penalty Order dated 29.03.2023 passed under Section 271AA(1) of the Act by remanding the matter back to the Respondent - Assessment /Penalty Unit to provide a fresh opportunity of hearing to the Petitioner and thereafter pass the fresh order under the provisions of Section 271AA(1) of the Act by the same officer who has heard the Petitioner through Video Conference. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

BINA SHAH

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: BINA A SHAH(HC00353), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 09/06/2025 10:26:57