



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 7654/2021

Radhe Shyam Kumhar S/o Sh. Alsi Ram Kumhar, Aged About 34
Years, W.no. 5, Gajner, Distt. And Tehsil Bikaner- 334001.

-----Petitioner

Versus

Deputy Commissioner Of Income Tax, National E-Assessment
Centre, Income Tax Department, Ministry Of Finance, Room No.
401, 2Nd Floor, E-Ramp, Jawarharlal Nehru Stadium, Delhi-
110003.

-----Respondent

For Petitioner(s) : Mr. Shafi Mohammad Chouhan,
through Cisco Webex App

For Respondent(s) : Mr. KK Bissa

JUSTICE DINESH MEHTA

Order

02/08/2021

1. By way of present writ petition, the petitioner has challenged the assessment order dated 23.04.2021 passed by the respondent, alleging it to be against the principles of natural justice.
2. Mr. Shafi Mohammad, learned counsel for the petitioner, narrating the requisite facts submitted that the petitioner came to receive a show cause notice dated 19.04.2021, alongwith the proposed draft assessment order requiring the petitioner assessee, to file response on or before 11.59 pm of 23.04.2021.
3. Learned counsel for the petitioner submits that during such period, lockdown was imposed by the State of Rajasthan and thus, the petitioner could neither file his reply nor could he contact his counsel for preparing the reply. And even before the requisite time



mentioned in the notice (i.e. 23.59.00 hours on 23.04.2021), the petitioner received assessment order at 13.52.13 hours on 23.04.2021 itself.

4. It is contended by learned counsel for the petitioner that in view of the State-wide lockdown, the respondent-assessing officer ought to have adjourned the proceeding, considering the overall situation prevailing in the State and the entire country.

5. It was also argued that the respondent Assessing Officer has also committed an error in giving only four days' time to the petitioner to respond to the show cause notice.

6. Mr. Bissa, learned counsel for the respondent submitted that the petitioner has an alternative efficacious remedy of appeal before the Commissioner of Appeals under the provisions of Income Tax Act and thus the writ petition is not maintainable.

7. I have heard learned counsel for the parties and perused the material available on record.

8. Indisputably, the Assessing Officer had allowed only four days' time to the petitioner assessee to file his response. That apart, on account of sudden surge of Covid-19, there was a situation of overall lockdown. The petitioner's grievance is genuine that he could not file reply/response.

9. This Court is of the view that the Assessing Officer has seriously erred, firstly in giving only four days' time to respond and thereafter in not adjourning the matter and then, passing the impugned assessment order even prior to expiry of the time given in the notice.

10. Mr. Bissa's contention that petitioner be relegated to avail remedy of appeal does not impress the Court, inasmuch as



violation of principles of natural justice is writ-large in the present case.

11. In view of the aforesaid, the impugned assessment order dated 23.04.2021 (Annex.2) is hereby quashed and set aside.

12. The petitioner is directed to file his reply pursuant to the notice dated 19.04.2021 on or before 16.08.2021. On receipt of the reply, the Chief Commissioner shall forward the same to the respondent-Deputy Commissioner of Income Tax, National E-Assessment Centre, Income Tax Department, Ministry of Finance, or to any other competent authority. The competent officer shall thereafter pass a fresh order, obviously after considering petitioner's reply/response.

13. In case the assessing officer is of the view that certain more information is required, he would issue a notice to the petitioner in accordance with law.

14. The writ petition stands allowed.

15. Stay application is disposed of.

(DINESH MEHTA),J

274-Rahul/-

सत्यमेव जयते