(2021) 07 DEL CK 0055

In the Delhi High Court

Case No : Civil Writ Petition No. 6126 Of 2021

Balraj Hire Purchase Pvt. Ltd APPELLANT

Vs

National Faceless Assessment Centre, Delhi & Anr RESPONDENT

Date of Decision : 06-07-2021

Acts Referred:
Income Tax Act, 1961 — Section 144B(7)(vii), 144B(7)(viii), 144B(7)(xii)

Citation : (2021) 07 DEL CK 0055

Hon'ble Judges : Rajiv Shakdher, J;Talwant Singh, J

Bench : Division Bench

Advocate : Jorawar Singh Bhasin, Dushyant Tiwari, Sanjay Kumar, Easha Kadian, Gurtejpal Singh, Ravi Prakash

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

CM APPL. 19402/2021

1. Allowed, subject to just exceptions.

W.P.(C) 6126/2021 and CM APPL. 19401/2021 [Application filed on behalf of the petitioner seeking stay on the impugned assessment

order and subsequent proceedings]

2. Issue notice.

3. Mr. Sanjay Kumar accepts service on behalf of respondent no.1. Likewise, Mr. Gurtejpal Singh accepts service on behalf of Mr. Ravi Prakash,

counsel for respondent no.2/UOI.

3.1 To be noted, respondent no.1 is the contesting party in the matter.

4. Mr. Kumar says that, in view of the directions that we intend to pass, he does not wish to file a counter-affidavit/reply and will argue the matter on

the basis of the record, presently, available with the Court.

5. Thus, with the consent of the counsel for the parties, the matter is taken up for final hearing and disposal at this stage itself.

5.1. Via the present petition, the petitioner has assailed the assessment order dated 27.05.2021, principally, on the ground that it has been passed in

breach of the principles of natural justice.

5.2 To be noted, the impugned assessment order concerns the assessment year (â??AYâ??) 2018-2019.

6. Briefly, the record shows that the petitioner was served with a show cause notice-cum-draft assessment order on 09.03.2021. Via the said show

cause notice-cum-draft assessment order, the petitioner was granted time till 23:59 hours on 12.03.2021 to file a response qua the same. It appears

that, on 12.03.2021, the petitioner requested for accommodation till 26.03.2021, to respond to the said notice.

6.1 Apparently, the petitioner [despite having made a request for accommodation till 26.03.2021] filed a reply to the aforesaid show cause notice-cum-

draft assessment order on 17.03.2021. Apart from anything else, in the said reply, the petitioner had made a request for being accorded a personal

hearing in the matter before passing the assessment order.

6.2. Concededly, the Assessing Officer (in short â??AOâ??) passed the impugned assessment order dated 27.05.2021 without according a personal

hearing to the petitioner.

7. It is the submission of Mr. Jorawar Singh Bhasin, who appears for the petitioner, that not only was petitioner deprived of a personal hearing in the

matter but also the abovementioned reply, filed on 17.03.2021, was not considered by the Assessing Officer (AO) while passing the impugned

assessment order.

8. On the other hand, Mr. Kumar says that, a perusal of the impugned assessment order would show that, the reply to the show cause notice-cum-

draft assessment order was considered, although, a personal hearing was not granted to the petitioner. It is Mr. Kumarâ??s contention that, since a

reply had been filed and the same was considered, the outcome would have been the same even if a personal hearing had been granted by the AO. In

other words, according to Mr. Kumar, there was no breach of the principles of natural justice, in the instant case, on account of personal hearing not

being granted.

9. Having heard the learned counsel for the parties, we are of the view that the failure to accord a personal hearing to the petitioner was fatal in this

particular case. The petitioner had a statutory right to personal hearing under Section 144B(7)(vii) of the Income Tax Act, 1961.

9.1. We have dealt with this very issue in Sanjay Aggarwal vs. National Faceless Assessment Centre, Delhi, [2021] 127 taxmann.com 637 (Delhi).

The relevant observations made in the said judgment are extracted hereafter:

â??11.4. A careful perusal of clause (vii) of Section 144B (7) would show that liberty has been given to the assessee, if his/her income is

varied to seek a personal hearing in the matter. Therefore, the usage of the word â??mayâ?, to our minds, cannot absolve the

respondent/revenue from the obligation cast upon it, to consider the request made for grant of personal hearing. Besides this, under sub-

clause (h) of Section 144B (7)(xii) read with Section 144B (7) (viii), the respondent/revenue has been given the power to frame standards,

procedures and processes for approving the request made for according personal hearing to an assessee who makes a request qua the

same.

11.5. In several matters, we have asked the counsels for the revenue as to, whether any standards, procedures and processes have been

framed for dealing with such requests. The response, which we have got from the standing counsels including Mr. Chandra, is that, to the

best of their knowledge, no such standards, procedures as also processes have been framed, as yet.

Conclusion:

12. Therefore, in our view, given the aforesaid facts and circumstances, it was incumbent upon the respondent/revenue to accord a

personal hearing to the petitioner. As noted above, several requests had been made for personal hearing by the petitioner, none of which

were dealt with by the respondent/revenue.

12.1. The net impact of this infraction would be that, the impugned orders will have to be set aside. It is accordingly. â??

9.2. In the instant case, it would be relevant to note that the petitioner had declared its taxable income as Rs.81,570/-. Via the impugned assessment

order, the petitionerâ??s taxable income has been assessed at Rs.2,89,67,727/-. Thus, there is a substantial variation made by the AO in the taxable

income of the petitioner. Therefore, in our view, the petitioner ought to have been granted a personal hearing in the matter. The failure to grant a

personal hearing has vitiated the impugned assessment order.

10. Accordingly, the impugned assessment order dated 27.05.2021 is set aside.

10.1. Liberty is, however, given to the AO to pass a fresh assessment order. The AO will grant a personal hearing to the authorised representative of

the petitioner before passing the fresh assessment order. For this purpose, the AO will issue a written notice to the petitioner setting out therein, the

date and time of the hearing. The AO will conduct the personal hearing via video-conferencing (in short â??VCâ??) mechanism, and transmit the VC

link, in that behalf, to the petitioner.

10.2. The AO will pass the fresh assessment order after taking into account abovementioned reply dated 17.03.2021, filed by the petitioner.

10.3. In case, petitionerâ??s authorized representative wishes to file written submissions, liberty in that behalf will be granted by the AO. Needless to

add, the said submissions will be considered by the AO.

11. The writ petition and pending application are disposed of in the aforesaid terms. The case papers shall stand consigned to the record.