(2021) 07 DEL CK 0089

In the Delhi High Court

Case No : Civil Writ Petition No. 6245 Of 2021, Civil Miscellaneous Application No. 19753-19754 Of 2021

Naresh Kumar Goyal APPELLANT

Vs

National Faceless Assessment Centre & Ors RESPONDENT

Date of Decision : 13-07-2021

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 144B(7), 144B(7)(vii), 144B(7)(viii), 144B(xii)(h), 271AAC(1), 274

Citation : (2021) 07 DEL CK 0089

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Ved Jain, Richa Mishra, Ajit Sharma, Vikrant N Goyal

Final Decision : Disposed Of

Judgement

Manmohan, J

1. The petition has been heard by way of video conferencing. 2. Present writ petition has been filed challenging the assessment order dated 20th May

2021 issued by Respondent Nos. 1 to 6 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [for short â??the Actâ??] for

Assessment Year 2018-2019 and notice of demand dated 20th May, 2021. Petitioner also challengesthe show cause notice and draft assessment order

both dated 19th April, 2021, penalty notice dated 20th May, 2021 under Section 274 read with Section 271AAC(1) of the Act issued by Respondents.

3. Learned counsel for the Petitioner states that the impugned assessment order and notices have been passed in gross violation of principles of

natural justice without affording the petitioner due opportunity of being heard.

4. He states that the show cause notice dated 19th April, 2021 required the

Petitioner to make compliance within 48 hoursi.e. by 21s t April, 2021

despite the fact that Covid-19 was at its peak at that time and there was a lockdown imposed in the NCT of Delhi by the Delhi Disaster Management

Authority, Government of NCT of Delhi

5. Learned counsel for the petitioner further states that the impugned Assessment order has been passed without granting an opportunity for personal

hearing as envisagedunder Section 144B(7)(vii) of the Act even though it was specifically sought by the Petitioner vide letter dated 21st April, 2021 in

response to show cause notice dated 19th April, 2021.

6. He emphasises that the Respondent No.6 denied the opportunity of personal hearing merely for the reason that such request was made by the

Petitioner through his reply filed on 21st April 2021 and not through the link provided in the show cause notice dated 19th April 2021 despite the fact

that no such link was provided in the show cause notice dated 19th April, 2021 as well as no manner of making the request for personal hearing was

prescribed in the show cause notice dated 19th April, 2021 and no guidelines or instructions have been issued under the Act or Rules to such effect.

7. Learned counsel for the Petitioner relies on various orders passed by this Court in matters with similar facts wherein this Court has set aside the

assessment orders that had been passed by the Revenue/Respondent without granting an opportunity of being heard. (Ritnand Balved Education

Foundation (Umbrella Organization of Amity Group of Institution) v NFAC W.P. (C) 5537/2021 dated 27th May, 2021, Sanjay Aggarwal v. National

Faceless Assessment Centre Delhi, W.P. (C) 5741/2021 dated 02nd June, 2021, Naina Lal Kidwai v.NFAC Delhi W.P.(C) 5775/2021 dated 03rd

June, 2021, Lemon Tree Hotels Limited v NFAC Delhi W.P(C) 5427/2021 dated 21st May, 2021).

8. Issue notice.

9. Mr. Ajit Sharma, Advocate accepts notice on behalf of Respondent Nos. 1 to 6. Mr. Vikrant N Goyal, Advocate accepts notice on behalf of

Respondent No. 7.

10. Mr.Sharma states that the expression used in clause (vii) of sub-section (7) of Section 144B of the Act is â??mayâ?? and not â??shallâ?? and

therefore, there is no vested right in the petitioner to claim a personal hearing.

11. Mr.Sharma states that the expression used in clause (vii) of subsection (7) of Section 144Bof the Act is â??mayâ?? and not â??shallâ?? and

therefore, there is no vested right in the petitioner to claim a personal hearing. 11. Having heard learned counsel for the parties, this Court is of the

view that Section 144B (7) provides for a personal hearing. The relevant portion of Section 144B (7) is reproduced hereinbelow:-

â??144B. Faceless assessment â?

(1) xxx xxx xxx

(7) For the purposes of faceless assessmentâ?

xxx xxx xxx

(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order,

and an opportunity is provided to the assessee by serving a notice calling upon him to show-cause as to why the assessment should not be

completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case

may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit;

(viii) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned

unit is set up, may approve the request for personal hearing referred to in clause (vii) if he is of the opinion that the request is covered by

the circumstances referred to in sub-clause (h) of clause (xii);

xxx xxx xxx

(xii) the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre shall, with

the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless

Assessment Centre, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including

format, mode, procedure and processes in respect of the following, namely:â?

xxx xxx xxx

(h) circumstances in which personal hearing referred to clause (viii) shall be approved;

xxx xxx xxxâ??

12. The learned Predecessor Division Bench in Sanjay Aggarwal v. National Faceless Assessment Centre Delhi in W.P. (C) 5741/2021, while

interpreting aforesaid section has held as under:-

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.

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 ordered accordingly.â??

13. Keeping in view the aforesaid facts and mandates of law, the impugned assessment order dated 20th May, 2021 as well as notice of demand and

penalty notice are set aside and the matter is remanded back to the Assessing Officer, who shall grant an opportunity of hearing to the petitioner by

way of a Video Conferencing and thereafter pass a reasoned order in accordance with law.

14. With the aforesaid direction, the present writ petition along with pending

applications stand disposed of.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

