(2021) 05 DEL CK 0141

In the Delhi High Court

Case No : Civil Writ Petition No. 5277 Of 2021

RKKR Foundation APPELLANT

Vs

National Faceless Assessment Centre Delhi (Earlier National Eassessment Centre Delhi) & Anr. RESPONDENT

Date of Decision : 17-05-2021

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 143(2), 143(3), 144B, 144B(7)(vii), 144B(7)(viii), 144B(7)(ix), 144B(7)(x), 144B(7)(xi), 144B(7)(xii), 156, 270A, 274

Citation : (2021) 05 DEL CK 0141

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

Bench : Division Bench

Advocate : Rohit Jain, Aniket D. Agrawal, Puneet Rai, Adeeba Mujahid, Niharika Rathore

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

CM APPL. 16238/2021

1. Allowed, subject to just exceptions.

CM APPL. 16239/2021

2. The prayer made in the captioned application is to grant exemption from filing requisite court-fee and sworn/notarised/affirmed affidavit(s) along

with the writ petition. The prayer made in the captioned application is allowed, subject to the petitioner depositing the requisite court-fee and filing

sworn/notarised/affirmed affidavit(s), within three days of the resumption of the normal and usual work pattern by this court.

3. The application is, accordingly, disposed of.

W.P.(C) 5277/2021 and CM APPL. 16237/2021

4. Issue notice.

4.1 Mr. Puneet Rai, accepts notice on behalf of the respondents. Mr. Rai says that, in view of the directions that we propose to pass, he does not wish

to file a counter-affidavit/reply and that he would argue the matter based on the record, presently, available before us.

4.2. Given the fact that the respondent no. 1 is located in the National Capital Territory of Delhi [in short â??Delhiâ?], Mr. Rai cannot, but accept,

that this Court would have the jurisdiction in the matter, though, the discretion to entertain the same, would vest with the Court.

4.3. In our view, we are inclined to exercise jurisdiction in the matter, as this would, one way or the other, conclude the matter. It would save time and

expense both, for the revenue, as well as the assessee and lend certainty as to how parties are to proceed further in the matter.

Preface: -

5. This writ petition is directed against the assessment order dated 30.04.2021, passed by respondent no. 1, in exercise of powers under Section 143(3)

read with Section 144B of the Income Tax Act, 1961 (in short 'the Act').

5.1 The impugned assessment order concerns assessment year 2018-2019.

5.2 Apart from the aforesaid, challenge is also laid by the petitioner to the notice of demand dated 30.04.2021 issued under Section 156 and the notice

for initiation of penalty proceedings issued under Section 274 read with Section 270A of the Act of even date, i.e., 30.04.2021.

Background facts:

6. For the disposal of the writ petition, the following relevant facts are required to be noted:

(i) The petitioner had filed its return concerning the aforementioned assessment year, i.e., 2018-2019 on 03.10.2018.

(ii) The petitioner was issued notice under Section 143(2) of the Act on 23.09.2019. Consequently, the petitioner's return was scrutinised pursuant to

the said notice. The petitioner filed its reply on 05.11.2019.

7. Furthermore, the petitioner was also issued notices under Section 142(1) of the Act between 11.12.2020 and 21.01.2021. The petitioner claims that

it had filed replies qua various issues raised in the said notices. 7.1 In this behalf, petitioner has adverted to replies dated 28.12.2020, 14.01.2021, 16.01.2021, 20.01.2021 and 21.01.2021.

7.2 It appears, the petitioner was also served with another notice under Section 142(1) of the Act on 05.03.2021, to which, the petitioner, once again,

claims that replies dated 12.03.2021 and 24.03.2021, were submitted.

8. It is in this background; respondent no. 1 issued a show cause notice-cum-draft assessment dated 22.04.2021. Via this show cause notice, the

petitioner was called upon to file its objections qua the same by 27.04.2021.

9. Pertinently, on 24.04.2021, the Central Board of Direct Taxes (CBDT) extended timelines for certain set of compliances required to be made by

the assesseesâ?? under the Act.

10. Insofar as the assessment proceedings were concerned, the timeline was extended till 30.06.2021.

11. Since the time granted to the petitioner, to respond to the show cause notice dated 22.04.2021, was short, a request for accommodation of

15 days was made by it, via a formal application, on 27.04.2021. The application was submitted through the designated e-portal; the receipt of

application is, thus, not disputed.

11.1 However, it appears that respondent no. 1 neither rejected the request for accommodation, nor did it allow the same, and instead, proceeded to

pass the impugned assessment order dated 30.04.2021.

12. Furthermore, as noted above, respondent no. 1 also issued notice of demand and a notice for initiation of penalty proceedings, via two separate

orders of even date.

13. It is in these circumstances that the petitioner has approached the Court via the instant writ petition.

Submissions on behalf of the petitioner:

14. Mr. Rohit Jain, who appears on behalf of the petitioner, contends that the impugned order has been passed in complete breach of principles of

natural justice.

14.1 It is Mr. Jain's contention that the petitioner had asked for personal hearing via its application dated 27.04.2021, which was not granted, apart

from respondent no. 1â??s unreasonable approach in not accommodating the petitioner, although the limitation for passing the assessment order had

been extended by the CBDT till 30.06.2021.

Submissions on behalf of the respondents:

15. Mr. Puneet Rai, who appears on behalf of the respondents, has contended that, as noted above by the Court, and upon perusal of the record, it is

clear that several opportunities were given to the petitioner to respond qua various issues.

15.1 Mr. Rai, thus, contended that merely because the respondent no. 1 did not respond to the petitionerâ??s request for accommodation made via

the application dated 27.04.2021, it could not be said that there was a breach of principles of natural justice.

Analysis and Reasons:

16. We have heard the learned counsel for the parties and have perused the record.

16.1 According to us, what has emerged clearly is that, a request for accommodation was made by the petitioner on 27.04.2021, wherein a reference

was made to the CBDT circular dated 24.04.2021, whereby, the limitation for passing the assessment order had been extended till 30.06.2021.

16.2 The respondent no. 1, in our opinion, at that juncture, had two options;

(i) First, to decline the request for accommodation; which may, possibly, have been unreasonable, given the fact that the limitation had been extended

till 30.06.2021.

(ii) Second, which was perhaps a more reasonable and equitable option, was to give, if not fifteen days, at least a little leeway to the petitioner to

respond to the show cause notice dated 22.04.2021.

16.3 The submission of Mr. Rai that since a notice under Section 143(2) was issued followed by several notices under Section 142 (1) of the Act, and

therefore, no further time was required to be granted by respondent no. 1 to the petitioner, in our opinion, is a submission that is completely untenable.

16.4. The reason we say so, is that once respondent no. 1 issued a show cause notice-cum-draft assessment order calling upon the petitioner to file its

objections qua the same, this argument cannot be taken on behalf of respondent no. 1 in view of the fact that the impugned show cause notice-cum-

draft assessment order dated 22.04.2021 has brought about a variation in the returned income of the petitioner.

Conclusion:

17. Therefore, for the foregoing reasons, we are inclined to allow the writ petition. It is ordered accordingly. The impugned assessment order, the

notice of demand and the notice for initiation of penalty proceedings, are quashed.

17.1. Liberty is, however, granted to respondent no. 1 to pass a fresh assessment order after giving an opportunity of a personal hearing to the

authorised representative of the petitioner, qua the show cause notice-cum-draft assessment dated 22.04.2021. While granting the personal hearing,

the respondent no. 1 will inter alia bear in mind the provisions of Clauses (vii) to (xii) of Section 144B (7) of the Act.

17.2. Respondent no. 1 will, thus, serve upon the petitioner, a written notice indicating therein, the date and time as to when the hearing will be

convened, albeit via virtual mode, given the fact that the pandemic is raging in Delhi.

17.3. Needless to add, once the assessment proceedings are concluded, a copy of the assessment order will also be served upon the petitioner.

17.4. To hasten the proceedings, the petitioner is directed to file its objections, if any, to the show cause notice-cum-draft assessment order dated

22.04.2021 within seven days of receiving a copy of the order passed today.

18. The writ petition and the pending application are disposed of in the aforesaid terms. Parties will act on the digitally signed copy of the order.