(2021) 08 DEL CK 0138

In the Delhi High Court

Case No : Civil Writ Petition No. 5196 Of 2021, Civil Miscellaneous No. 15967 Of 2021

Saawariya Impex Private Limited APPELLANT

Vs

National E-Assessment Center Delhi RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 143(3A), 143(3B), 144B, 144B(1)(xvi)(b), 144B(9), 156

Citation : (2021) 08 DEL CK 0138

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

Bench : Division Bench

Advocate : Sunil Agarwal, Tushar Gutpa

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 03rd April 2021 passed under Section 143(3) read with Section

143(3A) and 143(3B) of the Income Tax Act, 1961 [the Act] as well as the disputed demand raised under Section 156 of the Act, along with all

consequent proceedings thereto.

3. Learned counsel for the Petitioner states that the Impugned assessment order passed is jurisdictionally flawed and bad in law since it is violative of

the mandatory and binding natural justice requirements stipulated in faceless assessment scheme and relevant CBDT instructions.

4. He emphasises that no mandatory valid show cause notice as well as draft assessment order had been issued to the Petitioner before drawing an

adverse inference against it and creating a tax demand of Rs.92,14,550/-.

5. He relies on para 4 of the Central Board of Direct Taxes instruction no. 20/2015, dated 29th December 2015 which inter alia provides for a fair

opportunity to an Assessee to explain its case and mandates issuance of a show cause notice. The relevant portion of the said instructions no.20/2015

is reproduced hereinbelow:-

4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the

assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle

of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the

proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order

against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the

show-cause notice.

6. Per contra, Mr.Sunil Agarwal, senior standing counsel for the respondent states that principles of natural justice have been complied with in the

present case as adequate notice for the tax demand of Rs.92,14,550/- had been given to the Petitioner, who had also responded to the same by way of

an elaborate reply. In support of his submission, he relies upon the Constitution Bench judgment of the Supreme Court in Managing Director, ECIL,

Hyderabad & Ors. Vs. B. Karunakar & Ors., (1993) 4 SCC 727. The relevant portion of the said judgment is reproduced hereinbelow:-

â??30.[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not

furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the

punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not

furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no

difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been

evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to

be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to

him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the

report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get

all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical

and exasperating limits. It amounts to an â??unnatural expansion of natural justiceâ?? which in itself is antithetical to justice.â??

7. Having heard learned counsel for the parties, this Court is of the view that Section 144B(1)(xvi)(b) of the Act mandatorily provides for issuance of

a prior show cause notice and draft assessment order before issuing the final assessment order. The relevant portions of Section 144B(1)(xvi)(b) as

well as Section 144B(9) of the Act are reproduced hereinbelow:-

â??144B. Faceless assessment â?

(1) xxxx xxxx xxxx

xxxx xxxx xxxx

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy

specified by the Board, including by way of an automated examination tool, whereupon it may decide toâ?

xxxx xxxx xxxx

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice

calling upon him to show cause as to why the proposed variation should not be made; or

xxx xxx xxx

(9) Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under

section 144 in the cases referred to in sub section

(2) [other than the cases transferred under sub-section (8)], on or after the 1st day of April, 2021, shall be non est if such assessment is not

made in accordance with the procedure laid down under this section.â??

8. Since in the present case no prior show cause notice as well as draft assessment order had been issued, there has been a violation of the mandatory

procedure prescribed in law.

9. This Court is also of the view that once the assessment has been done by the respondent No. 1 in accordance with Section 144B of the Act, it has

to be done in accordance with the procedure prescribed therein alone.

10. It is settled law that when power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods

of performance are forbidden. (See: Taylor vs. Taylor, (1875) 1 Ch.D. 426; Nazir vs. King Emperor, AIR 1936 PC 253; and Babu Verghese vs. Bar

Council of Kerala, (1999) 3 SCC 422)

11. Consequently, even if it is assumed that the principles of natural justice have been complied with in the present case, then also the mandate of the

statute would have to be complied with.

12. Keeping in view the aforesaid, the impugned assessment order dated 03rd April 2021 passed under Section 143(3) read with Section 143(3A) and

143(3B) of the Act and disputed demand raised under Section 156 of the Act, are set aside and the matter is remanded back to the Assessing Officer,

who shall issue a show cause notice and draft assessment order and thereafter pass a reasoned order in accordance with law.

13. With the aforesaid direction, the present writ petition along with pending application stands disposed of.

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