(2021) 07 DEL CK 0063

In the Delhi High Court

Case No : Civil Writ Petition No. 6272 Of 2021, Civil Miscellaneous Application No. 19818-19 Of 2021

SDS Infratech Private Limited APPELLANT

Vs

National Faceless Assessment Centre Delhi, New Delhi RESPONDENT

Date of Decision : 09-07-2021

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

Citation : (2021) 07 DEL CK 0063

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

Bench : Division Bench

Advocate : Kapil Goel, Sandeep Goel, Dhananjay Garg, Ruchir Bhatia

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 21st April 2021 passed by the Respondent and seeking directions

thereby prohibiting the Respondent from collecting the demand raised by the Respondent.

3. Learned counsel for the Petitioner states that the impugned assessment order is challenged on the ground of violation of principle of natural justice

as no Video Conferencing or oral hearing opportunity was provided to petitioner despite specific request made vide communication dated 21st April

2021 as mandated in relevant statutory norms and Central Board of Direct Taxes (CBDT) instructions. He emphasises that serious injustice has been

caused to petitioner by not providing a fair opportunity of Video Conferencing to the petitioner or oral hearing, prior to closure/finalization of impugned tax assessment

4. He points out that the petitioner has no other efficacious alternative remedy but to approach this Court and relies on the Supreme Court judgment in

the case of Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd in Civil Appeal No. 8129 of 2019 amongst

others.

5. Issue notice. Mr. Ruchir Bhatia, Advocate accepts notice on behalf of Department of Revenue.

6. Mr.Bhatia states that the expression used in clause (vii) of sub-section (7) of Section 144B is â??mayâ?? and not â??shallâ?? and therefore, there

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

7. Having heard learned counsel for the parties, this Court is of the view that Section 144B (7) provides for a personal hearing. The relevant port ion

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??

8. 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??

9. Keeping in view the aforesaid facts and mandates of law, the impugned assessment order dated 21st April, 2021 is 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 an order in accordance with law. With the aforesaid direct ion, the present writ petition along with pending applications stand disposed of.

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