(2021) 08 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Petition No. 6802 Of 2021, Civil Miscellaneous No. 21455-21456 Of 2021

Sudev Industries Ltd — APPELLANT

Vs

National Faceless Assessment Centre Delhi (Earlier National E-Assessment Centre Delhi) & Anr — RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:
Income Tax Act, 1961 — Section 144, 144B(7), 144B(7)(vii), 144B(7)(viii), 144B(7)(xii)(h), 144B(9), 156, 254, 271(1)(b), 271(1)(c)

Citation : (2021) 08 DEL CK 0009

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

Bench : Division Bench

Advocate : Kavita Jha, Udit Naresh, Puneet Rai, Adeeba Mujahid

Final Decision : Disposed Of

Judgement

Manmohan, J

1. The present writ petition has been filed challenging the assessment order dated 13th May, 2021 under Section 144 read with Section 254 of the

Income Tax Act (hereinafter referred to as the 'Act') and the accompanying notice of demand under Section 156 of the Act and notices of initiation of

penalty proceedings under Section 271(1) (b) and 271(1)(c), in the case of the petitioner for the Assessment Year 1995-96.

2. Learned counsel for the petitioner submits that the Impugned Order and the accompanying notice issued by the respondents are patently illegal, bad

in law, issued without application of mind and the same are against the principles of natural justice.

3. Learned counsel for the petitioner submits that the Impugned Assessment order has been finalized without issuing prior notice as well as draft

Assessment Order and without affording an opportunity of being heard to the petitioner as well as without considering the adjournment

application/letter filed by the petitioner. She also emphasizes that the Chartered Accountant and his entire family were suffering from Covid-19

pandemic during the relevant time and therefore, the petitioner did not have adequate opportunity to file his response.

4. On the last date of hearing, Mr.Puneet Rai, learned senior Standing Counsel had taken time to obtain instructions. He states that the jurisdictional

assessing officer has not been able to access the petitionerâ??s portal and therefore, he is not in a position to state as to whether the draft

Assessment Order had been issued to the petitioner or not. He however, does not deny that opportunity of hearing was not granted to the petitioner.

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

prior show cause notice and draft Assessment Order before issuing the final Assessment Order. The said Section also provides for an opportunity of

personal hearing, if requested, by the assessee. The relevant portions of Section 144B (7) and (9) are reproduced hereinbelow:

â??144B. Faceless assessment â?

(1) xxxx xxxx xxxx

(7) For the purposes of faceless assessmentâ?

xxxxxxxxxxxx

(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);

xxxx xxxx xxxx xxxx

(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?

xxxx xxxx xxxx xxxx

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

xxxx xxxx xxxx xxxx

(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??

6. The learned Predecessor Division Bench in Sanjay Aggarwal vs. National Faceless Assessment Centre Delhi in WP(C) No.5741/2021 while

interpreting the aforesaid Section has held that it was incumbent upon the respondent/Revenue to accord a personal hearing to the petitioner. The

relevant portion of the said judgment is reproduced hereinbelow:

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 'may' or our minds, cannot absolve the

respondent/revenue from the obligation caste 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 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.

7. Since in the present case, the Assessing Officer has proceeded to pass the impugned Assessment Order without dealing with the request of the

petitioner for adjournment, this Court is of the view that there has been a violation of principles of natural justice.

8. Keeping in view the aforesaid, the impugned Assessment Order dated 13th May, 2021, the notice of demand and penalty notices for the

Assessment Year 1995-96 are set aside and the matter is remanded back to the Assessing Officer, who shall grant an opportunity of personal hearing

to the petitioner by way of Video Conferencing after serving a copy of the draft Assessment Order, and thereafter pass a reasoned order in

accordance with law.

9. With the aforesaid direction, the present writ petition along with pending applications stands 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.