(2021) 06 DEL CK 0068

In the Delhi High Court

Case No : Civil Writ Petition No. 5422 Of 2021, Civil Miscellaneous Application No. 16813 Of 2021

Sudhir Desh Ahuja APPELLANT

Vs

National Faceless Assessment Centre & Ors RESPONDENT

Date of Decision : 02-06-2021

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 143(3), 144B, 156, 270A, 271AAC(1), 274

Citation : (2021) 06 DEL CK 0068

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

Bench : Division Bench

Advocate : Asheesh Jain, Parveen Jain, Adarsh Kumar Gupta, Shlok Chandra, Ruchir Bhatia

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. The captioned writ petition was placed before us for hearing, for the first time, on 21.05.2021. On that date, the following relevant facts, regarding

the merits of the case, were recorded:

â??3. The petitioner has assailed the assessment order dated 22.04.2021, as also the notice of demand and notice for initiation of penalty

proceedings.

4. The principal submission of the petitioner is that there has been a breach of principles of natural justice.

5. According to the petitioner, a show cause notice-cum-draft assessment order was issued to him on 16.04.2021 whereby time was granted

to file response/objections by 23:59 hours on 19.04.2021.

6. The petitioner claims that a preliminary reply was sent to the assessing officer, wherein, the difficulty faced by him was articulated. It was

indicated that the petitioner would not be able to file a reply on merits, [although all queries qua the notice issued under Section 142(1) of

the Income Tax Act, 1961 (in short the â??Actâ?) had been replied to], on account of his wife and son being admitted to a hospital on

12.04.2021 and 14.04.2021 respectively.

7. The burden of this reply filed by the petitioner was that, because of these circumstances, petitioner had quarantined himself, and was not

able to collate the necessary documents to furnish a detailed reply.

8. Besides this, it is averred that the petitioner, on 28.04.2021, also filed a reply to the notice issued for initiation of penalty proceedings

under Section 270A of the Act.

9. We are also informed, in the interregnum, the petitioner had filed a detailed reply to the show cause notice-cum-draft assessment order,

dated 22.04.2021.

10. Given the foregoing circumstances, the petitioner, it appears, was constrained to approach this Court for appropriate relief.

11. We may note that Mr. Shlok Chandra, who appears on advance notice on behalf of the respondents/revenue, says that he will revert

with instructions.

12. Accordingly, issue notice.

13. Mr. Shlok Chandra accepts notice.

14. In case Mr. Chandra receives instructions to resist the petition, he shall file a counter affidavit before the next date of hearing.

15. List the matter on 02.06.2021.

16. In the meanwhile, there shall be a stay on the operation of the orders impugned in the instant matter.â??

2. Mr. Shlok Chandra, who appears on behalf of the revenue, says that although the counter-affidavit has not been filed, he has instructions to argue

the matter based on the record currently available.

3. We have queried Mr. Chandra as to whether the facts, as indicated in our order dated 21.05.2021, are in dispute. Mr. Chandra says that though the

facts are not in dispute, what has emerged from the record is that the petitioner had not expressly requested for a personal hearing in the matter.

4. Mr. Asheesh Jain, who appears on behalf of the petitioner, on the other hand, has submitted that since the timeframe given for filing the response to

the show cause notice-cum-draft assessment order dated 16.04.2021 was narrow; a request was made for accommodation on 19.04.2021.

4.1. It is also submitted by Mr. Jain that the said request was not dealt with by the Assessing Officer (in short â??AOâ?). Besides this, Mr. Jain says

that this request was made on account of the fact (something that has already been recorded in our order dated 21.05.2021) that the petitionerâ??s

wife and son were admitted to the hospital on 12.04.2021 and 14.04.2021, respectively.

4.2. It is Mr. Jainâ??s submission that the wife and son of the petitioner were admitted to hospital as they had been afflicted with Coronavirus, which

led to the petitioner having to quarantine himself.

4.3. According to Mr. Jain, these circumstances put the petitioner in difficulty, whereby, he was not able to collate the relevant documents which were

necessary to file a reply by 23:59 hours on 19.04.2021.

5. As noted in our aforementioned order, the petitioner did, in fact, file a reply, albeit on 22.04.2021, followed by a reply to the notice for initiation of

penalty proceedings, which was filed, on 28.04.2021.

5.1. As noted by us, the aforementioned facts are not in dispute. In any event, these assertions are supported by an affidavit, qua which, no counter-

affidavit has been filed on behalf of the respondent/revenue.

5.2. Given the aforesaid circumstances, we are of the view that the impugned orders are liable to be set aside for the following reasons:

(i) Firstly, the AO failed to deal with the request of the petitioner, for according an adjournment in the matter.

(ii) Secondly, in any event, the petitionerâ??s case has been that, given his difficulty, he was not in a position to file a response/objection to the show

cause notice-cum-draft assessment order by 19.04.2021.

6. Therefore, as indicated hereinabove by us, we are of the view that the impugned assessment order, passed by respondent/revenue under Section

143(3) read with Section 144B of the Income Tax Act, 1961 (in short â??the Actâ?), dated 22.04.2021, and notice of demand issued under Section

156 of the Act, as well as notices for initiating penalty proceedings issued under Section 274 read with Section 270A, and Section 271AAC(1) of the

Act, should be set aside, with liberty to the AO to pass a fresh order, after considering the reply/objections of the petitioner. It is ordered accordingly.

6.1. Furthermore, the AO is also directed to accord a personal hearing to the petitioner and/or his authorized representative. The AO will intimate to

the petitioner, the date and time fixed, for personal hearing, via his registered e-mail ID. The AO will also send the link to the petitioner, for the said

purpose.

7. The petition and the pending application are disposed of, in the aforesaid terms.