(2021) 05 DEL CK 0194

In the Delhi High Court

Case No : Civil Writ Petition No. 5552 Of 2021

YCD Industries APPELLANT

Vs

National Faceless Assessment Centre, Delhi RESPONDENT

Date of Decision : 27-05-2021

Acts Referred:

Income Tax Act, 1961 — Section 115BBEE, 142(1), 143(2), 144B, 144B(1)(xiv), 144B(1)(xv), 144B(1)(xvi)(b), 144B(1)(xxii), 156, 270A, 274

Citation : (2021) 05 DEL CK 0194

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

Bench : Division Bench

Advocate : Deepkaran Dalal, Ruchir Bhatia

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

CM APPL. 17212/2021

1. Allowed, subject to just exceptions.

CM APPL. 17213/2021

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

captioned application is disposed of with a direction to the petitioner to place on record the duly sworn/notarised/affirmed affidavit and to deposit the

requisite court-fee, within three days of the resumption of the normal and usual work pattern by this court.

W.P.(C) 5552/2021 and CM APPL. 17211/2021 [Application filed on behalf of petitioner, under Section 151 of Code of Civil Procedure,

1908, seeking stay on the operation of order passed by respondent, dated

20.04.2021]

3. The principal grievance of the petitioner, is that, contrary to the mandate of Section 144B of the Income Tax Act, 1961 (in short, â??the Actâ??),

and the Faceless Assessment Scheme, 2019 (in short, â??the Schemeâ??), no show cause notice-cum-draft assessment order was served on the

petitioner, before the passing of the impugned assessment order dated 20.04.2021, as also the impugned notices issued under Section 156 and Section

274 read with Section 270A of the Act, of even date.

4. Issue notice.

5. Mr. Ruchir Bhatia, accepts notice on behalf of the respondent/revenue.

5.1. Mr. Bhatia says that, in view of the directions that we propose to pass, he does not wish to file a reply and will argue the matter based on the

record, presently, available with the Court.

6. Accordingly, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal.

7. The record shows that the petitioner had filed his return qua the Assessment Year (AY) 2018-2019 on 30.10.2018. Via this return, the petitioner

had declared a loss of Rs.58,43,378/-.

8. It appears that the petitioner was issued a notice under Section 143(2) of the Act, on 22.09.2019.

9. Furthermore, it is the petitioner's case that it was informed, on 15.10.2020, that the assessment would be completed under the Scheme.

10. It is also the petitioner's case that notice, under Section 142(1) of the Act was issued on 09.12.2020, to which, the petitioner filed a reply dated

07.01.2021, followed by an additional reply dated 18.01.2021.

11. It appears, thereafter, that the respondent/revenue directed the petitioner, via notice dated 08.02.2021, to explain its position, with regard to the

unsecured loan and the increase in share capital and share application money, qua the assessment year in issue. In sum, the petitioner was required to

satisfy the respondent/revenue as to the genuineness of these transactions.

12. The petitioner claims that necessary information was submitted to the respondent/revenue, on 20.02.2021.

13. It appears that respondent no. 2, thereafter, passed the impugned assessment order on 20.04.2021.

13.1. Via the impugned assessment order, an addition of Rs.90,25,535/- was made to the petitioner's declared loss.

13.2. Furthermore, the petitioner was assessed to tax under Section 115BBEE of the Act.

13.3. The petitioner's income, chargeable to tax, was pegged at Rs.90,00,000. Consequently, according to the petitioner, a tax demand, which included

demand towards interest, was crystalized as Rs.81,43,220.

14. Mr. Bhatia, who appears on behalf of the respondent/revenue says that, before issuance of the impugned assessment order, several opportunities

were given, and therefore, the case set up on behalf of the petitioner that there has been a breach of principles of natural justice, is not tenable.

15. Mr. Deepkaran Dalal, who appears on behalf of the petitioner, contends to the contrary.

16. Having heard the learned counsel for the parties and perused the record, in our view, the principles of natural justice have been violated in this

case. The reason why we say so is set forth hereafter.

16.1. The statute [i.e., Section 144B(1)(xiv), (xv), (xvi)(b) and (xxii)] provides for issuance of a show cause notice-cum-draft assessment order, and

an opportunity to the petitioner/assessee to respond to the same where income of the assessee is varied by the respondent/revenue. Admittedly, the

petitionerâ??s income was varied to its prejudice with the addition of Rs. 90,25,535/-. As a matter of fact, had the show cause notice cum draft

assessment been served on the petitioner, its authorised representative could have requested for a personal hearing in the matter. The respondent/

revenue, to our minds, could not have side-stepped such safeguards put in place by the legislature.

16.2. The justification proffered by Mr. Bhatia that notices were issued prior to the passing of the impugned assessment order, does not impress us.

This submission flies in the face of the schematic design of the statute.

17. Accordingly, the impugned assessment order and the notice issued under Section 156 and Section 270A read with Section 274 of the Act are set

aside.

18. Liberty is, however, given to the respondent/revenue to pass a fresh assessment order, albeit, as per law.

18.1. The respondent/revenue will grant a personal hearing to the authorised representative of the petitioner.

18.2. For this purpose, the respondent/revenue will convene a hearing via videoconferencing mechanism.

18.3. The respondent/revenue will also indicate the date and time of the hearing, well in advance, to the petitioner via its registered e-mail id.

19. The writ petition is disposed of in the aforesaid terms. The pending application shall stand closed.

