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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4989/2021**

DAR HOUSING LIMITED

..... Petitioner

Through: Mr. Ruchesh Sinha, Advocate.

versus

**NATIONAL E ASSESSMENT CENTRE DELHI
& ANR.**

.... Respondents

Through: Mr. Sanjay Kumar, Advocate.

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Date of Decision: 08th September, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN,J: (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the impugned assessment order dated 15th April, 2021 passed by the Respondents under Section 143(3) read with Sections 143(3A) & 143(3B) of Income Tax Act, 1961 for the Assessment Year 2018-19 in the case of the Petitioner.
3. Learned counsel for the Petitioner states that the impugned assessment order has been passed without affording the petitioner due opportunity of being heard despite the Petitioner seeking a personal hearing.
4. He also states that a show cause notice dated 06th April, 2021 was issued to the Petitioner stating as to why the addition of Rs. 7,98,32,462/-

pertaining to credit notes and of Rs. 5,32,00,000/- pertaining to interest on debentures should not be made in the ongoing assessment proceedings. He states that since the Petitioner was given time to reply to the said notice by 23:59 hours of 10th April, 2021, an adjournment was sought as the concerned Chartered Accountant had been diagnosed with Covid-19. He points out that subsequently, the income tax portal showed the next date of compliance as 15th April, 2021. He points out that the Petitioner filed a detailed reply on 15th April, 2021 to the aforesaid show cause notice dated 6th April, 2021 vide its reply dated 08th April, 2021 and specifically requested that in terms of the Faceless Assessment Scheme, a virtual hearing be granted to it through Video Conference, as the Petitioner wanted to present his case before the Respondent. He contends that on the very same date i.e. on 15th April, 2021, in violation of principles of natural justice and, without providing any video conferencing to the Petitioner as envisaged under Section 144B(7)(vii) of the Act and without considering the submission made by the Petitioner in reply to the show cause notice, the impugned assessment order under Section 143(3) read with sections 143(3A) & 143(3B) of the Income Tax Act was passed in the case of Petitioner making an aggregate addition of Rs. 13,30,32,462/- in an arbitrary manner and raising a huge demand of Rs. 5,25,87,030/-.

5. *Per Contra*, Mr. Sanjay Kumar, learned counsel for the Respondents, states that the expression used in clause (vii) of sub-section (7) of Section 144B of the Act is 'may' and not 'shall' and therefore, there is no vested right in the petitioner to claim a personal hearing.

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

of Sections 144B (7) and 144B(9) are reproduced hereinbelow:-

“144B. Faceless assessment –

(1) xxx xxx xxx

(7) For the purposes of faceless assessment—

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:—

xxx xxx xxx

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

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.

7. 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:-

“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’, 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.”

8. Keeping in view the aforesaid facts and mandate of law, the impugned assessment order dated 15th April, 2021 passed by the Respondents under

Section 143(3) read with Sections 143(3A) & 143(3B) of the Act for the Assessment Year 2018-19 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 Video Conferencing and thereafter pass a reasoned order in accordance with law.

9. With the aforesaid direction, 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.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 8, 2021
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