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

\+ W.P.(C) 5377/2021

DEVANSHU INFIN LIMITED ..... Petitioner
Through Mr.Salil Kapoor, Ms.Ananya Kapoor, Ms. Soumya Singh, Mr.Sanat Kapoor, Mr.Sumit Lalchandani, Advs.

versus

NATIONAL E-ASSESSMENT CENTRE, DELHI ..... Respondent
Through Mr. Kunal Sharma, Advocate.

% Date of Decision: 26th August, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the assessment order dated 29th April, 2021 passed under Section 144(3) read with Section 144B of the Income Tax Act (hereinafter referred to as the 'Act') for AY 2018-19.

3. Learned counsel for the petitioner states that respondent issued the Show Cause Notice dated 07th April, 2021 giving the petitioner a very short time to submit its reply i.e. by 09th April, 2021 at 23:59 hours. She states that the petitioner filed a request for adjournment dated 09th April, 2021

requesting time till 13th April, 2021 for filing the reply. She points out that on 13th April, 2021 the petitioner filed a detailed response and requested for personal hearing through video conferencing. She submits that without providing any personal hearing as categorically requested by the petitioner in its reply dated 13th April, 2021, the respondent passed the impugned assessment order dated 29th April, 2021.

4. Per contra, Mr. Kunal Sharma, learned counsel for respondent states that the petitioner who had been given time to file reply-affidavit by 09th April, 2021, did not seek personal hearing on or before the said date.

5. In rejoinder, learned counsel for the petitioner has drawn this Court's attention to the screen shot of the e-filing portal where the petitioner uploaded its adjournment request with the respondent. She points out that e-filing portal clearly gave time till 15th April, 2021 to the petitioner to file its response to the show cause notice.

6. Having heard the learned counsel for the parties, this Court is of the view that as the e-filing portal gave time to the petitioner to file reply-affidavit till 15th April, 2021 and the petitioner in its reply-affidavit dated 13th April, 2021 had requested for a personal hearing, it was incumbent upon the respondent to have granted personal hearing through video conferencing.

7. This Court is further of the opinion that Section 144B(7) of the Act mandatorily provides for an opportunity of personal hearing, if requested, by the assessee. The relevant portions of Section 144B (7) and (9) are reproduced hereinbelow:

> *"144B. Faceless assessment –*
> *(1) xxxx xxxx xxxx*
> *(7) For the purposes of faceless assessment—*
> *xxxx xxxx xxxx*

(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: —

xxxx xxxx xxxx xxxx

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

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.”*

8. 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.*
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> *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.*
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> *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.*
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> *12.1 The net impact of this infraction would be that, the impugned orders will have to be set aside. It is ordered accordingly."*

9. Keeping in view the aforesaid, the impugned assessment order dated 29th April, 2021 is set aside and the matter is remanded back to the Assessing Officer who shall grant an opportunity of personal hearing by way of video conferencing and thereafter pass a reasoned order in accordance

with law.

10. With the aforesaid direction, present writ petition along with pending application stands disposed of.

11. 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

AUGUST 26, 2021
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