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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 02.06.2021

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W.P.(C) 5422/2021 & CM APPL. 16813/2021

SUDHIR DESH AHUJA

..... Petitioner

Through : Mr. Asheesh Jain, Advocate with Mr.
Parveen Jain and Mr. Adarsh Kumar
Gupta, Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ORS.

..... Respondents

Through : Mr. Shlok Chandra, Junior Standing
Counsel for Mr. Ruchir Bhatia, Senior
Standing Counsel, for Revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

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:

“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 “Act”) 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.”

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 “AO”). 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 petitioner’s wife and son were admitted to the hospital on 12.04.2021 and 14.04.2021, respectively.

4.2. It is Mr. Jain’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 petitioner'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 "the Act"), 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.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JUNE 2, 2021

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Click here to check corrigendum, if any