

\$~14(2021)

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

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Decision delivered on: 06.08.2021

+ **W.P.(C) 5535/2021, CM 17160-61/2021**

MODICARE FOUNDATION

..... Petitioner

Through: Mr. Rohit Jain and Mr. Aniket D.
Aggarwal, Advocates.

versus

**NATIONAL FACELESS ASSESSMENT CENTRE DELHI
(EARLIER NATIONAL E-ASSESSMENT CENTRE DELHI) &
ANR.**

..... Respondents

Through: Mr. Abhishek Maratha, Senior
Standing Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

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

1. This writ petition is directed against the assessment order dated 15.04.2021, passed under Section 143(3) read with Section 144B of the Income Tax Act 1961 (in short "the Act"), concerning assessment year (AY) 2018-2019.

1.1. Besides this, the assessee has also assailed the notice of demand, issued under Section 156 of the Act and the notice issued for initiating penalty proceedings, under Section 270A of the Act, dated 15.04.2021.

2. Notice in this writ petition was issued on 28.05.2021, when operation of the impugned assessment order, dated 15.04.2021, was stayed.

2.1. The principal grievance, which is articulated before us, on behalf of the petitioner, is that, although, the impugned assessment order has varied the taxable income to the detriment of the petitioner, no show cause notice-cum-draft assessment order was issued, as was required under the legislative/statutory scheme, which is prevalent in that behalf.

2.2. The respondents (hereafter referred to as “revenue”) have failed to file a counter-affidavit in the matter, though an opportunity was granted, in that behalf, on 28.05.2021. Counsel for the revenue has chosen to argue the matter based on the record presently available with the Court.

2.3. As is evident upon a bare perusal of the impugned assessment order dated 15.04.2021, the assessment was carried out in this case under the E-assessment Scheme, 2019 [renamed, Faceless Assessment Scheme, 2019, hereafter referred to as ‘2019 Scheme’], as amended by the Faceless Assessment (1st Amendment) Scheme, 2021 [hereafter referred to as ‘2021 Scheme’]. The 2019 Scheme was framed and notified by the Central Government in exercise of its powers under Section 143(3A) of the Act. Subsection 3A to subsection 3C were inserted in Section 143 of the Act via Finance Act, 2018, with effect from, 01.04.2018. However, with the enactment of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [in short “2020 Act”], subsection 3D was inserted in Section 143, whereby, it was provided that “Nothing contained in sub-section (3A) and sub-section (3B) shall apply to the assessment made under sub-section (3) or under section 144, as the case may be, on or after the 1st day of April, 2021”. The provisions of Section 143(3D), thus, kicked in on 01.04.2021. Almost simultaneously, the Central Board of Direct Taxes, vide Order F. NO. 187/3/2020-ITA-I dated 31.03.2021, provided

2.4. Given this backdrop, it would be relevant to note that, the provisions contained in sub-clauses (b) and (c) of clause (xvi) of Section 5(1) of the 2019 Scheme as also the Central Board of Direct Tax (CBDT) Instruction No. 20/2015, dated 29.12.2015, required the revenue to grant an opportunity to the assessee to respond, in case, additions or disallowances were proposed vis-a-vis the assessee's taxable income.

“(xvi) the National e-Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to –

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or

“4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed

additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show-cause notice.”

2.6. It is also relevant to note that, the aforementioned scheme, i.e., 2019 Scheme [as amended by 2021 Scheme] has been incorporated, substantially, in Section 144B of the Act.

2.7. Therefore, sub-clauses (b) and (c) of clause (xvi) of Section 5(1) of the 2019 Scheme, read with Section 144B(7)(vii)¹ of the Act, oblige the revenue, to follow the principles of natural justice, where there is a variation made in the taxable income to the prejudice of the assessee. [See *Ritnand Balved Education Foundation vs. National Faceless Assessment Centre*²,

¹ "144B. Faceless assessment -

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(7) For the purposes of faceless assessment—

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(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;”

² “7.2 As would be evident, this provision [i.e., Section 144B(7)(vii) of the Act] would squarely apply in this case, as a specific request for personal hearing was made on behalf of the petitioner. The request made by the petitioner is contained in its communication dated 23-4-2021, appended on page 324 of the paper book [See Annexure P-29 (Colly)].

7.3 We may also note that, in the Lemon Tree Case, we had queried Ms. Malhotra as to whether any standards, procedures and processes have been framed by revenue in terms of sub-clause (h) of clause (xii) of Section 144B(7) of the Act. Ms. Malhotra had informed us that, in this regard, she had no instructions. We have queried Ms. Malhotra, once again today. Ms. Malhotra says that she has, still, not received any instructions in that regard.

[2021] 127 taxmann.com 627 (Delhi)]

3. A perusal of the impugned assessment order would show that, variation has been made in the taxable income to the prejudice of the assessee.

3.1. The record shows that, the assessee had claimed exemptions under Section 11/12 of the Act, and thus, declared its income in the relevant AY i.e., 2018-2019, as “Nil”.

3.2. The Assessing Officer (in short ‘AO’), via the impugned assessment order dated 15.04.2021, has made an addition of Rs. 75,79,981/- to the taxable income of the assessee. Thus, the assessee has been assessed at Rs. 75,79,980/- (rounded off).

3.3. In view of this, it is evident that variation was made to declared taxable income of the assessee which, as noticed above, was Nil, albeit, without issuance of a show cause notice-cum-draft assessment order. Admittedly, the assessee had no opportunity to respond to the additions made.

4. Given these admitted circumstances, the impugned assessment order as also the consequential notices, issued under Section 156 and 270A of the Act, dated 15.04.2021, would have to be set aside. It is ordered accordingly.

4.1. Liberty, however, is granted to the revenue to take next steps in the

7.4 Therefore, we have to presume that, no standards, procedures and processes have been framed in terms of clause (xii) Section 144B(7) of the Act. These standards, procedures and processes are required to be framed, to guide the assessing officer as to whether or not personal hearing in a given matter should be granted.

7.5 That apart, in our view, since the statute itself makes the provision for grant of personal hearing, the respondents/revenue cannot veer away from the same.

8. Accordingly, the impugned assessment order as well as the impugned notice of demand and notice for initiating penalty proceedings, of even date, i.e., 29-4-2021, are set aside.”

matter, in accordance with the law.

5. The writ petition and the pending applications are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 06, 2021

mr

[Click here to check corrigendum, if any](#)

