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

\+ **W.P.(C) 6646/2021 & CM APPL. 20902-03/2021**

PUNJAB AND SIND BANK ..... Petitioner

Through: Mr.Salil Kapoor, Mr.Sumit Lalchandani, Ms.Ananya Kapoor & Ms.Soumya Singh, Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE-EARLIER KNOWN AS NATIONAL E-ASSESSMENT CENTRE

..... Respondent

Through: Mr.Puneet Rai, Sr. Standing Counsel for Income Tax Department.

% Date of Decision: 16th July, 2021.

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

JUDGMENT

MANMOHAN, J: (Oral)

1. The hearing has been conducted through video conferencing.

2. Present writ petition has been filed challenging the assessment order dated 22nd June 2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [for short 'the Act'], notice of demand dated 22nd June 2021 passed under Section 156 of the Act and notice for penalty dated 22nd June 2021 passed under Section 274 read with Section 270A of the Act for the Assessment Year [AY]

2018-19. Petitioner also seeks a direction to restrain the respondents from giving effect to the impugned assessment orders and notices.

3. Learned counsel for the Petitioner states that vide Show Cause Notice dated 22nd April 2021, the Respondent gave the Petitioner very short time to submit its reply, i.e. by 25th April 2021, 23:59 hours.

4. He states that subsequently, the Petitioner made request to the Respondent for grant of adjournment for fifteen days as the time allowed was too short taking into consideration the complexity of the issue and the prevalent lockdown, due to which the employees were not able to reach their place of work.

5. He states that the adjournment as sought by the Petitioner was granted whereby the time to file submissions was extended to 26th May 2021.

6. He points out that the Petitioner vide response dated 25th May 2021, in addition to a detailed reply, categorically requested for grant of personal hearing to explain its case. However, neither the response was considered nor a personal hearing was granted and in fact the respondent passed the impugned order dated 22nd June, 2021.

7. He submits that the said impugned order and notices have been passed without proper appreciation of the facts of the present case and without affording the Petitioner an opportunity of hearing, which is in gross violation of principles of natural justice and therefore is not in accordance with the provisions of the Act, i.e., clause (vii) of sub-section (1) of Section 144B and Section 144B (7) as well as provisions of the Scheme.

8. He further adds that the reason given by Respondent while

passing the impugned assessment order for not considering the detailed submission/objection filed by the petitioner, namely, that it was without a covering letter, was not warranted and is against the basic purpose for which faceless assessment was introduced.

9. Issue notice. Mr.Puneet Rai, learned senior standing counsel accepts notice on behalf of respondent.

10. Mr.Rai states that the expression used in clause (vii) of sub-Section (7) of Section 144B is 'may' and not 'shall' and therefore, there is no vested right in the petitioner to claim a personal hearing.

11. 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 Section 144B (7) is reproduced hereinbelow: -

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

12. 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."

13. Keeping in view the aforesaid facts and mandate of law, the impugned assessment order dated 22nd June 2021, notice of demand dated 22nd June 2021 passed under Section 156 of the Act and notice for penalty dated 22nd June 2021 are set aside and the matter is remanded back to the Assessing Officer, who shall grant an opportunity of personal hearing to the petitioner by way of a Video Conferencing and thereafter pass a reasoned order in accordance with law.

14. With the aforesaid direction, the present writ petition along with pending applications stands disposed of.

15. 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

JULY 16, 2021/*rv*