

\$~S-33

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

+ **W.P.(C) 6669/2021 & CM APPL. 21004-005/2021**

CIVITECH DEVELOPERS PRIVATE LIMITED Petitioner

Through: **Ms. Lakshmi Gurung, Advocate with
Mr. R. Ramachandra, Advocate.**

versus

**NATIONAL E-ASSESSMENT CENTRE,
NEW DELHI**

.....Respondent

Through: **Mr. Zoheb Hossain, Advocate.**

%

Date of Decision: 22nd July, 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 assessment order dated 22nd April, 2021 passed by the Respondent under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (for short “the Act”) for Assessment Year 2018-2019.
3. Learned counsel for the Petitioner states that the Petitioner is in the business of real estate projects and during the assessment year 2018-19, the case of the Petitioner was selected for scrutiny through CASS to examine the issue “Income from Real Estate Business”.
4. She states that the Petitioner replied to all the notices issued by the

Respondent and submitted the evidence. However, subsequently, a show cause notice dated 24th February, 2021, proposing to make addition of Rs. 1,46,34,047/- (Rupees One Crore Forty Six Lakhs Thirty Four Thousand and Forty Seven Only) was served to which the Petitioner filed a response and sought personal hearing through video conferencing.

5. She points out that another notice dated 10th March, 2021 was served with the draft assessment order reducing the addition to Rs. 1,23,12,479/- (Rupees One Crore Twenty Three Lakhs Twelve Thousand Four Hundred and Seventy Nine) to which the Petitioner filed a detailed reply with documents and again sought a personal hearing through video conferencing to explain the issue to the Assessing Officer in correct perspective with the layout plan and the disputed land and the Towers which were still incomplete.

6. She states that the petitioner was asked to request for personal hearing through a video link which would be enabled. However, despite repeated attempts, the personal hearing/Video Conference link was not enabled and option was not available and the petitioner brought this to the notice of the Respondent on 16th April, 2021 and requested to enable the Video Conference Link but the same was not enabled and the Petitioner did not get a personal hearing. She emphasises that in the absence of the personal hearing, the Assessing Officer did not understand the complex issue or the written submissions filed by the Petitioner.

7. Issue notice.

8. Mr. Zoheb Hossain, learned counsel for respondent accepts notice. He states that though the respondent repeatedly requested the petitioner to submit its request for personal hearing through the e-portal, yet no formal

request for personal hearing was placed on the e-portal. In support of his contention, he relies upon the orders dated 15th April, 2021 and 19th April, 2021 passed by the respondent.

9. Having heard learned counsel for the parties, this Court is of the view that Section 144B (7) provides an opportunity for a personal hearing, if requested by the assessee. The relevant portion of Section 144B (7) and 144B (9) are 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; ”

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.”

10. The learned Predecessor Division Bench in **Sanjay Aggarwal v. National Faceless Assessment Centre Delhi** in **W.P. (C) 5741/2021**, while interpreting the aforesaid Sections has held that it is 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’, 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.”

11. This Court is of the view that as the option to opt for personal hearing was not enabled, the petitioner due to technical glitches could not request for personal hearing on the e-portal. Consequently, it cannot be said that the petitioner did not opt for personal hearing in the present case.

12. Keeping in view the aforesaid, the impugned assessment order dated 22nd April, 2021 along with the consequential demand and penalty notice is 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 Video Conferencing and thereafter pass a reasoned order in accordance with law.

13. With the aforesaid direction, the present writ petition along with pending applications stand disposed of.

14. 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 22, 2021/TS