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

+ **W.P.(C) 6696/2021**

**M/ S EXPERT CAPITAL SERVICES
PRIVATE LIMITED**

..... Petitioner

Through: Mr. Akhilesh Kumar, Advocate with
Mr. Pushkar Pandey, Advocate.

versus

**NATIONAL FACELESS ASSESSMENT
CENTRE**

.... Respondent

Through: Mr. Sanjay Kumar, Advocate with
Ms. Easha Kadiyan, Advocate.

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Date of Decision: 19th 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 present petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the assessment order and notice of demand dated 30th April 2021. Petitioner also seeks directions to restrain the Respondent from giving effect to the impugned assessment orders and notices.
3. Learned counsel for the Petitioner states that vide show cause notice-cum-draft assessment order dated 23rd April 2021 respondent set the date of compliance as 26th April, 2021 with a proposal to vary the declared income by making substantial additions on account of unsecured loans of 33 lenders.

He states that Petitioner filed objections against the show cause notice within the short time allowed and requested for grant of personal hearing in terms of Section 144B(7)(vii) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') to demonstrate the material not considered in show cause notice and explain the evidence filed, which was neither allowed nor rejected by the respondent.

4. He points out that on 24th April 2021, the CBDT had extended timeline for completing assessment till 30th June 2021 but the respondent passed the impugned Assessment Order under Section 143(3) read with Section 144B of the Act along with issuance of notice of penalty under Section 271 AAC, 270A and demand notice raising a high pitched demand of Rs.3,90,35,560/- on 30th April 2021, which is against the specific provisions of the Act as well as a complete breach of principles of natural justice.

5. He states that though the statutory appeal against such an order is not an effective remedy, but as the Petitioner was not aware about admittance of writs against such orders by this court, hence, under compulsion filed appeal before Commissioner (Appeals) on 31st May 2021 in terms of CBDT circular no. 08/2021 dated 30th April 2021.

6. Learned counsel for the Petitioner 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 and hence the same is in gross violation of principles of natural justice and therefore, is not in accord 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.

7. Issue notice. Mr. Sanjay Kumar, learned counsel accepts notice on behalf of respondent and waives the right to file counter affidavit.

8. He states that the present writ petition is not maintainable as the petitioner had already availed of an alternative effective remedy by filing an appeal.

9. 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) and Section 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.

(emphasis supplied)

10. 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.”

11. In ***Gurgaon Realtech Limited vs. National Faceless Assessment Centre Delhi, W.P. (C) 5849/2021***, a Coordinate Bench of this Court has also held that an appeal that was filed, *albeit*, only to ensure that limitation is not crossed, is not an impediment in proceeding ahead with the writ petition.

12. Keeping in view the aforesaid facts and mandate of law, the impugned assessment order dated 30th April, 2021 as well as notice of demand are set aside and the matter is remanded back to the Assessing Officer, who shall grant an opportunity of 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 stands 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 19, 2021
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