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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6355/2022 & CM APPLs.19206-19207/2022

VIRASAT FOUNDATION

..... Petitioner

Through: Mr.Vikas Srivastava, Advocate with
Mr.Sumit Mangal and Mr.Mayank
Aggarwal, Advocates.

versus

THE ADDITIONAL / JOINT / DEPUTY / ASSISTANT
COMMISSIONER OF INCOME TAX / INCOME-TAX OFFICER,
NATIONAL FACELESS ASSESSMENT CENTRE, INCOME TAX
DEPARTMENT, DELHI

..... Respondent

Through: Mr.Abhishek Maratha, Advocate.

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Date of Decision: 21st April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the Assessment Order dated 28th March, 2022 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 ('the Act').
2. Learned counsel for the petitioner states that the impugned assessment order has been passed in violation of principle of natural justice as despite making a request for grant of personal hearing, the same was not provided



by the respondent.

3. He submits that in accordance with Section 144B(7)(vii) of the Act (as amended by Finance Act, 2021), the Respondent is required to grant personal hearing to the Petitioner on a request made by the Petitioner. In support of this contention, he relies on the judgement of this Court in ***Sanjay Aggarwal vs. National Faceless Assessment Centre Delhi (2021) 436 ITR 180***, wherein the final assessment order was set aside on the ground that an opportunity of personal hearing had not been provided to the assessee.

4. Issue notice. Mr. Abhishek Maratha, Advocate accepts notice on behalf of the respondent.

5. Having heard learned counsel for the parties, this Court is of the view that the issue involved in the present writ petition is no longer *res integra*. This Court in the case of ***Bharat Aluminium Company Ltd. vs. Union of India & Ors., W.P.(C) No.14528/2021 dated 14th January, 2022***, has held that the use of the expression “may” in Section 144B(7)(vii) is not decisive. Where a discretion is conferred upon a quasi-judicial authority whose decision has civil consequences, the word “may” which denotes discretion should be construed to mean a command. Consequently, requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory. It was further held that the classification made by the Respondent between the matters involving disputed questions of fact and questions of law by way of the Circular dated 23rd November, 2020 is not legally sustainable.

6. Accordingly, the impugned assessment order dated 28th March, 2022 passed under Section 147 read with Section 144B of the Act for the assessment year 2016-17 is quashed and the matter is remanded back to



Respondent for passing a fresh order in accordance with law after giving an opportunity of personal hearing.

7. In view of the above, the present writ petition and applications stand disposed of. The rights and contentions of all the parties are left open.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 21, 2022
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नित्यमेव जयते