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

\+ W.P.(C) 6486/2022 & CM APPLs.19671-19672/2022

SHRUTEE EXPORTS PRIVATE LIMITED ..... Petitioner

Through: Mr. Gagan Kumar with Ms. Radhika Dubey, Soami Dharmendra, Ms. Nishtha Kaura, Mr. Karan Nagrath, Mr. Varun Nagrath, Ms. Aparjita Sahani, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sunil Agarwal with Mr. Tushar Gupta and Mr. Samarth Chaudhari, Advocates for Revenue.
Mr. Santosh Kumar Pandey, Advocate for UOI.

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\+ W.P.(C) 6491/2022 & CM APPLs.19680-19681/2022

SHRUTEE EXPORTS PRIVATE LIMITED ..... Petitioner

Through: Mr. Gagan Kumar with Ms. Radhika Dubey, Soami Dharmendra, Ms. Nishtha Kaura, Mr. Karan Nagrath, Mr. Varun Nagrath, Ms. Aparjita Sahani, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sunil Agarwal with Mr. Tushar Gupta and Mr. Samarth Chaudhari, Advocates for Revenue.
Mr. Santosh Kumar Pandey, Advocate for UOI.

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+ W.P.(C) 6492/2022 & CM APPLs.19682-19683/2022

SHRUTEE EXPORTS PRIVATE LIMITED ..... Petitioner

Through: Mr. Gagan Kumar with Ms. Radhika Dubey, Soami Dharmendra, Ms. Nishtha Kaura, Mr. Karan Nagrath, Mr. Varun Nagrath, Ms. Aparjita Sahani, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sunil Agarwal with Mr. Tushar Gupta and Mr. Samarth Chaudhari, Advocates for Revenue.
Mr. Santosh Kumar Pandey, Advocate for UOI.

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+ W.P.(C) 6493/2022

SHRUTEE EXPORTS PRIVATE LIMITED ..... Petitioner

Through: Mr. Gagan Kumar with Ms. Radhika Dubey, Soami Dharmendra, Ms. Nishtha Kaura, Mr. Karan Nagrath, Mr. Varun Nagrath, Ms. Aparjita Sahani, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Sunil Agarwal with Mr. Tushar Gupta and Mr. Samarth Chaudhari, Advocates for Revenue.
Mr. Santosh Kumar Pandey, Advocate for UOI.

% Date of Decision: 25th 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 petitions have been filed challenging the assessment orders dated 28th March, 2022 and 31st March, 2022 passed under Section 147 read with Section 144B of the Income Tax Act, 1961 (for short 'Act') for the Assessment Years 2014-15, 2015-16, 2016-17 and 2017-18 as well as the penalty notices issued under Section 274 of the Act.

2. Learned counsel for the petitioner states that the impugned orders have been passed without following the principle of natural justice and in violation of Section 144B of the Act as no opportunity of hearing was granted to the petitioner despite a specific request having been made under Section 144B(vii) of the Act.

3. In support of his submission, he relies on the decision of this court in ***Sanjay Aggarwal vs. National Faceless Assessment Centre, Delhi (2021) 436 ITR 180*** and ***Bharat Aluminum Company Ltd v. Union of India, W.P.(C) 14528/2021 dated 14th January, 2022***.

4. Issue notice.

5. Mr. Sunil Agarwal, learned counsel accepts notice on behalf of the respondents. He states that the present writ petitions are not maintainable as the petitioner has an alternative effective remedy by filing an appeal.

6. Having heard learned counsel for the parties, this Court is of the view that the issue involved in the present writ petitions are no longer *res integra*. This Court in ***Bharat Aluminium Company Ltd. vs. Union of India & Ors.*** (supra) 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.

7. Accordingly, the impugned assessment orders dated 28th March, 2022 and 31st March, 2022 passed under Section 147 read with Section 144B of the Act for the Assessment Years 2014-15, 2015-16, 2016-17 and 2017-18 are violative of principle of natural justice and Section 144B(7)(vii) of the Act.

8. It is settled law that when there is a violation of principle of natural justice, the availability of an appellate remedy does not operate as a bar to the maintainability of the writ petition.

9. Consequently, the impugned Assessment orders, Demand notices and Penalty notices are quashed and the matters are remanded back to the Respondents for passing fresh orders in accordance with law after giving an opportunity of personal hearing to the petitioner.

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

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 25, 2022
AS