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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5766/2021 & CM APPL.18092/2021

VIKAS SINGHAL

..... Petitioner

Through: Mr.Kapil Goel, Advocate.

versus

NATIONAL FACELESS ASSESSMENT CENTRE, DELHI

..... Respondent

Through: Mr.Zoheb Hossain, Sr.Standing
Counsel with Mr.Vipul Agrawal and
Mr.Parth Semwal, Jr.Standing
Counsel.

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Date of Decision: 21st July, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the impugned assessment order dated 26th May, 2021 passed by the respondent under Section 143(2) of the Income Tax Act, 1961 ['the Act'].
2. Learned counsel for the Petitioner states that the principal grievance of the petitioner is that the impugned assessment order for the assessment year 2018-19, was passed in violation of Section 144B(7)(vii) of the Act.
3. He points out that the petitioner had sought personal hearing on two dates, i.e., 30th March, 2021 and 19th April, 2021. He emphasises that a request for oral hearing was made on 19th April, 2021 by way of the



petitioner's reply/objection to the show cause notice and draft assessment order dated 15th April, 2021.

4. He states that even though the petitioner's declared income was Rs.7,30,700/-, the Respondent/revenue had enhanced the declared income to Rs.46,02,60,330/-, thereby proposing disallowances/additions amounting to Rs.45,95,29,630/- against the Petitioner.

5. He also points out that the demand raised against the petitioner, as indicated in the notice issued under Section 156 of the Act, dated 26th May, 2021, is Rs.49,68,78,182/-.

6. *Per contra*, Mr.Zoheb Hossain, learned counsel for the Respondent, submits that adequate opportunity was given to the petitioner, and therefore, the request for personal hearing was rightly declined.

7. 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., [2022] 134 taxmann.com 187 (Delhi)***, has held that the use of the expression “may” in Section 144B(7)(viii) is not decisive. Where 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, the 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. This Court is of the opinion that an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it.



8. Consequently, the impugned assessment order dated 26th May, 2021 passed by the respondent under Section 143(2) of the Act for the assessment year 2018-19 and the consequent proceedings are quashed and the matter is remanded back to the Assessing Officer for a fresh decision within twelve weeks after giving an opportunity of hearing to the petitioner in accordance with law.

9. With the aforesaid direction, the present writ petition and application are disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 21, 2022
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