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

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Decision delivered on: 09.11.2022

+ **W.P.(C) 11754/2021**

D.B ENGINEERING PVT. LTD.

.....Petitioner

Through: Mr Jayant K. Mehta, Sr. Adv. with
Mr Samar Kachwaha, Mr
Raghavendra M. Bajaj, Mr Agnish
Aditya, Ms Shivangi Nanda, Ms
Kavita Vinayak, Mr Shagun Agarwal
and Ms Rini Mehra, Advs.

versus

NATIONAL FACELESS ASSESSMENT
CENTRE, DELHI & ANR.

.....Respondents

Through: Mr Sanjay Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The record shows, that on 22.10.2021, this matter was heard by one of us [i.e., Rajiv Shakdher, J.] sitting with Hon'ble Mr Justice Talwant Singh.

1.1 On that date, the broad contours of the controversy arising in the matter were etched out. For the sake of convenience, the relevant part of the said order is extracted hereafter:

“3. Via this writ petition, in effect, challenge is laid to the assessment order dated 28.09.2021, for the assessment year (AY) 2017-18.

3.1. Mr. Jayant Mehta, learned senior counsel, who appears for the petitioner, has drawn our attention, inter alia, to paragraph

nos. 8 and 8.1 of the impugned order.

3.2. For the sake of convenience, the said paragraphs of the impugned assessment order, are extracted hereafter:-

“8. A showcause notice was issued to the assessee on 22/09/2021 along with Draft Assessment Order for compliance on 24/09/2021. The assessee has given the reply to showcause notice on 23/09/2021 along with Statement of Sales partywise above 5 Lakhs with address and TIN Number, Statement of partywise purchases above 5 Lacs with address and PAN/TAN No., List of Debtors, Form 26AS, screen shot from website, List of Creditors, Purchase of raw material partywise and (i) reply letter dated 16/08/2021 to Notice u/s. 142(1), dated 14/08/2021, (ii) reply letter dated 23/09/2021 to showcause notice, dated 22/09/2021 & (iii) reply letter dated 5/09/2021 to Notice u/s. 142(1) dated 3/9/21. The assessee's representative Ankit P. Jain & Co., CAs vide letter dated 22/09/2021 in reply to showcause notice has given the statement of opening and closing stock for the last three year and further stated that, "It is requested to allow video conferencing for some crucial discussion in the matter and allow some time to arrange more documents as asked in the letter. It is also requested to keep the provisional Assessment under abeyance and do not add any income till the Assessment is complete and also requested to complete regular Assessment as being undertaken by you as the Income Tax Portal is not working Properly. "

8.1 The above request of the assessee could not be granted due to paucity of time as the time barring date is 30/09/2021. The assessee was accorded various opportunities to give the submissions but the assessee has not given any reply. The onus was on the assessee to give valid proof against the reopening proceedings to prove that the discrepancies pointed out by the complainant in his books of accounts are not correct. The assessee would have given his submission and supporting documents well in

advance after first Notice u/s. 142(1) was issued to the assessee on 29/01/2021 and also, the assessee would have given his reply with the supporting documents on 13/02/2021 when the assessee company has given part reply.”

3.3. *A perusal of the aforementioned extract from the impugned assessment order shows that, although, personal hearing was sought, the same was declined only on account of paucity of time, as the end date for passing the assessment order was expiring, on 30.09.2021.*

4. *Given the foregoing, prima facie, we are of the view that, there is a case for interference, as there has been a breach of the principles of natural justice.*

5. *Issue notice.*

5.1 *Ms. Easha Kadian, Advocate, who appears for Mr. Sanjay Kumar, learned standing counsel, accepts notice on behalf of respondents/revenue.*

5.2. *Counter-affidavit will be filed within four weeks from today.*

5.3. *Rejoinder thereto, if any, will be filed before the next date of hearing.*

6. *Although, there is no separate application for grant of interim relief, the prayer, to that effect, has been made in prayer clause (f).*

6.1. *Accordingly, till the next date of hearing, the operation of the assessment order dated 28.09.2021 as well as consequential notices i.e., the demand notice and notice for penalty of even date, shall remain stayed.*

7. *List the matter on 12.01.2022.”*

2. Since then, a counter-affidavit has been filed on behalf of the respondents/revenue.

3. Mr Sanjay Kumar, who appears on behalf of the respondents/revenue, says that there is no dispute about the fact, that although a personal hearing was sought by the petitioner, the same was not granted, on account of

paucity of time.

3.1 This aspect has been recorded in the impugned order, which, as would be obvious, stands extracted in our order dated 22.10.2021.

4. Clearly, the denial of personal hearing is violative of the provisions of Section 144B(6)(vii) of the Income Tax Act, 1962. For the sake of convenience, the same is extracted hereafter:

“144B. Faceless assessment.

xxx xxx xxx

(6) For the purposes of faceless assessment-

xxx xxx xxx

(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft 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 such income or loss determination proposal, the assessee or his authorized 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 of the relevant unit.”

5. The proposition, that personal hearing, if sought, is required to be granted to the assessee, is no longer *res integra*, wherever variation is proposed in the income or loss determination proposal or the draft order. In the instant matter, the case concerns variation of income.

5.1 This covered by several judgments of this Court, including a judgment rendered on 19.05.2021 in W.P.(C) No.5235/2021 titled ***Renew Power Pvt. Ltd. v. National E-Assessment Centre, Delhi.***

6. Mr Kumar fairly concedes, that this view has been reiterated in the following judgments as well:

(i) ***Bharat Aluminium Company Ltd. v. Union of India***, [2022] 134 taxmann.com 187 (Delhi).

(ii) *Sanjay Aggarwal v. National Faceless Assessment Centre Delhi*
(2021) 436 ITR 180

7. In these circumstances, the impugned assessment order is set aside.
8. Liberty is, however, given to the respondents/revenue to take next steps in the matter, *albeit*, as per law.
9. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

NOVEMBER 9, 2022

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[Click here to check corrigendum, if any](#)