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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 14243/2021 & C.M.No.44912/2021

ROMANO BUILDTECH PVT LTD

..... Petitioner

Through

Mr.Gautam Jain with Mr.Mayank Jain, Mr. Parmatma Singh, Mr. Madhur Jain and Mr.Piyush Kumar Kamal, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through

Mr.Aditya Deshwal, Advocate for R-1.
Mr.Sunil Aggarwal, standing counsel for the Revenue.

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Date of Decision: 24th January, 2022**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 matter has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the assessment order dated 09th November 2021, the demand notice dated 30th September 2021 and the penalty proceedings under Sections 270A and 271AAC of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for Assessment Year 2018-19.
3. Learned counsel for the Petitioner states that the impugned orders are in direct contravention of the order dated 12th May, 2021 passed by this



Court in WP(C) No.4988/2021, wherein while setting aside the earlier assessment order dated 12th April, 2021 for the Assessment Year 2018-19, it was directed that the concerned Assessing Officer will grant a personal hearing to the authorized representative of the Petitioner through video conferencing, which was blatantly disregarded by the Respondents.

4. He states that the request for personal hearing was rejected on arbitrary grounds showing complete non-application of mind. He states that it was wrongly observed by the Respondents in the impugned assessment order that the personal hearing was rejected as there is no legal aspect to be heard and that the proposed additions are a matter of fact.

5. He further states that the date of notice of demand and computation of tax which are attached to assessment order have been mentioned as 30th September, 2021 but the speaking order has been passed on 9th November 2021, therefore, this shows that the Respondent had already made up its mind before passing the order that the impugned addition had to be made.

6. Learned counsel for the Petitioner states that the Respondents, without considering the replies filed by the Petitioner, rejected the request of the Petitioner for grant of personal hearing via video conferencing and passed the impugned Assessment order dated 09th November, 2021 under section 143(3) read with section 260 of the Act in terms of the draft assessment order and the show cause notice dated 21st September, 2021.

7. Mr.Sunil Aggarwal, learned standing counsel for the Respondent-Revenue states that in the present case, the request for personal hearing has been rejected in accordance with the CBDT Circular dated 23rd November, 2020, wherein it had been stated that personal hearing would be granted only in cases, which involved the disputed questions of fact.



8. 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)(VIII) 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.

9. Consequently, the impugned assessment order dated 09th November 2021, the demand notice dated 30th September 2021 and the penalty proceedings under Sections 270A and 271AAC of the Act for the assessment year 2018-19 are quashed and the matter is remanded back to Respondent No.2 for a fresh decision, in accordance with law.

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

MANMOHAN, J

NAVIN CHAWLA, J

JANUARY 24, 2022/KA