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

% *Date of decision: 19.12.2023*

\+ **W.P.(C) 12573/2023 & CM APPL. 49588/2023**

YOGESH BANSAL ..... Petitioner

Through: Mr Nitin Gulati with Mr Ashok Sikka, Mr Anurag Rajput, Ms Reena Gandhi, Mr Dhruv Bhardwaj and Mr Hardik Saxena, Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE, DELHI ..... Respondent

Through: Mr Ujjwal Jain, Advocate for Mr Shlok Chandra, Sr. Standing Counsel.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition is directed against the assessment order dated 30.08.2022 passed by the Assessing Officer (AO) under Section 144 read with Section 144B of the Income-tax Act, 1961 [in short, "the Act"] concerning Assessment Year (AY) 2020-21.

2. The principal grievance of the petitioner/assessee is that notice, dated 29.06.2021, issued under Section 143(2) of the Act was not served on him.

3. It was contended that notice was directed to the e-mail address of the erstwhile Chartered Accountant (CA) of the petitioner/assessee, whose services had been done away with. It is contended that the return of income (ROI) filed by the petitioner *qua* the aforementioned AY i.e. AY 2020-21,

on 15.02.2021, reflected the correct e-mail address of the petitioner/assessee.

4. In other words, the submission is that the aforementioned notice, under Section 143(2) of the Act, was not addressed to the e-mail addresses indicated in the ROI filed by the petitioner/assessee. It is for this reason that the petitioner/assessee was unaware of the notice issued to him.

5. Furthermore, it was also the grievance of the petitioner/assessee that the assessment order was not available on the designated portal.

6. On the other hand, counsel for the respondent/revenue did indicate that the computation sheet was available on the portal.

6.1 Broadly this grievance was etched out in a hearing held on 13.12.2023. Furthermore, we also asked counsel for the parties to visit the designated portal during the lunch recess and report to the Court as to whether the assessment order was available on the designated portal.

6.2 For convenience, the relevant parts of the order dated 13.12.2023 are set forth hereafter:

> "*1. On 22.09.2023, when the above-captioned matter was listed before the Court, the broad contours of the issue raised in the matter were recorded. For convenience, the relevant parts of the said order are extracted hereafter:*
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> > *"2. This petition concerns Assessment Year (AY) 2020-21.*
> > *3. The petitioner, inter alia, seeks to assail the assessment order dated 30.08.2022.*
> > *4. Mr Nitin Gulati, who appears on behalf of the petitioner/assessee, says that the petitioner/assessee was not served with any notice before the assessment order was passed.*
> > *5. Mr Gulati also submits that the impugned assessment order is not available on the designated portal.*
> > *5.1 It is submitted that the [sic] since the portal is still open, it is indicative of the fact that the assessment order was not uploaded as claimed.*
> > *6. On being queried on how the petitioner got a hold of the order, Mr Gulati says that the petitioner obtained the order after he approached the Assessing Officer (AO).*
> > *7. Mr Shlok Chandra, learned senior standing counsel who appears on behalf of the respondent/revenue, will return with instructions as to the correctness of the assertion made before us by Mr Gulati.*"

2. *The record shows that on the next date of hearing, i.e., 30.10.2023, the respondent/revenue was granted an extension of time to seek instructions in the matter against the backdrop of events recorded on 22.09.2023. It is in these circumstances that the matter has, once again, been listed before us.*

3. *The record shows that, insofar as the Return of Income (ROI) for the Assessment Year (AY) in issue, i.e., AY 2020-21 is concerned, it was filed on 15.02.2021, at 13:45:56 hours. The said return adverted to the following e-mail addresses:*

"honey.ykstudios@gmail.com; mudgalgourav11@gmail.com"

4. *The record also discloses that notice under Section 143(2) of the Income-tax Act, 1961 [in short, "Act"], issued to the petitioner/assessee on 29.06.2021, was directed to an e-mail address that was not reflected in the ROI.*

4.1 *Concededly, the e-mail address to which the said notice was directed was the following:*

"pulkitjainca88@gmail.com"

5. *As would be evident from the extract of the order passed in the instant matter on the first date, i.e., 22.09.2023, the assessment order was passed on 30.08.2022.*

6. *It has been the contention of the petitioner/assessee right from the first date that he was not served with a notice before the assessment order was framed.*

7. *On being queried, Mr Nitin Gulati, counsel who appears on behalf of the petitioner/assessee, says that the notice, dated 29.06.2021, was sent to the Chartered Accountant (CA) engaged by the petitioner/assessee at a point in time much earlier to the date of the said notice.*

7.1 *It is for this reason that the petitioner/assessee remained unaware of the notice issued under Section 143(2) of the Act.*

8. *Mr Gulati has also submitted that since the ROI was filed before the date on which notice under Section 143(2) of the Act was issued, the respondent/revenue cannot feign ignorance of the updated e-mail addresses of the petitioner/assessee.*

8.1 *Furthermore, Mr Gulati, in the course of the hearing, emphasized that even today, the assessment order was not available on the designated portal.*

8.2 *Given this submission, we had requested learned counsel for the parties to ascertain, during lunch recess, the position about the availability of the assessment order on the portal and thereafter, report to the Court the correct position.*

9. *We were told that Mr Shlok Chandra, learned senior standing counsel, who appears on behalf of the respondent/revenue, along with Mr Gulati, accessed the designated portal.*

10. *Mr Chandra says that, although the aforementioned assessment order is not available on the designated portal, this could be because of a technical glitch.*

11. *Mr Chandra, however, says that the computation sheet is available on the designated portal. That said, it is conceded by Mr Chandra that the notice of demand is not available on the designated portal.*

12. Having regard to the foregoing, we accede to the request of Mr Chandra that the matter be stood over so that he may return with instructions as to why the assessment order is not available on the designated portal."

7. Mr Shlok Chandra, learned senior standing counsel, conceded before us that the assessment order was not available on the designated portal. It was his submission that this situation may have occurred because of a technical glitch. It is in these circumstances that Mr Chandra was requested to return with appropriate instructions in the matter.

8. Mr Ujjwal Jain, learned counsel, who appears on behalf of the respondent/revenue, says that he has received instructions. It is conceded that the assessment order was not available on the designated portal, contrary to the assertion made on the previous occasion.

9. Given this position, the impugned assessment order, dated 30.08.2022, is set aside. The concerned AO is directed to activate the designated portal so that the petitioner/assessee and/or his authorized representative can upload replies to the notice been issued in the matter.

10. It is made clear that all defences will remain open to the petitioner/assessee.

11. The writ petition is disposed of in the aforesaid terms.

12. Resultantly, the interlocutory application is also disposed of.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 19, 2023 / tr