

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6737 of 2024

M/s R.K. Traders Maroofganj, P.S.- Malsalami, P.O.- Patna City, Patna-800008 through its Partner namely Rajeev Kumar, aged about 52 years, Male, son of Late Kanhaiya Lal, Permanent resident of Maroofganj, P.S.- Malsalami, P.O.- Patna City, Patna- 800008.

... .. Petitioner/s

Versus

The Assessment Unit Income Tax Department, National Faceless Assessment Centre, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Ms. Smriti Singh, Advocate Ms. Kalpana Rastogi, Advocate
For the Respondent/s	:	Mrs. Archana Sinha, Sr. SC

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-04-2024

The petitioner is aggrieved with the assessment order dated 22.03.2024, passed without affording an opportunity of hearing. There is an appeal provided from the order, which has not been availed of.

2. The learned Senior Counsel for the petitioner only seeks for a remand so that an opportunity be afforded for a proper hearing. The learned Senior Counsel would also rely on a Full Bench decision of this Court in *Commissioner of Wealth-Tax Vs. Sri Jagdish Prasad Choudhary, (1995) 211 ITR 472X (Pat)*. Therein, the specific provision on which the dictum was laid was Section 18 (2) of the Wealth Tax Act, which reads as under:



“18 (2) No order shall be made under sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard.”

3. It was held by the Full Bench that the word “heard” occurring in Section 18(2) of the Act means to be heard “orally” and not a mere consideration of the case as made out in the written representation. Incidentally, it was also examined whether such an oral hearing can be given only on the request of the person concerned or whether under the scheme of the Act, there is an implied obligation of the concerned authority to offer an opportunity of oral hearing. It was found on the scheme of the Wealth Tax Act, specifically sub-Section (2) of Section 18 that even without a request there is an implied obligation on the authority.

4. Juxtaposed with the above provision, we have to consider Section 144B(vii), which reads as under:

“(vii) the assessee or any other person, as the case may be, shall file his response to the notice referred to in clause (vi), within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre;”

5. Hence, under the scheme of the Income Tax Act, specifically after the faceless assessment was brought into force, a request has to be made for an oral hearing. There is a specific



option provided, which has to be ticked in the affirmative, to make the request while uploading the objection. Unless the request is made, the faceless assessment would be concluded without an oral hearing, which again is as per the scheme of the Act. We do not think that the dictum of the Full Court applies here. We also notice that there is a provision for appeal where all the facts can be argued in person. The appellate authority also has sufficient power to get a report from the Assessing Officer, after affording an opportunity of hearing before the Assessing Officer.

6. We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders laid down by the Hon'ble Supreme Court in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**. It has been held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate



and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion that there has been a breach of principles of natural justice or due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where there is failure of principles of natural justice or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged. The plea made of no oral hearing afforded has to be considered in the context of the option not having been exercised; which amounts to a waiver.

7. We, however, reserve the liberty of the petitioner to approach the appellate authority. The period during which the writ petition, was filed from 20.04.2024, till today, shall not be reckoned as delay.

8. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.04.2024.
Transmission Date	NA

