

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

W.P.A 11496 of 2024

**Sitaram Shyam Sundar Fashions Private Limited & Anr.
Versus
Union of India & Ors.**

For the petitioners : Mr. Himanghsu Kumar Roy
Mr. Paban Kumar Ray
Mr. Subhasis Poddar
Mr. Amit Saha
Ms. Shiwani Shaw

For the respondents : Mr. Tilak Mitra

Heard on : 2nd July, 2024

Judgment on : 2nd July, 2024

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the order of assessment dated 21st March, 2024 issued under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") read with Section 144B of the said Act.
2. It is the petitioners' case that a proceeding for scrutiny under said Act was initiated pursuant to the show cause notice dated

4th March, 2024, indicting therein the proposed variations, in respect of the Assessment Year 2022-23.

3. The petitioner no.1 had duly responded to the said notice on 9th March, 2024. Simultaneously, the petitioner no.1 had also requested for personal hearing by invoking the provisions of Section 144B(6)(viii) of the said Act. The records reveal that such prayer made by the petitioner no.1 was approved on 13th March, 2024 and the date for personal hearing through video conferencing was fixed on 16th March, 2024 at 1500 hrs.
4. Incidentally, before the personal hearing was offered, an additional show cause notice was served on the petitioner no.1 on 13th March, 2024 indicating the details of variations proposed therein in respect of the Assessment Year 2022-23. The petitioner no.1 was, however, afforded an opportunity to respond to the said additional show cause by 1100 hrs on 15th March, 2024.
5. Mr. Roy, learned advocate representing the petitioners in support of the aforesaid writ petition submits that the additional show cause notice has been issued in violation to the statutory provisions. He submits that without withdrawing the first show cause notice, the second show cause could not have been issued. In support of his contention, he has placed reliance on a judgment delivered by a coordinate Bench of this Court in the case of *Elite Pharmaceuticals vs. Income Tax Officer*, reported in (2023) 147 Taxmann.com 378 (Calcutta). By drawing attention of

this Court to a screen-shot of the income tax portal it is submitted that although, a meeting ID/V.C. Link had been shared and despite the petitioners joining such meeting, no personal hearing was given to the petitioner no.1 since, none joined the meeting on behalf of the Faceless Assessment Unit. Following the aforesaid, the assessment order was passed on 21st March, 2024, inter alia, recording that the assessee despite being afforded with an opportunity, did not join the “video hearing”. According to Mr. Roy, the aforesaid finding recorded in the order is perverse. No opportunity of personal hearing was afforded to the petitioner no.1 since the Faceless Assessment Unit did not join the meeting.

6. Mr. Mitra, learned advocate enters appearance on behalf of the respondents. He submits as to whether or not the Faceless Assessment Unit had given an opportunity of hearing to the petitioner no.1 can no longer be agitated by the petitioners in the light of the observations made in the assessment order passed by the Faceless Assessment Unit on 21st March, 2024. In the said order it has been specifically recorded that the petitioner no.1 did not avail the opportunity of video conferencing facility. In any event, the aforesaid is a disputed question of fact which cannot be conveniently decided by this Court in exercise of its extraordinary writ jurisdiction. On the question of issuance of additional show cause notice, it is submitted that that it always

within the jurisdiction and competence of the Assessing Officer/ Faceless Assessment Unit to issue an addendum. In this case, no fresh show cause or no fresh notice under Section 148 of the said Act was issued. The judgment relied on by the petitioners has been rendered in a different set of facts. The same does not assist the petitioners at all. It is still further submitted that the petitioner no.1 has an efficacious alternative remedy in the form of an appeal. The petitioners cannot be permitted to bypass the same by invoking the extra-ordinary writ jurisdiction of this Court.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case, it is noticed that the scrutiny proceeding had been initiated by issuance of a notice dated 4th March, 2024 in respect of the Assessment Year 2022-23. Particulars of the variations proposed were duly indicated therein. The petitioner no.1 had duly responded to the said show cause notice on 9th March, 2023 and simultaneously, had applied for personal hearing in terms of Section 144B(6)(viii) of the said Act. In the instant case, the Faceless Assessment Unit had approved the request of the petitioner no.1 and had fixed 16th March, 2024, at 1500 hrs. as the date and time of the meeting. However, before affording such opportunity to the petitioner no.1, the Faceless Assessment Unit had issued an additional show cause notice along with the

variations proposed. Incidentally, the time to respond to the show cause was, however, limited to 1100 hrs., of 15th March, 2024. It may be noticed, that Mr. Roy, learned advocate by placing before this Court the print out of the relevant portion of the Standard Operating Procedure (SOP) in connection with affording opportunity of hearing to respond to the show cause had submitted that a minimum 7 days time ought to be provided to the assessee to respond to the same. The relevant portion of the SOP is extracted hereinbelow:-

*“National Faceless Assessment Centre, Delhi
NaFAC/Delhi/CIT-1/2022-23/112/92 03/08/2022*

To,

*The Pr. Chief Commissioner of Income –tax (CCA),
(All region)*

Madam/Sir,

Sub: Standard Operating Procedure (SOP) for Assessment Unit (AU), Verification Unit (VU), Technical Unit (TU) and Review Unit (RU) under the Faceless Assessment provisions of Section 144B of the Income-tax Act.

Kindly, find enclosed Standard Operating Procedure (SOP) issued under Section 144B(6)(xi) of the Income-tax Act 1961, for Au, VU, TU and RU . The same may be disseminated among the Units under your region for compliance.

2. The SOPs provide guidance to the Units and outline the process for facilitating assessments as envisaged under the provisions of Section 144B of the Income-tax Act.

3. All care has been taken in preparation of the SOPs . However, in implementation of the SOPs if any

practical difficulty or conflict with the statute is noticed, then the provisions of Statute shall prevail.

4. *These SOPs are strictly for departmental use only.*

5. *This is issued with the prior approval of the CBDT.*

N. Process of Assessment:-

N.1. **Show Cause Notice (SCN)** shall be issued in the prescribed format (Annexure AU-7), in all cases where any variation prejudicial to the assessee is proposed-

N.1.1. SCN shall be drafted after conduct of all necessary enquiry/verification and collection of relevant information.

N.1.2. SCN should contain:

N.1.2.1. Complete description of the issue involved;

N.1.2.2. Details of dates of all notices/opportunities given;

N.1.2.3. Details of dates of compliance/on-compliance of the assessee;

N.1.2.4. Summary of all submissions of the assessee, to demonstrably reflect application of mind and consideration of all submissions;

N.1.2.5. Specific Information/material proposed to be used against the assessee;

N.1.2.6. Variations proposed on the basis of reasonable inferences drawn;

N.1.3. To ensure adherence to the principles of natural justice and reasonable opportunity to the assessee, timelines to be given for obtaining response to the SCN shall be;

N.1.3.1. Response time of 7 days from the issue of SCN

N.1.3.2. Response time of 7 days may be curtailed, keeping in view the limitation date for completing the assessment.”

8. Admittedly, in this case it would transpire that the petitioner no.1 did not get adequate opportunity to respond to the additional show-cause notice. The petitioners also complain of not being afforded opportunity of personal hearing and claim that despite the petitioner no.1 logging in for joining the meeting, the Faceless Assessment Unit did not join. Although, it has been recorded by the Faceless Assessment Unit in its order dated 21st March, 2024 that the petitioner no.1 despite being afforded with an opportunity to join the meeting via video hearing did not join, I am of the view that it is not necessary to consider such issue at this stage since, the assessment order passed by the assessing officer/Faceless Assessment Unit otherwise stands vitiated by reasons of violation of principles of natural justice. Admittedly, in this case, the petitioner no.1 was not afforded adequate opportunity to respond to the additional show cause. As to whether or not the second/additional show cause could be issued in the facts would fall for consideration only when a response is offered by the petitioner no.1 to the same. Admittedly, in this case, there is no contemporaneous response on record. The petitioners, however, claim that the petitioner no.1 had been denied the opportunity to appropriately respond to the same. The SOP circulated by the Commissioner of Income Tax, National Faceless

Assessment Centre, Delhi, dated 3rd August, 2022 may not have a statutory force, however, the respondents cannot feign ignorance of the same nor can they disregard the same. Although, Mr. Mitra, learned advocate representing the respondents has claimed that since, the petitioners have an efficacious alternative remedy in the form of an appeal, this Hon'ble Court ordinarily, should not exercise jurisdiction, in the instant case, it is noticed that the petitioner no.1 had been denied the very opportunity to respond to the second/additional show cause. Additionally in terms of Section 144B(6)(viii) of the said Act, it is the duty of the Faceless Assessment Unit in case of proposing variations to afford an opportunity to the assessee to show cause why the assessment should not be completed as per the income or loss proposed in the variations. In my view, failure to afford adequate opportunity to the petitioner no.1 to respond also constitutes violation of statutory provisions apart from violation of principles of natural justice. Since, the petitioner no.1 did not get the opportunity to respond to the additional show-cause, in my view, the petitioners cannot be asked to pursue statutory remedy as the defect cannot be cured by affording opportunity to the petitioners to prefer an appeal.

9. Having regard to the aforesaid, the assessment order passed by the Faceless Assessment Unit dated 21st March, 2024 under

Section 143(3) read with section 144B of the said Act cannot be sustained and the same is accordingly set aside.

10. The matter is remanded back to the Faceless Assessment Unit with a direction to permit the petitioner no.1 to file its response to the additional show cause within a period of 15 days from date. For the said purpose, the Faceless Assessment Unit shall activate the submit response button on the portal so as to enable the petitioner no.1 to submit its response. The Faceless Assessment Unit is also directed to intimate the petitioner no.1 via online portal the date and time of virtual meeting/video hearing and upon giving an opportunity of hearing to the petitioner no.1 to hear out and dispose of the scrutiny assessment proceeding within a period of 10 weeks from the date of communication of this order.
11. In the light of the observations made hereinabove, the notice issued Section 274 read with Section 271AAD(1)(i) of the said Act and the notice for penalty under Section 274 read with Section 271B of the said Act both dated 21st March, 2024, stand quashed.
12. With the above observations and directions the writ petition stands disposed of.
13. There shall be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

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