Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

W.P.A 12102 of 2024

Phari Projects Pvt. Ltd.
Versus
The Income Tax Officer & Ors.

For the petitioner	:	Mr. Avra Mazumder Ms. Alish Das Mr. Suman Bhowmik Mr. Samrat Das Mr. Sourendra Nath Banerjee
For the respondents	:	Mr. Aryak Dutt Ms. Riya Kundu
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 dated 29th 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 as also the consequential demand notice issued under Section 156 of the said Act for the Assessment Year 2022-23.

2. The short point involved in the present petition is with regard the question whether the petitioner had been afforded the opportunity of personal hearing through video conferencing or video telephony, despite making a request, in terms of Section 144B(6)(viii) of the said Act.

3. Since, Mr. Mazumder, learned advocate appearing on behalf of the petitioner on 16th May, 2024 had submitted that despite the petitioner making a request prior to passing of the assessment order for personal hearing, and despite the respondents approving such request, the petitioner could not attend the personal hearing since the communication as appearing on the portal did not provide for any video conferencing link, this Court by an order dated 16th May, 2024 had directed the respondents to take appropriate instruction in the matter.

4. Today Mr. Dutt, learned advocate representing the respondents by placing before this Court an intimation notice dated 28th March, 2024 submits that the petitioner was duly notified of the video conferencing link. Unfortunately, since the petitioner did not log in, no personal hearing could be held. Such fact is also recorded in the order dated 29th March, 2024.

5. Upon disclosure of the aforesaid document, Mr. Mazumder, learned advocate representing the petitioner has placed before this Court a print out of the screen shot from the portal, which is

accessible from the petitioner's account. Incidentally, such print out does not demonstrate that the aforesaid notice dated 28th March, 2024 had been uploaded on the portal, as the same is not visible on the online portal. According to Mr. Mazumder, ordinarily once, a notice is uploaded on the portal, the petitioner is immediately communicated with regard to the same though e-mail communication and via mobile alert. A copy of the aforesaid print out of the screen shot has also been made over to Mr. Dutt, learned advocate representing the respondents, let a copy thereof, be taken on record.

6. Mr. Dutt, in reply, submits that by reasons of technical glitch the aforesaid communication may not appear to the petitioner on the portal. According to him, steps had been taken by the faceless assessment unit for having the same uploaded on the portal, if the petitioner is unable to view the same the faceless assessment unit cannot be made responsible therefor.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. I find that in terms of Section 144B(6)(viii) of the said Act, when a variation is proposed in the income or loss, apart from service of a draft order an opportunity is required to be given to show cause and in furtherance thereto, when a request for personal hearing is received, the Faceless Assessment Unit of the income tax authority is duty bound to afford an opportunity of personal

hearing to the assessee concerned. Admittedly, in this case, the petitioner had applied for an opportunity of personal hearing. The petitioner's request was also approved by the Faceless Assessment Unit as would corroborate from the screen shot of the online portal appearing at page 16 of the writ petition. The screen shot, however, does not disclose that any video conferencing link had been shared, for the petitioner to log in and join the link, the same only records that the 'V.C. Link' and password will be displayed two hours prior to schedule time for 'V.C'. The petitioner claims that it did not receive the V.C. Link. Although, the petitioner had made a contemporaneous complaint, prior to such complaint being resolved, the assessment order had been passed. Today at the time of hearing of this petition Mr. Dutt, by placing before this Court a notice dated 28th March, 2024 has attempted to claim that video conferencing link was shared with the petitioner. The said document, however, is not visible on the petitioner's view of the portal. No automated SMS alerts/email alerts were also trigged. In my view, mere creation of video conferencing meeting ID/Link, does not absolve the Faceless Assessment Unit from discharging its responsibility of offering personal hearing. The meeting ID/Link is required to be disclosed/shared, for the petitioner to log in to the said ID/Link, for ensuring compliance of the statutory provision of personal hearing as provided for in Section

144B(6)(viii) of the said Act. The Faceless Assessment Unit cannot claim to absolve of its responsibility by mere creation of a meeting ID/Link, without having the same shared to the petitioner. The finding by the Faceless Assessment Unit in the order dated 29th March, 2024 that the petitioner chose not to attend the Video Conference thus, appears to be perverse and is based on no evidence.

8. Having regard to the aforesaid, since the determination made by the Faceless Assessment Unit stands vitiated from the stage of not affording the petitioner an opportunity of personal hearing, I am of the view that the order dated 29th March, 2024 cannot be sustained and the same is accordingly set aside.

9. The matter is remanded back to the Faceless Assessment Unit for affording the petitioner an opportunity of personal hearing by sharing a video conferencing link. For the said purpose, the Faceless Assessment Unit is directed to share on the portal a video conferencing link and upon giving an opportunity of hearing to the petitioner, decide the matter afresh from the stage of affording personal hearing, within a period of 8 weeks from the date of communication of this order.

10. It is made clear that this Court has not gone into the merits of the assessment proceeding and it shall be open to the Faceless Assessment Unit to pass appropriate order as it may deem fit,

without being influenced by any of the observations made hereinabove.

11. As a sequel to the above, the notice issued under Section 156 of the said Act dated 29th March, 2024 in respect of the Assessment Year 2022-23 is set aside.

12. With the above observations and directions, the writ petition is disposed of.

13. 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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