# IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM:

**THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.P.No.11098 of 2024 and**
**W.M.P.Nos.12175, 12176 & 12178 of 2024**

Venkateshwara Jewellery,
Represented by Partner,
No.173, Bazaar Street,
Namakkal 637 001.
PAN AABFV2282 ...Petitioner

Vs.

1. The Assessment Unit,
Income Tax Department,
National e-Assessment Centre,
Delhi, E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

2. The Deputy Commissioner of Income Tax,
Circle 1, Erode, Income Tax Department,
Nallappa Street, Periyar Nagar, Erode-638 001.

3.The Principal Commissioner of Income Tax,
Coimbatore, Income Tax Department,
No.63, Race Course Road,
Coimbatore-641 018. .. Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the Writ Petitioner on the file of the 1st Respondent to quash the impugned order u/s 143(3) read with Section 144B of the Income Tax Act, 1961 dated 12.03.2024 in DIN ITBA/AST/S/ 143(3)/2023-24/ 1062440849(1) for the Assessment Year 2022-23.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Dr.B.Ramaswamy, Sr. Standing Counsel

**ORDER**

An assessment order dated 12.03.2024 is assailed on the ground that hearing by video-conference was not provided to the petitioner.

2. The petitioner filed the return of income for assessment year 2022-2023 on 23.09.2022. Upon examining such return of income, several notices were issued to the petitioner and such notices were replied to. The impugned order was issued in these facts and circumstances on 12.03.2024.

3. Learned counsel for the petitioner submits that a show cause notice was issued on 10.01.2024. Since such show cause notice called for a response during the Pongal period, the petitioner requested for and obtained an adjournment. Thereafter, by communication dated

29.01.2024, the petitioner replied to the show cause notice and requested for a hearing through video-conference. Learned counsel submits that such request was not responded to and that the impugned order was issued. By referring to order dated 26.02.2024 of this Court in W.P.No.32560 of 2023 and the judgment of the Division Bench of the Delhi High Court in *Bharat Aluminium Company Limited v. Union of India, (2022) 134 Taxmann.com 187 (Delhi)*, learned counsel submits that providing a hearing by video-conference is mandatory under Section 144B of the Income Tax Act, 1961.

4. In response to these contentions, Dr.B.Ramaswamy, learned senior standing counsel, who accepts notice for the respondents, submits that several opportunities were provided to the petitioner and that it is clear from the details of opportunities given at paragraph 2 of the impugned order. By specifically referring to show cause notice dated 10.01.2024, learned senior standing counsel points out that the assessee was called upon to accept the proposed variation or file a written reply objecting to the variations or, if required, in addition to filing a written reply request for a personal hearing through video-conference. Therefore, he submits that the opportunity of hearing through video-conference was

offered to the petitioner and that the petitioner merely requested for an adjournment without stating that he requires a personal hearing by video-conference.

5. Clause (viii) of sub-section (6) of Section 144B prescribes as under:

> *"(6) For the purposes of faceless assessment:-*
>
> *.. ..*
>
> *.. ..*
>
> *(viii) Where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or vide technology, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;*

6. As originally enacted, this provision used the word "may". By an amendment with retrospective effect, the word "may" was replaced

with the word “shall”. Thus, it is beyond doubt that the prescription is intended to be mandatory. While learned senior standing counsel is correct in pointing out that an opportunity of hearing by video-conference was offered under show cause notice dated 10.01.2024, the documents on record indicate that no video-conference hearing was provided after the petitioner's request for the same on 29.01.2024. As a result, the impugned assessment order was issued without providing a personal hearing through video-conference. In those circumstances, the impugned assessment order cannot be sustained.

7. Therefore, the impugned assessment order dated 12.03.2024 is set aside and the matter is remanded. The 1st respondent is directed to provide a hearing through video-conference to the petitioner and thereafter issue a fresh assessment order within three months from the date of receipt of a copy of this order.

8. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

**26.04.2024**

Index : Yes / No
Internet : Yes / No

Neutral Citation : Yes / No
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**SENTHILKUMAR RAMAMOORTHY,J.**

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To

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