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

\+ W.P.(C) 6691/2021

MANMOHAN SINGH ..... Petitioner

Through: Mr. Gaurav Jain & Mr. Shubham Gupta, Advs.

versus

NATIONAL E-ASSESSMENT CENTRE, INCOME TAX DEPARTMENT, DELHI ..... Respondent

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, JSC & Ms. Nupur Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

<u>O R D E R</u>

% **16.02.2024**

PER: PURUSHAINDRA KUMAR KAURAV J.

1. The petitioner, by way of the captioned writ petition filed under Article 226 and 227 of the Constitution, has challenged the assessment order dated 23.04.2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [**"Act"**] for the Assessment Year [**"AY"**] 2018-19 and has also prayed for setting aside other consequential proceedings.

2. The facts of the present case would show that the petitioner had filed his income tax return [**"ITR"**] on 31.10.2018 for the concerned AY and the same was processed under Section 143(1)(a) of the Act. Thereafter, on 23.09.2019, a notice was issued under Section 143(2) of the Act, informing the petitioner that his case has been selected for the purpose of limited scrutiny. *Vide* another notice dated 15.10.2020,

it was communicated to the petitioner that the assessment proceedings shall be carried out in accordance with the Faceless Assessment Scheme, 2019 [**“FAS”**].

3. Pursuant to the aforesaid notice, the petitioner sought time vide letter dated 17.10.2020 to duly respond to the said notice as the authorized representative of the petitioner was recuperating from the Covid-19 symptoms. On 04.01.2021, the respondent issued notice under Section 142(1) of the Act, directing the petitioner to furnish all the requisite details and explanations by 15.01.2021. The petitioner, adhering to the said timeline, submitted a detailed response to the aforesaid notice within the prescribed date.

4. Subsequently, on 05.02.2021, a show cause notice was issued by the respondent calling upon the petitioner as to why the assessment should not be completed on the basis of the draft assessment order. *Vide* response dated 12.02.2021, the petitioner explained the reasons as to why the proposed modifications in the draft assessment order should not be made.

5. Thereafter, another show cause notice cum draft assessment order was served upon the petitioner on 01.03.2021 seeking his response regarding the completion of the assessment as per the fresh draft assessment order with certain new modifications. In pursuance of the said notice, the petitioner submitted his reply on 08.03.2021 alongwith a request to provide an opportunity of personal hearing before passing the final assessment order. However, without affording a personal hearing, on 23.04.2021, the final assessment order was passed by the respondent alongwith demand notice and penalty notice under Section 156 and Section 270 A of the Act, respectively.

6. Learned counsel appearing on behalf of the petitioner submits that the impugned order suffers from material illegality and the respondent has proceeded to pass the said order without any jurisdiction. He contends that the assessment order is in complete dissonance with the provisions of the Act and flagrantly contravenes various circulars issued by the Central Board of Direct Taxes [**"CBDT"**]. According to him, under the guise of limited scrutiny, the AO has enlarged the scope of enquiry by embarking upon the issues which were not selected for the purpose of scrutiny. He submits that such an act of the AO is impermissible, in as much as, he cannot be allowed to arbitrarily exercise the powers vested in him to travel beyond the mandate of law and conduct a roving enquiry in the case of limited scrutiny. The procedure prescribed under Section 144B of the Act is stated to have been violated. He, therefore, contends that in light of the gross violation of the principles of natural justice, the action of the respondent is contrary to the FAS and the mandatory provisions of the Act. He has placed reliance on the decision of this Court in the case of **Sanjay Aggarwal v. National Faceless Assessment Centre Delhi** [2021 SCC OnLine Del 3091] to substantiate his arguments.

7. *Per contra,* learned counsel for the respondent submits that the assessment order has been passed after duly considering the material evidences available on record and after a proper application of mind adhering to the provisions of the Act. He contends that the petitioner has failed to understand the new procedure brought in place by the respondent as per the FAS, whereby, the assessee is required to opt for virtual hearing through the video conferencing facility provided in the e-portal. According to him, the request for personal hearing can only

be made through the e-portal by the assessee and the respondent cannot itself initiate the virtual hearing in absence of the request made by the assessee through the e-portal. He, therefore, submits that the petitioner is himself responsible for not opting for the appropriate mechanism established by the respondent to provide an effective hearing to the assessees as per the mandate of the FAS.

8. We have heard the learned counsel for the parties and perused the record. The primary grievance which comes to the fore and requires consideration is the lack of opportunity of personal hearing to the petitioner in terms of the FAS and Section 144B of the Act.

9. Undisputedly, during the interregnum period of the passing of the draft assessment orders and the final assessment order, the petitioner had requested on at least two occasions i.e., 12.02.2021 and 08.03.2021 to extend an opportunity of personal hearing to enable him to contend the alleged extra-jurisdictional variation in the assessment of income carried out by the AO. However, it is seen that the same was never extended to the petitioner.

10. At this juncture, it is pertinent to delve into the provisions of the Act concerning the requirement of personal hearing to the assessee, particularly Section 144B (7) of the Act which envisages that an assessee may seek personal hearing to present his case before the income-tax authority. For the sake of clarity, Section 144B (7) of the Act, as it existed at the time of passing of the assessment order, reads as under:-

> "144B. Faceless assessment
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> (7) For the purposes of faceless assessment—
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> (*vii*) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised

draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income tax authority in any unit;

(*viii*) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (*vii*) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (*h*) of clause (*xii*);

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(*xii*) the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely—

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(*h*) circumstances in which personal hearing referred to clause (*viii*) shall be approved;

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11. Also, the incidental question which emanates at this point is whether the personal hearing captured in the aforesaid provision of the Act is discretionary or mandatory. Reference may be drawn from the decision in *Sanjay Aggarwal,* wherein, while answering the said question under similar facts and circumstances, this Court held that the Revenue is obligated to consider the request for personal hearing. The relevant paragraph of the said decision reads as under:-

"11.4. A careful perusal of clause (vii) of section 144B(7) would show that liberty has been given to the assessee, if his/her income is

> varied, to seek a personal hearing in the matter. **Therefore, the usage of the word "may", to our minds, cannot absolve the respondent-Revenue from the obligation cast upon it, to consider the request made for grant of personal hearing.** Besides this, under sub-clause (h) of section 144B(7)(xii) read with section 144B(7)(viii), the respondent-Revenue has been given the power to frame standards, procedures and processes for approving the request made for according personal hearing to an assessee who makes a request qua the same."

12. Additionally, at the time when the final assessment order was passed, on one side the common citizens were grappling with the striding waves of the Covid-19 pandemic and on the flip side, the world was transcending the physical barriers to move towards a virtual system. However, we cannot lose sight of the fact that not everyone was equipped with the requisite know-how to match the steps with the fast-paced developments in the technology brought in our lives as a by-product of the pandemic. In the instant case as well, the petitioner was apparently not well acquainted with the rigour of law which envisioned a paradigm shift in the mode of granting an opportunity of personal hearing to the assesses and therefore, he could not avail the benefit of the concerned statutory provision.

13. It is also not in dispute that certain variation in the income has been carried out by the respondent which, as per the provisons of the Act discussed above, crystallizes a right of personal hearing to the petitioner.

14. Considering the foregoing, under the facts of the present case, it can be safely concluded that the respondent was obligated to extend an occasion of personal hearing to the petitioner before passing of the final assessment order. It cannot be gainsaid that the respondent has not been able to accede to the requests of the petitioner, which otherwise ought to have been duly fulfilled. It is also trite that the

adherence to the principles of natural justice is the cornerstone of a just, fair and equitable justice delivery system. Therefore, in light of the infraction of the principles of natural justice, the impugned order dated 23.04.2021 is, hereby, set aside.

15. We find it appropriate to remit back the proceedings at the stage of issuance of notice under Section 142(1) of the Act for a *de novo* consideration by the respondent. The petitioner shall submit a fresh reply to the said notice within a period of 15 days from the date of passing of this order.

16. All the rights and contentions are left open.

17. The petition stands allowed in the aforesaid terms and is disposed of alongwith the pending application(s), if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 16, 2024/