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

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Date of decision: 02.06.2021

+ **W.P.(C) 5741/2021**

SANJAY AGGARWAL Petitioner

Through: Mr. Kapil Goel, Mr. Sandeep Goel
and Mr. Dhananjay Garg Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI

..... Respondent

Through: Mr. Shlok Chandra, Junior Standing
Counsel for Mr. Ruchir Bhatia, Senior
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL) :

CM APPL. 17993/2021

1. Allowed, subject to just exceptions.

CM APPL. 17994/2021

2. The prayer made in the captioned application is to grant exemption from filing attested affidavits along with the present petition. The captioned application is disposed of with a direction to the petitioner to place on record the duly attested affidavits, within three days from the resumption of the normal and usual work pattern by this Court.

W.P.(C) 5741/2021 and CM APPL. 17992/2021 [*Application filed on behalf of the petitioner seeking stay on the operation of the impugned assessment order dated 28.04.2021 and consequential proceedings*]

Preface: -

3. Via this writ petition, a challenge is laid to the assessment order dated 28.04.2021, and consequential proceedings. The said order concerns the assessment year ('AY') 2018-2019.

3.1. The substantive prayers made in the writ petition are as follows:

“A. issue a writ in the nature of Certiorari or an order, quashing the impugned assessment order dated 28.04.2021 (Annexure-P-8) passed by the respondent;

B. issue a writ in the nature of mandamus or an order prohibiting the operation of the assessment order passed by the respondent ;

C. issue a writ in the nature of mandamus or an order prohibiting for the collection of disputed demand raised by the respondent.

D. that pending the hearing and final disposal of the present petition, this Court may be pleased to stay the operation of the impugned assessment order dated 28.04.2021 and subsequent proceeding which has been undertaken in consequence of said impugned assessment order dated 28.04.2021 and grant an injunction restraining the Respondents, their subordinates, servants, agents, successors-in-office from taking any steps in furtherance or in implementation of said impugned assessment order dated 28.04.2021 and subsequent proceeding which has been undertaken in consequence of the said impugned assessment order dated 28.04.2021.”

4. Mr. Kapil Goel, who appears on behalf of the petitioner, says that the principal grievance of the petitioner is that, although, a personal hearing was sought, on account of the fact that the matter was complex and required proffering explanation, the respondent/revenue chose not to accord the same.

4.1 It is Mr. Goel's contention that the respondent/revenue has, thus, committed an infraction of the statutory scheme encapsulated in Section 144B of the Income Tax Act, 1961 (in short 'the Act').

5. Issue notice.

5.1. Mr. Shlok Chandra accepts service on behalf of the respondent/revenue.

6. Mr. Chandra says that he would argue the matter based on the record presently available with the Court, and therefore, he does not wish to file a counter-affidavit.

7. Thus, with the consent of the counsel for the parties, the writ petition is taken up for hearing and final disposal.

Background facts:

8. Broadly the facts adverted to in the writ petition are as follows:

8.1 The petitioner claims that, in respect of the AY in issue, i.e., 2018-2019, the return was filed on 27.10.2018. It is averred that, *via* this return, the petitioner declared its income as Rs.33,43,690/-. According to the petitioner, the return was processed under Section 143(1) of the Act.

8.2 It is further averred by the petitioner that, on 22.09.2019, a notice was issued, under Section 143(2) of the Act read with Rule 12E of the Income Tax Rules, 1962, whereby, the petitioner's return was picked up for scrutiny. It is the petitioner's case that, *via* this notice, two issues were flagged by the Assessing Officer (in short 'AO'): First, deductions made under the head 'income from other sources'; and second, the aspect concerning unsecured loans.

8.3. It appears that a notice under Section 142(1) of the Act was served on the petitioner on 06.12.2020, which was followed by a communication dated 12.01.2021, issued by the respondent/revenue. The petitioner claims that, a reply to the notice dated 06.12.2020, was furnished by him, on 25.02.2021. The respondent/revenue thereafter, it appears served two rejoinders on the

petitioner. These rejoinders are dated 06.03.2021 and 19.03.2021. The petitioner sent a response qua them *vide* communication dated 27.03.2021.

8.4. It appears that, the aforementioned correspondence was carried forward by the respondent/revenue by sending a communication to the petitioner on 31.03.2021, which, once again, was responded to by the petitioner, *via* letter dated 01.04.2021. This response, according to the petitioner, was reiterated by him, in the communication sent on 04.04.2021.

8.5. The petitioner avers that, that, thereafter, the respondent/revenue served a show cause notice-cum-draft assessment order, dated 13.04.2021, on him. *Via* the said show-cause notice-cum-draft assessment order, the respondent/revenue proposed a disallowance of Rs.1,00,26,692/-, under Section 57 of the Act. Consequently, a proposal was made to vary the income, resulting in the enhancement of the declared income to Rs. 1,33,70,380/-.

8.6. It is the petitioner's case that, thereafter, several requests were made to the respondent/revenue for grant of personal hearing. The petitioner avers that these requests were made on 15.04.2021 and 20.04.2021.

8.7. It appears that the respondent/revenue did not pay heed to the requests made on behalf of the petitioner, and proceeded to issue a second show-cause notice along with a draft assessment order, dated 23.04.2021. Furthermore, the petitioner was directed to file its response/objections by 23:59 hours of 25.04.2021.

8.8. According to the petitioner, although, the timeframe for filing the response/objections to the aforementioned show-cause notice-cum-draft assessment order, dated 23.04.2021, was very short, he filed the response/objections on 24.04.2021.

8.9. The respondent/revenue, thus, without according a personal hearing to the petitioner, passed the impugned assessment order dated 28.04.2021. It is in these circumstances, that the said order has been assailed in the instant writ petition.

9. Mr. Goel, in support of the prayers made in the writ petition, submits that, the impugned assessment order, which has been passed under Section 143(3) read with Section 144B of the Act, is contrary to the statutory scheme incorporated under Section 144B of the Act. It is also Mr. Goel's submission that, the impact of such an infraction, as captured in Section 144B(9) of the Act, is that, such assessment proceedings are non-est in the eyes of law.

10. Mr. Chandra, on the other hand, says that the expression used in clause (vii) of sub-section (7) of Section 144B is 'may' and not 'shall', and therefore, there is no vested right in the petitioner to claim a personal hearing.

10.1. According to Mr. Chandra, since, even before the issuance of the show-cause notice-cum-draft assessment order, dated 23.04.2021, several opportunities were given to the petitioner to respond, which is reflected in the correspondence exchanged between the petitioner and the respondent/revenue, and failure to grant personal hearing to the petitioner did not render the proceedings non-est as the same was not mandatory.

10.2. Mr. Goel, in rejoinder, controverts this position.

Analysis and reasons:

11. Having perused the record and heard the learned counsel for the parties, in our view, what has clearly emerged is, as follows:

i) That prior to the issuance of the show cause notice-cum-draft

assessment order dated 23.04.2021, a show-cause notice-cum-draft assessment order was issued on 13.04.2021. In between these two dates, the petitioner had, on two occasions, i.e., 15.04.2021 and 20.04.2021, asked for personal hearing in the matter.

ii) After the show cause notice-cum-draft assessment order dated 23.04.2021 was issued, *via* which the petitioner was invited to file his response/objections, the petitioner, once again, while filing his reply, on 24.04.2021, asked for being accorded personal hearing in the matter.

11.1. The sum and substance of the requests made, is that, both before and after the issuance of the show-cause notice-cum-draft assessment order dated 23.04.2021, the petitioner continued to press the respondent/revenue to accord him a personal hearing, before it proceeded to pass the impugned assessment order. As noticed above, according to the petitioner, the request was made as the matter was complex and therefore, required some bit of explanation.

11.2. It has also emerged that [something which is not in dispute], the respondent/revenue made proposals for varying the income, both *via* the show-cause notice dated 13.04.2021 as well as the show-cause notice-cum-draft assessment order dated 23.04.2021. As noticed above, the declared income was proposed to be, substantially, varied.

11.3. In this context, if one were to look at the relevant provisions, [which, for the sake of convenience are extracted hereafter], then, one would get a sense as to why the legislature has provided a personal hearing in the matter:

“144B. Faceless assessment –
(1) xxx xxx xxx
(7) For the purposes of faceless assessment—
xxx xxx xxx

(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);

xxx xxx xxx
(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:—

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

[Emphasis is ours]

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.

11.5. In several matters, we have asked the counsels for the revenue as to, whether any standards, procedures and processes have been framed for dealing with such requests. The response, which we have got from the standing counsels including Mr. Chandra, is that, to the best of their knowledge, no such standards, procedures as also processes have been framed, as yet.

Conclusion:

12. Therefore, in our view, given the aforesaid facts and circumstances, it was incumbent upon the respondent/revenue to accord a personal hearing to the petitioner. As noted above, several requests had been made for personal hearing by the petitioner, none of which were dealt with by the respondent/revenue.

12.1. The net impact of this infraction would be that, the impugned orders will have to be set aside. It is ordered accordingly.

13. This brings us to Mr. Chandra's submission that; the respondent/revenue should be allowed to proceed afresh in the matter, in accordance with the law. To our minds, if the law permits the respondent/revenue to take further steps in the matter, the Court, at this stage, need not make any observations in that regard. If and when such steps are taken, and there is a grievance, the petitioner can take recourse to the relevant provisions of the Act.

14. At this stage, Mr. Goel says that the entire scheme, encapsulated

under Section 144B of the Act, was laid down to bring transparency as well as accountability in the system.

14.1. According to us, irrespective of whether such a statutory scheme was framed or not, the system has to be both, transparent, and the persons administering it, have to remain accountable. Therefore, what Mr. Goel has said is something, which is, obvious.

15. The writ petition and the pending application are disposed of in the aforesaid terms. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

JUNE 02, 2021

tr/sh

[Click here to check corrigendum, if any](#)