

Costs To Be Imposed On A.O, If Orders are Passed Without Application Of Mind- Bombay HC



Mantra Industries Ltd. vs NFAC W.P. NO.1625 OF 2021 order dated 11.10.21 Bombay HC

Brief Facts of The Case

- i) A.Y 2018-19;
- ii) On 22.04.2021(Friday) A Show Cause Notice (SCN) was issued to the assessee;
- iii) SCN as to why assessment shouldn't be completed as per the draft assessment order(DAO);
- iv) Assessee was to submit response by 23:59 Hours of 24.04.21(Fourth Saturday);
- v) Further It was advised that assessee may request for personal hearing;
- vi) On 23.04.21 Assessee sought 20 days-time due to Covid-19 to fulfil requirements of notice;
- vii) Assessee also objected to modification and also requested for personal hearing;
- viii) On 27.04.21 Assessee furnished the details sought in the notice;
- ix) On 08.06.2021 Assessment order u/s 144 was passed;(Six weeks after SCN, though only two days were given to file reply);
- x) The Assessment order was verbatim same as DAO except one sentence that SCN was issued on 22.04.21 but the assessee didn't furnish quantitative details

Contentions Raised by the Petitioner Assessee:

Principles of Natural Justice not followed as :

- i) Adjournment request not considered;
- ii) Request for personal hearing not considered;
- iii) Reply/ Objection filed against DAO not considered while passing the assessment order.

Contentions raised by the revenue:

- i) Both the replies filed by the assessee were considered and placed on record;
- ii) Assessee did not furnish quantitative details and also no justification was given by assessee for such non-compliance;
- iii) Therefore assessment is completed u/s 144 of The Act.

Observations of the Hon. Bombay High Court:

- i) Submissions of the Revenue are not unacceptable.
- ii) The Assessment order was passed without application of mind as;
- iii) Replies and objections not considered while passing assessment orders;
- iv) Personal Hearing not allowed;
- v) The order dated 08.06.21 is non-Est as it is passed without following procedure u/s 144B and therefore is set-aside;
- vi) Instruction was given to Senior Counsel appearing for The NFAC that

Quote "to circulate this order right from the Revenue Secretary to everybody in the Finance Ministry, that if such orders are continued to be passed, this Court will be constrained to impose substantial costs on the concerned Assessing Officer to be recovered from his/her salary and also direct the department to place such judicial orders in the career records of such Assessing Officer." **Unquote**

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Summarized By

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