

Court No. - 03

Case :- WRIT TAX No. - 465 of 2022

Petitioner :- Harish Chandra Bhati

Respondent :- Principal Commissioner Of Income Tax Noida And 2 Others

Counsel for Petitioner :- Ashish Bansal

Counsel for Respondent :- Gaurav Mahajan, Arvind Kumar Goswami

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. Heard Sri Ashish Bansal, learned counsel for the petitioner, Sri S.P. Singh, learned Additional Solicitor General of India assisted by Sri Arvind Kumar Goswami, learned Central Government Standing Counsel and Sri Ashish Agarwal, learned Standing Counsel for the respondent-Income Tax Department.

2. A personal affidavit of respondent No.4, namely, Sri Tarun Bajaj, Revenue Secretary to the Government of India, New Delhi dated 19.5.2022 has been filed today which is taken on record.

3. Learned Additional Solicitor General has referred to paragraphs 9 and 10 of the aforesaid personal affidavit dated 19.5.2022 and stated that the date of circular in paragraph 10 has been wrongly mentioned as 25.4.2022 instead 23.4.2022 and copy of said circular dated 23.4.2022 has already been filed alongwith the personal affidavit dated 3.5.2022. He further states that the Government's stand stated in paragraph 10 of the personal affidavit dated 19.5.2022 is clear and, accordingly, the Government shall take all actions against the erring officers.

4. In the order dated 30.03.2022 passed by this court, submissions of the learned counsel for the petitioner have been noted as under:-

“Learned counsel for the petitioner submits that the two land in question were jointly owned by seven persons. The petitioner herein and the aforesaid Dushyant Bhati both were also co-owners of the aforesaid agricultural land which was sold by two separate registered sale deeds. For the same set of reasons proceedings under Section 148 of the Act, 1961, were initiated against the petitioner and the aforesaid Dushyant Bhati who is the son of the petitioner. The Assessment Order dated 23.03.2022 under Section 147 read with Section 144 B of the Act, 1961, in respect of Dushyant Bhati has been passed by the National Faceless Assessment Centre, Delhi, accepting his claim that the land in question was accepted to be an agricultural land situate beyond 8 km. of municipal

limits. Thus the disclosed income in the returns for the Assessment Year 2013-14 has been accepted and no tax has been imposed in respect of the sale of the land in question. **On the other hand totally contrary view has been taken in the matter of the petitioner vide reassessment order dated 28.03.2022, under Section 147 read with Section 144 B of the Act, 1961, passed by the National Faceless Assessment Centre, Delhi, whereby 1/7th of the consideration in respect of the land in question, belonging to the petitioner, has been assessed as a long term capital gain on the finding that the land in question is not an agricultural land. Thus, on the same set of facts while the respondents have accepted the claim of petitioner's son in respect of the same land and on the other hand in respect of the same land the stand taken by the petitioner has been rejected and the sale proceeds of the agricultural land has been assessed as a long term capital gain."**

5. In the order dated 18.04.2022, submission of learned counsel for the respondent Nos.1, 2 and 3 has been noted, as under:

"Today, learned counsel for the respondent nos.1, 2 and 3 states that conflicting orders are being passed by National Faceless Assessment Centre and for which steps shall be taken to remove the anomalies.

In view of the statement as aforementioned and also the fact that two conflicting reassessment orders have been passed by the National Faceless Assessment Centre in respect of two co-owners of the same land, we direct the newly impleaded respondent no.4 to look into the matter and file his personal affidavit explaining the state of affairs and the steps being taken by the Government."

6. **In response, a personal affidavit dated 03.05.2019 on behalf of Union of India has been filed by Sri Tarun Bajaj, Revenue Secretary to the Government of India who has stated in paragraph-11 of the affidavit, as under:**

"11. The petitioner has an alternate administrative remedy in form of approaching the Local Committee for grievance settlement instead of approaching the Court in writ proceedings. Local committee has been empowered to deal with Taxpayer's Grievances from High-Pitched Scrutiny Assessment upon receipt of grievances, related to High-pitched Scrutiny assessments completed either under the Faceless Assessment regime or non-faceless Assessment regime and ascertain whether there is a prima-facie case of High-pitched Assessment, non-observance of principles of natural justice, non-application of mind or gross negligence of Assessing Officer/Assessment Unit. Issues such as the present case can be resolved by individual taxpayers through the remedy of approaching local committees set up for grievance redressal.

[A True Copy of the Revised Instruction for dealing with Taxpayer's grievance from High pitched scrutiny assessment, dated 23.04.22 (earlier version being Instruction No 17/2015 dt. 09/11/2015) is marked as Annexure A]"

7. True copy of **instructions/ Circular F.No.225/101/2021-ITA-II,**

Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes **dated 23.04.2022** issued under Section 119 of the Income Tax Act, 1961 and filed as Annexure A-1 to the personal affidavit dated 03.05.2022 is reproduced below:

“F.No.225/101/2021-ITA-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

*Room No. 245-A, North Block,
 New Delhi, the 23rd April, 2022*

To

All Pr. CCsIT/DGsIT/Pr.CCIT(Exemption)/Pr. CCIT(International-tax)

Madam/Sir,

Subject: Revised Instruction for constitution and functioning of ‘Local Committees to deal with Taxpayers’ Grievances from High-Pitched Scrutiny Assessment’ -reg.

The Central Board of Direct Taxes (the 'CBDT'), by its Instruction No. 17/2015, dated 9-11-2015 (copy enclosed) provided for constitution of 'Local Committees to deal with Taxpayers' Grievances from High-Pitched Scrutiny Assessment' in each Pr.CCIT region. The Local Committees were constituted to expeditiously deal with Taxpayers' grievances arising from High-Pitched Scrutiny Assessment.

2. Taking into consideration the changes in organizational set-up subsequent to launch of Faceless Assessment regime, the CBDT, in exercise of its powers under section 119 of the Income-tax Act, 1961 ('the Act') and in supersession of its earlier Instruction No. 17/2015 dated 9-11-2015, hereby issues the following instructions regarding constitution and functioning of 'Local Committees to deal with Taxpayers' Grievances from High-Pitched Scrutiny Assessment':

A. Constitution of Local Committees:

(i) Local Committees to deal with Taxpayers' Grievances from High-Pitched Scrutiny Assessment ('Local Committees') are required to be constituted in each Pr.CCIT region across the country including the Pr.CCIT(Exemption) and Pr.CCIT(International Taxation).

(a) The Local Committee shall consist of 3 members of Pr.CIT/CIT rank. To have a perspective of processes involved in Faceless Assessment process, Local Committees so constituted in each Pr. CCIT region and Pr.CCIT(Exemption) shall have one Pr.CIT (AU) of the region. The Local Committee constituted under the Pr.CCIT(International Taxation) need not have a Pr.CIT(AU) as a

member, as the assessments under the International Taxation charges are outside the purview of Faceless Assessment regime.

(b) The other members may be selected from the pool of officers posted as Pr.CsIT/Pr. CIT(Central)/CIT(Judicial)/ CIT(Audit)/CsIT(DR), ITAT of the respective Pr.CCIT region. For the Local Committees constituted under the Pr.CCIT(Exemption) and Pr.CCIT(International Taxation), members may be selected from their respective pool of officers.

(c) The senior most Member would be designated as the Chairperson of the Committee.

(d) The Addl. CIT (Headquarters) to such Pr. CCIT would act as a Member - Secretary to the Local Committee.

(ii) The Local Committees so constituted may co-opt other members, if necessary.

(iii) The Pr. CCIT concerned should ensure that the Local Committees are duly reconstituted after transfer/promotion of Members of the existing Local Committees.

(iv) Adequate publicity shall be given regarding constitution and functioning of Local Committees for filing of grievance petitions regarding High-Pitch Scrutiny Assessments. The communication address of such Local Committees shall be displayed at prominent places in the office building.

B. Jurisdiction of Local Committees:

The Local Committees constituted as above shall deal with the grievance petitions of the assessee under the **jurisdiction of respective Pr.CCIT regarding High-Pitched Scrutiny Assessments completed under both Faceless and non-Faceless Assessment regimes**. These Committees constituted in Pr. CCIT Region will also handle the grievances pertaining to Central Charges located under the territorial jurisdiction of the Pr. CCIT concerned.

C. Receipt of Grievances:

(i) Grievances related to High-Pitched Scrutiny Assessments completed under the Faceless Assessment regime will be received by NaFAC through dedicated e-mail id: samadhan.faceless.assessment@incometax.gov.in. Grievances so received shall be forwarded to Local Committee of the Pr. CCIT concerned by NaFAC, under intimation to Pr. CCIT of the Region/ Pr.CCIT(Exemption).

(ii) Grievances related to High-Pitched Scrutiny Assessments completed under the non-Faceless Assessment regime will be received by the office of Pr.CCIT concerned, physically or through e-mail. Grievances so received shall be forwarded to Local Committee of the Pr. CCIT concerned.

D. Action to be taken by the Local Committees on grievance petitions:

(i) A grievance petition received by the Local Committee **would be acknowledged**. A separate record would be maintained for dealing with such petitions by the Member-Secretary.

(ii) Member - Secretary on receipt of taxpayers' grievances of High-Pitched Assessment, will forward the same to the Chairman and Members of the Local Committee within three days of receipt of the grievance.

(iii) The grievance petition received by Local Committee would be examined by it to ascertain whether there is a prima facie case of High-Pitched Assessment, non-observance of principles of natural justice, non-application of mind or gross negligence of Assessing Officer/Assessment Unit.

(iv) The Local Committee may call for the relevant assessment records to peruse from the Jurisdictional Pr.CIT concerned.

(vi) The Local Committee may seek inputs from the Directorate of Systems (ITBA/e-filing/CPC-ITR, CPC-TDS, etc.), on Systems-related issues emanating from the grievance/matter under consideration, if considered necessary.

(vii) Local Committee would ascertain whether the addition(s) made in assessment order is/are not backed by any sound reason or logic, the provisions of law have grossly been misinterpreted or obvious and well-established facts on records have outrightly been ignored. The Committee would also take into consideration whether principles of natural justice have been followed by the Assessing Officer/Assessment Unit. Thereafter, Local Committee shall submit a report treating the order as High-Pitched/Not High-pitched, along with the reasons, to the Pr. CCIT concerned.

(viii) The Local Committee shall endeavor to **dispose of each grievance petition within two months from the end of the month in which such petition is received by it.**

(ix) Member-Secretary will ensure that the **meetings of the Local Committees are held at least twice in every month** during the pendency of the grievance petitions and that timely reports are submitted to the Pr. CCIT concerned.

E. Follow up action by Pr.CCIT:

(i) On receipt of the report of Local Committee, Pr. CCIT concerned may take suitable administrative action in respect of cases where assessment was found to be High-Pitched by the Local Committee, which inter alia include:

(a) **Calling for explanation of the Assessing Officer/Assessment Unit** (through Pr.CCIT, NaFAC) and any other administrative action as deemed fit.

(b) **Administratively advise the Pr.CIT concerned to prevent any coercive recovery in cases identified as high pitched by the Local Committee.**

(ii) **The findings of the report** of the Local Committee may also be shared by the Pr.CCIT concerned with NaFAC and/or Directorate of Income-tax(Systems), **as feedback, for revisiting the SOP/policy on Faceless Assessment and/or addressing the Systems related issues.**

F. Monitoring the functioning of Local Committee:

(i) **The Pr. CCIT concerned shall review the work of the Local Committee on a monthly basis.** Pr. CCsIT shall highlight outcome of work of Local Committees along with the action taken on the suggestions made by the Local Committees in respect of cases where assessment were found to be High-Pitched by the Local Committees, in their monthly D.O. letters to the respective Zonal Member.

(ii) **Quarterly Report** regarding the functioning of Local Committees shall be furnished by the Pr. CCIT concerned to the O/o Member (IT&R), CBDT under intimation to the respective Zonal Member in the prescribed format (copy enclosed) by 15th of the month following the quarter ended.

3. The purpose of constitution of Local Committees is to effectively and efficiently deal with the genuine grievances of taxpayers and help in supporting an environment where assessment orders are passed in a fair and reasonable manner. It is to be noted that Local Committees cannot be treated as an alternative forum to dispute resolution/appellate proceedings.

4. It is emphasized that the task of **constitution of Local Committees as per this Instruction be finalized within 15 days of issue of this Instruction or 30-4-2022, whichever is later,** and compliance report may be sent by the Jurisdictional Pr. CCsIT/Pr. CCIT (Intl.Tax.)/ Pr.CCIT(Exemptions) to their respective Zonal Members with a copy to Member (IT&R), CBDT.

5. This issues with the approval of Chairman, CBDT.

Enclosure: As above

(Ravinder Maini)

(Director)(ITA-II), CBDT.

Copy to:

- 1) The Chairperson, CBDT and all Members, CBDT
- 2) PS to the Secretary (Revenue)
- 3) All JS/CsIT, CBDT
- 4) ITCC division, CBDT
- 5) Jt. CIT, Data base Cell for uploading on the Department Website:
www.irsofficersonline.gov.in
- 6) O/o Pr. DGIT (Systems) for uploading on Official Website: www.incometax.gov.in
- 7) CIT (Media Coordinator), CBDT
- 8) Guard file

(Ravinder Maini)

(Director)(ITA-II), CBDT.

Annexure:

Quarterly Report on functioning of Local Committees to deal with taxpayers' grievances from High-Pitched Scrutiny Assessments

Date:

Quarter 1/2/3/4, Year _____

Number of grievances brought forward by the Local Committees from the last quarter	Number of grievances received by the Local Committee during the quarter	Number of grievances disposed of by the Local Committee during the quarter	Number of grievances pending with the Local Committee at the end of the quarter	Number of grievances where assessment was found to be high-pitched	Synopsis of administrative actions taken in respect of cases found high-pitched (Name, PAN and Asst. Year Wise description has to be given.)
(1)	(2)	(3)	(4)	(5)	(6)

(Note: The above information is to be submitted by 15th of the month following the quarter ended)

8. On 05.05.2022, this Court passed the following order:

“Sri S.P. Singh, learned Additional Solicitor General has filed a personal affidavit dated 03.05.2022 of Sri Tarun Bajaj, Revenue Secretary to the Government of India annexing therewith a circular dated 23.04.2022 providing for constitution of local committees which prima facie appears to be wholly unsatisfactory and a complete eyewash to address the problem being faced by assesseees on account of conflicting orders by the National Faceless Assessment Centre, New Delhi inasmuch as it merely provides a forum for complaint without any relief to the complainant and without fixing of accountability of the erring officers. It is highly improbable that an assessee shall make complaint against his assessing officer whether faceless or non-faceless without any relief to him from arbitrary assessment order or order passed in breach of principles of natural justice.

Learned Additional Solicitor General states that the Revenue Secretary to the Government of India shall file a better affidavit indicating solution to the problem of conflicting orders, arbitrary orders and frequent breach of principles of natural justice by assessing authorities including National Faceless Assessment Centre, within two weeks.

Time as prayed is granted.

Put up as a fresh case on 19.05.2022 for further hearing.”

9. In the personal affidavit filed today, the respondent No.4 by means of personal affidavit of Sri Tarun Bajaj, Revenue Secretary to the Government of India, New Delhi has stated in paragraphs-10 and 12, as under:-

*“10. It is further respectfully submitted that even though a large number of assessments were carried out efficiently and effectively, yet, recognising the difficulties faced by the tax payers, the Central Board of Direct Taxes issued instruction F. No. 225/101/2021/-ITA-II, dt. 25/04/22, for dealing with taxpayers grievances. The local committee ascertains whether the additions made in the assessment order is not backed by any sound reasons or logic, provisions of law have been grossly misinterpreted or obvious and well-established facts on record have been ignored outrightly. **The said instruction also provides for initiation of suitable administrative action against the erring officer in case where assessments are found by the local committee to be high-pitched or where there is non-observance of principles of natural justice, non-application of mind or gross negligence of assessing officer/ Assessment Unit.** Also, the findings of the local committee are considered for revisiting SOP/policy on faceless assessment and addressing systems related issues.*

12. The Petitioner has statutory remedy under the Income Tax Act, 1961 which he may avail by filing revision petition before the jurisdictional Principal Commissioner of Income Tax under section 264 or filing appeal before the Commissioner of Income Tax (Appeals) under section 250. The Petitioner has also filed application for withdrawal of Writ Petition to avail the remedy available under law. As such the Writ Petition is liable to be dismissed.”

10. In instructions/ Circular F.No.225/290/2015-ITA-II, dated 09.11.2015 issued by the Government of India, Ministry of Finance, Department of Revenue (CBDT), the Central Board of Direct Taxes (for short “CBDT”) itself has noted that **“it has been brought to the notice of Board that the tendency to frame high-pitched and unreasonable assessment orders is still persisting due to which grievances are being raised by the taxpayers. Such grievances not only reflect harassment of taxpayers but also lead to generation of unproductive work for Department as well as Appellate Authorities.”** Under the aforesaid instructions dated 09.11.2015, Local Committees were constituted to resolve quickly the taxpayers' grievances on account of high-pitched and unreasonable additions made by the Assessing Authorities. But it appears that tendency to frame high-pitched and unreasonable assessment orders is still persisting as also acknowledged by the respondents which resulted in issuance of instructions/ Circular dated 23.04.2022 under Section 119 of the Income Tax Act, 1961 so as to give it statutory backing.

11. This Court is also frequently coming across the writ petitions in which impugned orders reflect non-observance of principles of natural justice and even reply submitted by assesseees are not being considered by Assessing Officers under the faceless regime as well as non-faceless regime under the Act, 1961.

12. Tax payers are one of the important pillars of economy of the country. Their harassment not only causes jolt to the economy of the country and employment but also comes in the way of economic policy of the government including the policy “Ease of Doing Business”. The instructions dated 23.04.2022 issued by the CBDT, in exercise of powers conferred under Section 119 of the Act, 1961 and statement made by the respondent No.4 in the aforequoted para-10 of the personal affidavit dated 19.05.2022, needs to be implemented truly and effectively. Therefore, necessary mandamus needs to be issued to the respondents.

13. In view of the aforesaid, **the writ petition is disposed off** giving liberty to the petitioner to avail statutory remedy of appeal or revision under the Act, 1961 as he may be advised. All pending applications are disposed off.

14. In view of the discussions made above, particularly considering the instructions dated 23.04.2022 issued by the CBDT in exercise of powers conferred under Section 119 of the Act, 1961 and the statement of the respondent No.4 made in para-10 of the personal affidavit filed on 19.05.2022, the following directions in the nature of mandamus are issued:-

(i) The respondent No.4 shall ensure that copies of instructions F.No.225/101/2021-ITA-II, Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes dated 23rd April, 2022 is circulated within a month from today to Tax Bar Associations at District Level, State Level and National Level for information along with the following contents of paragraph-10 of the personal affidavit dated 19.05.2022:-

“The said instruction also provides for initiation of suitable administrative action against the erring officer in case where assessments are found by the local committee to be high-pitched or where there is non-observance of principles of natural justice, non-application of mind or gross negligence of assessing officer/ Assessment Unit.”

(ii) The respondent No.4 shall ensure that the aforesaid instructions dated 23.04.2022 along with afore-quoted contents of paragraph-10 of the personal affidavit dated 19.05.2022 shall be displayed on the official website of the Income Tax Department for awareness and information of taxpayers and consultants.

(iii) The constitution of Local Committees, procedure for submissions, receipts and disposal of grievances as provided in the aforesaid instructions dated 23.04.2022 and the above noted contents of the paragraph 10 of the personal affidavit dated 19.05.2022, for the purposes of publicity and awareness amongst taxpayers/ assesseees to achieve the mandate of Clause 2.A.(iv) of the aforesaid instructions dated 23.04.2022, shall be published

regularly for one year at least once in three months in two National Newspapers (one in English and the other in Hindi) and two State Level Newspapers (one in Hindi or Local Language and the other in English).

(iv) In the event “Local Committees” as referred in Clause 2.A.(i) of the aforesaid instructions dated 23.04.2022 in all the regions across the country including Pr.CCIT (Exemptions) and Pr.CCIT (International Taxation) have not yet been constituted, then the respondent No.4 shall ensure that Local Committees as provided in Clause 2.A.(i) of the aforesaid instructions dated 23.04.2022 be constituted within fifteen days from today and be made functional.

(v) The respondent No.4 shall ensure to establish a monitoring cell at the level of Government or CBDT within a month from today, if not established so far, which shall ensure regular monitoring of the Local Committees, follow up actions and review by Principal Chief Commissioners of Income Tax and Zonal Members, and analyse the quarterly reports for effective implementation of the instructions dated 23.04.2022 and the statement made in paragraph 10 of the personal affidavit dated 19.05.2022 aforequoted.

(vi) The Local Committee shall dispose off each grievance petition within two months from the end of the month in which grievance petition is received by it and its result and action taken on administrative side, if any, shall be communicated in writing to the concerned assessee within next four weeks.

(vii) The CBDT shall regularly monitor and shall take all necessary steps from time to time for effective implementation of the scheme/ instructions dated 23.04.2022 and necessary modifications/ improvements therein in the interest of assesseees so as to achieve the object of the aforesaid scheme/ policy decision/ instructions dated 23.04.2022.

Order Date :- 19.05.2022

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