

2022 LiveLaw (Del) 481

**IN THE HIGH COURT OF DELHI AT NEW DELHI
RAJIV SHAKDHER; JASMEET SINGH, JJ.
W.P.(C) 6158/2021 and CM APPL. 19532/2021; 10.03.2022**

OMKAR NATH

versus

**NATIONAL FACELESS ASSESSMENT CENTRE DELHI
(EARLIER NATIONAL E-ASSESSMENT CENTRE DELHI) & ANR.**

Summary: The Court has quashed the assessment order as an opportunity of personal hearing was not granted to the taxpayer.

Petitioner Through: Ms Kavita Jha, Advocate.

Respondents Through: Mr Ruchir Bhatia, Sr. Standing Counsel with Mr Shlok Chandra, Jr. Standing Counsel and Ms Mansie Jain, Advocate.

RAJIV SHAKDHER, J.

1. This writ petition is directed against the assessment order dated 07.06.2021, issued under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (in short "the Act") . The impugned assessment order concerns the assessment year (AY) 2018-2019.

1.1 Besides this, challenge has also been laid to the notice of demand dated 07.06.2021, issued under Section 156 of the Act, as well as notice issued for initiation of penalty proceedings under Section 270A of the Act. 2. Being aggrieved, the petitioner has approached this Court by way of the instant writ petition.

2.1 On 07.07.2021, upon notice being issued in the writ petition, the operation of the impugned assessment order dated 07.06.2021 was stayed.

2.2 On the same date i.e., 07.07.2021, while issuing notice, in paragraph 5 of the said order, the grounds on which, according to the petitioner, the impugned assessment order and the consequential orders of demand and initiation of penalty proceedings were not sustainable, were also, broadly, captured. For the sake of convenience, that part of the said order is extracted hereafter :

"5. Ms. Kavita Jha, learned counsel, who appears on behalf of the petitioner, says that the impugned assessment order is flawed, inter alia, for the following reasons:

i) Firstly, it seeks to tax interest received by the petitioner under Section 28 of the Land Acquisition Act, 1894 (in short "the LAC Act"), which is a capital receipt. In support of this plea, our attention has been drawn to the certificate issued by the Land Acquisition Officer, dated 16.03.2020. This certificate is appended on page 128 of the paper book.

ii) Secondly, the respondents have treated the petitioner differently, inasmuch as, another assessee who received compensation in the form of interest under Section 28 of the LAC Act was not subjected to tax qua that part of his income.

(ii)(a) For this purpose, our attention has been drawn to the assessment order passed in the case of Mr. Jitender Kumar Sharma. The assessment order is appended on page 125 of the paper book.

iii) Thirdly, the impugned assessment order is contrary to the Supreme Court judgement rendered in **Commissioner of Income Tax vs. Ghanshyam (HUF)**, (2009) 8 SCC 412 : 315 ITR 1.”

2.3. Since then, the respondents/revenue have filed a counter-affidavit in the matter.

3. We have heard the learned counsel for the parties.

3.1 According to us, for the moment, what needs to be decided by us in this petition is: whether or not the principles of natural justice have been followed as required under Section 144B of the Act.

3.2 Insofar as the merits of the case are concerned, at this juncture, in our opinion, we are not called upon to examine the same.

4. Therefore, keeping the aforesaid aspects in mind, the following broad facts need to be noticed:

(i) The petitioner had filed his return of income for AY 2018-2019 on 31.03.2019. In the said return, the petitioner pegged his taxable income at Rs. 29,66,880/-.

(ii) The Assessing Officer (AO) picked up the petitioner's case for scrutiny, and, accordingly, issued a notice under Section 143(2) of the Act on 23.09.2019. Apparently, the AO had also issued several notices under Section 142(1) of the Act between 24.11.2020 and 15.02.2021.

(iii) Ultimately, a show cause notice-cum-draft assessment order was served on the petitioner on 18.03.2021, which gave a very narrow window for responding to the same. The petitioner was called upon to respond to the same by 23:59 hours ending on 02.04.2021.

(iv) A perusal of the show cause notice-cum-draft assessment order reveals that the AO proposed an addition of Rs.7,34,28,895/- to the taxable income of the petitioner, as income from other sources. Pertinently, this addition was arrived at, based on the following computation noted in the show cause notice-cum-draft assessment order:

“1. Total income Returned Rs. 29,66,880/-

2. Addition (As discussed in para 9.2)

(Interest received on enhanced compensation) Rs. 14,68,57,790/-

(rounded off)

Less: Deduction @50% Rs 7,34,28,895/- iii) Total assessed income Rs.7,63,95,775/-”

(v) As is evident from above, the addition in the petitioner's income was proposed on account of interest received by him from the Land Acquisition Collector („LAC”) on enhanced compensation for acquisition of his land. As required, the petitioner filed a response with the AO on 25.03.2021. (vi) The record shows that, thereafter, another notice was issued by the AO on 09.04.2021, under Section 142(1) of the Act. Via this notice the AO, raised several queries with respect to the addition that he proposed to make, bearing in mind the defence that had been articulated by the petitioner in reply to the show cause notice-cum-draft assessment order dated 18.03.2021.

(vii) What is pertinent is that the petitioner responded to this notice [i.e., notice dated 09.04.2021] as well, *via* communication dated 15.04.2021, and, while furnishing the necessary information, the petitioner also sought an opportunity for being heard in-person.

4.1. Concededly, the AO passed the impugned assessment order, as indicated above, on 07.06.2021, without granting an opportunity to the petitioner of a personal hearing in the matter.

4.2. This being the position, clearly, the provisions of Section 144B(7)(vii) of the Act would apply in this case.

4.3. We may note that this issue has received consideration of this Court, *inter alia*, in judgment dated 27.05.2021, passed in WP(C) No.5537/2021, titled ***Ritnand Balved Education Foundation (Umbrella Organization of Amity Group of Institutions) v. National Faceless Assessment Centre & Ors.*** The relevant observations made in the said judgment are extracted hereafter:

" 7.1. For the sake of convenience, the relevant part of Section 144B(7)(vii) of the Act and the SOP framed by the CBDT are extracted hereafter:

"144B. Faceless assessment -

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;

xxx xxx xxx"

"STANDARD OPERATING PROCEDURE (SOP) FOR PERSONAL
HEARING THROUGH VIDEO CONFERENCE UNDER THE
FACELESS ASSESSMENT SCHEME, 2019

CIRCULAR F. NO. PR. CCIT/NeAC/SOP/2020-21, DATED 23-11-2020

The Principal Chief Commissioner of Income Tax, National e-assessment Centre, with the prior approval of the Central Board of Direct Taxes, New Delhi, lays down the following circumstances in which personal hearing through Video Conference shall be allowed in the Faceless Assessment Scheme, 2019:

Where any modification is proposed in the draft assessment order (DAO) issued by any AU and the Assessee or the authorized representative in his/her written response disputes the facts underlying the proposed modification and makes a request for a personal hearing, the CCIT ReAC may allow personal hearing through Video Conference, after considering the facts & circumstances of the case, as below:-

1. The Assessee has submitted written submission in response to the DAO.

2. The Video Conference will ordinarily be of 30 minutes duration. That may be extended on the request of the Assessee or authorised representative.

3. The Assessee may furnish documents/evidence, to substantiate points raised in the Video Conference during the session or within a reasonable time allowed by the AU, after considering the facts and circumstances of the case.”

7.2. As would be evident, this provision [i.e., Section 144B(7)(vii) of the Act] would squarely apply in this case, as a specific request for personal hearing was made on behalf of the petitioner. The request made by the petitioner is contained in its communication dated 23.04.2021, appended on page 324 of the paper book [See Annexure P-29 (Colly)].

7.3. We may also note that, in the Lemon Tree Case, we had queried Ms. Malhotra as to whether any standards, procedures and processes have been framed by revenue in terms of sub-clause (h) of clause (xii) of Section 144B(7)¹ of the Act . Ms. Malhotra had informed us that, in this regard, she had no instructions. We have queried Ms. Malhotra, once again today. Ms. Malhotra says that she has, still, not received any instructions in that regard.

7.4. Therefore, we have to presume that, no standards, procedures and processes have been framed in terms of clause (xii) Section 144B(7) of the Act. These standards, procedures and processes are required to be framed, to guide the assessing officer as to whether or not personal hearing in a given matter should be granted.

7.5. That apart, in our view, since the statute itself makes the provision for grant of personal hearing, the respondents/revenue cannot veer away from the same.”

5. Accordingly, in view of the aforesaid discussion, the prayer made in the writ petition is allowed.

5.1. The impugned assessment order dated 07.06.2021, as well as consequential notices i.e., the notice of demand issued under Section 156 of the Act, and the notice issued for initiation of penalty proceedings under Section 270A of the Act, of even date, are set aside.

5.2. Needless to add, if the AO is desirous to proceed further in the matter, she/he will have the liberty to do so, albeit as per law.

6. The writ petition is, accordingly, disposed of. Pending application(s), if any, shall stand closed.

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¹ 144B.

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: —

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