

\$~S-7

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

+ W.P.(C) 6245/2021 & CM APPLs. 19753-54/2021

NARESH KUMAR GOYAL

..... Petitioner

Through: Mr. Ved Jain with Ms. Richa Mishra,
Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ORS.

..... Respondents

Through: Mr. Ajit Sharma, Advocate for R-1 to
6.
Mr. Vikrant N Goyal, Advocate for
R-7/UOI

%

Date of Decision: 12th July, 2021.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the assessment order dated 20th May 2021 issued by Respondent Nos. 1 to 6 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [for short 'the Act'] for Assessment Year 2018-2019 and notice of demand dated 20th May, 2021. Petitioner also challenges the show cause notice and draft assessment order both dated 19th April, 2021, penalty notice dated 20th May, 2021 under Section 274 read with Section 271AAC(1) of the Act issued by

Respondents.

3. Learned counsel for the Petitioner states that the impugned assessment order and notices have been passed in gross violation of principles of natural justice without affording the petitioner due opportunity of being heard.

4. He states that the show cause notice dated 19th April, 2021 required the Petitioner to make compliance within 48 hours i.e. by 21st April, 2021 despite the fact that Covid-19 was at its peak at that time and there was a lockdown imposed in the NCT of Delhi by the Delhi Disaster Management Authority, Government of NCT of Delhi.

5. Learned counsel for the petitioner further states that the impugned Assessment order has been passed without granting an opportunity for personal hearing as envisaged under Section 144B(7)(vii) of the Act even though it was specifically sought by the Petitioner vide letter dated 21st April, 2021 in response to show cause notice dated 19th April, 2021.

6. He emphasises that the Respondent No.6 denied the opportunity of personal hearing merely for the reason that such request was made by the Petitioner through his reply filed on 21st April 2021 and not through the link provided in the show cause notice dated 19th April 2021 despite the fact that no such link was provided in the show cause notice dated 19th April, 2021 as well as no manner of making the request for personal hearing was prescribed in the show cause notice dated 19th April, 2021 and no guidelines or instructions have been issued under the Act or Rules to such effect.

7. Learned counsel for the Petitioner relies on various orders passed by this Court in matters with similar facts wherein this Court has set aside the assessment orders that had been passed by the Revenue/Respondent without

granting an opportunity of being heard. (*Ritnand Balved Education Foundation (Umbrella Organization of Amity Group of Institution) v NFAC* W.P. (C) 5537/2021 dated 27th May, 2021, *Sanjay Aggarwal v. National Faceless Assessment Centre Delhi*, W.P. (C) 5741/2021 dated 02nd June, 2021, *Naina Lal Kidwai v. NFAC Delhi* W.P.(C) 5775/2021 dated 03rd June, 2021, *Lemon Tree Hotels Limited v NFAC Delhi* W.P(C) 5427/2021 dated 21st May, 2021).

8. Issue notice.

9. Mr. Ajit Sharma, Advocate accepts notice on behalf of Respondent Nos. 1 to 6. Mr. Vikrant N Goyal, Advocate accepts notice on behalf of Respondent No. 7.

10. Mr.Sharma states that the expression used in clause (vii) of sub-section (7) of Section 144B of the Act is ‘may’ and not ‘shall’ and therefore, there is no vested right in the petitioner to claim a personal hearing.

11. Having heard learned counsel for the parties, this Court is of the view that Section 144B (7) provides for a personal hearing. The relevant portion of Section 144B (7) is reproduced hereinbelow:-

“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

(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

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

xxx xxx xxx”

“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.

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. Keeping in view the aforesaid facts and mandates of law, the impugned assessment order dated 20th May, 2021 as well as notice of demand and penalty notice are set aside and the matter is remanded back to the Assessing Officer, who shall grant an opportunity of hearing to the petitioner by way of a Video Conferencing and thereafter pass a reasoned order in accordance with law.

14. With the aforesaid direction, the present writ petition along with pending applications stand disposed of.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JULY 12, 2021

AS