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

\+ W.P.(C) 7166/2021 & CM APPLs. 22632-22633/2021

UMKAL HEALTHCARE PVT LTD ..... Petitioner
Through Mr. Satyen Sethi, Advocate

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ANR. ..... Respondents
Through Mr. Sunil Agarwal, Sr. Standing Counsel with Mr. Tushar Gupta, Jr. Standing Counsel for respondents

% Date of Decision: 29th July, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

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 09th June 2021 passed by the Respondents under Section 143(3) read with Section 144B of the Act for Assessment Year [AY] 2018-19 as well as notice of demand issued under Section 156 of the Act and all proceedings initiated pursuant thereto.

3. Learned counsel for the Petitioner states that the impugned order dated 09th June 2021 passed under Section 143(3) read with Section 144B of

the Act, for the assessment year 2018-19 is without jurisdiction, arbitrary, illegal and deserves to be quashed. He states that the impugned order dated 09th June 2021 was passed without affording personal hearing, even when, specifically requested by the Petitioner and hence, the impugned order is violative of the principles of natural justice and Section 144B of the Act.

4. He points out that as against the draft assessment order dated 08th April 2021, the Petitioner had filed a response, therefore in terms of clause (xxiii)(b) of section 144B, the response was required to be sent to the assessment unit and the assessment unit was to pass a revised draft order. He contends that the Revised draft order under clause (xxiv) to section 144B of the Act was not prepared. He emphasises that the final assessment order is virtually a copy of draft assessment order dated 08th April 2021.

5. Issue notice. Mr. Sunil Agarwal, learned senior standing counsel accepts notice on behalf of respondents. He submits 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.

6. Having heard learned counsel for the parties, this Court is of the view that Section 144B (7) provides for an opportunity of personal hearing, if requested, by the assessee. The relevant portions of Section 144B (7) and Section 144B (9) are reproduced hereinbelow: -

"144B. Faceless assessment –
(1) xxxx xxxx xxxx xxxx
(7) For the purposes of faceless assessment—
xxxx xxxx xxxx xxxx
(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);

xxxx xxxx xxxx xxxx

(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: —

xxxx xxxx xxxx xxxx

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

xxxx xxxx xxxx xxxx

(9) Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) [other than the cases transferred under sub-section (8)], on or after the 1st day of April, 2021, shall be non est *if such assessment is not made in accordance with the procedure laid down under this section."*

7. The learned predecessor Division Bench in ***Sanjay Aggarwal Vs. National Faceless Assessment Centre, Delhi, W.P.(C) 5741/2021, dated***

02nd June, 2021, while interpreting the aforesaid Section has held as under:-

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

8. Since in the present case no hearing had been granted before passing the impugned assessment order, there is a violation of principles of natural justice as well as mandatory procedure prescribed in "Faceless Assessment

Scheme" and stipulated in Section 144B of the Act.

9. Consequently, the impugned assessment order dated 09th June 2021 as well as demand notice and all proceedings initiated pursuant thereto for the assessment year 2018-19 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 Video Conferencing and thereafter pass a reasoned order in accordance with law. With the aforesaid directions, the present writ petition and pending application stand disposed of.

10. 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 29, 2021

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