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

+ W.P.(C) 7230/2021 & CMA APPL. 22778/2021

KRS HOME DEVELOPERS PRIVATE LIMITED

Through Mr. Kapil Goel with Mr. Sandeep
Goel and Mr. Dhananjay Garg,
Advocates

versus

NATIONAL FACELESS ASSESSMENT

CENTRE NEW DELHI

..... Respondents

Through Ms. Vibhooti Malhotra, Sr. Standing
Counsel

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Date of Decision: 29th 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 Impugned Assessment Order dated 31st May 2021 passed by the Respondents in light of Section 144B (7) and Section 144B (9) of the Income Tax Act, 1961 [the Act] and all proceedings initiated pursuant thereto.
3. Learned counsel for the Petitioner states that the Show Cause Notice with draft Assessment Order was issued on 19th March 2021 by NFAC giving time to file reply till 23:59 hours of 25th March 2021. He points out that the Petitioner responded to above Show Cause Notice within the short

time pleading that the matter requires explanation due to complexity of facts and requested for video conference (VC) hearing. He also states that subsequently, separate requests were made by the Petitioner assessee seeking opportunity of personal hearing however, the Respondents without paying heed to the Petitioner's requests, issued more notices.

4. He emphasises that the impugned order dated 31st May 2021 was passed without providing personal hearing as was requested in replies dated 25th March 2021 and 13th April 2021 which is a serious violation of the principles of natural justice.

5. Issue notice. Ms. Vibhooti Malhotra, learned senior standing counsel accepts notice on behalf of respondents. She 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.

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.

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.

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 31st May 2021 and all proceedings initiated pursuant thereto 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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