

THE HIGH COURT OF MADHYA PRADESH
WP-11258-2021
(METHARAM PINJANI VS. INCOME TAX DEPARTMENT)

JABALPUR, DATED : 28.01.2022

Heard through Video Conferencing.

Shri Ashish Goyal, learned counsel for petitioner.

Shri Sanjay Lal, learned counsel for respondent.

The present petition filed under Article 226 of the Constitution of India prays for the following reliefs :-

"7.1 Issue a writ of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India :-

(i) To quash the invalid and illegal impugned order; or

(ii) To set-aside the high pitched Assessment order and demand thereof direction the respondent to make the assessment afresh after affording proper and due opportunity and considering the submissions of the petitioner; and/or

(iii) To direct the appropriate authority to stay the demand recovery proceedings till the disposal of the case; and/or

(iv) To issue any other writ, order or direction as this Hon'ble Court deems just and fair in the facts and circumstances of the case to give relief to the petitioner."

2. The grievance of the petitioner as projected by learned counsel for petitioner Shri Ashish Goyal is that though an appeal u/S 246A of the Income Tax Act, 1961 is pending before the Appellate Authority against the order of assessment dated 23.02.2021 impugned herein, but this petition is filed to raise certain uncontroverted facts and

violation of statutory provisions, in particular Section 144(B)(7)(vii) of the Income Tax Act and thus this petition despite pendency of the appeal is maintainable and deserves adjudication on merits.

3. Learned counsel for petitioner has submitted that the show cause notice issued to the petitioner led to a response filed by the petitioner vide reply (at Pg No. 55 of the Paper Book) which besides refuting the contentions of the Revenue sought personal hearing in terms of Section 144(B)(7)(vii) of IT Act.

4. Learned counsel for petitioner raised several other contentions which in the considered opinion of the Court are more to do with merits of the claim which is pending adjudication in shape of appeal before the Appellate Authority and therefore, this Court refrains from going into the same.

5. As regards denial of the right to personal hearing is concerned it would be appropriate to reproduce the provision of Section 144(B)(7) (vii) as follows :-

“144B. Faceless assessment. - (1) xx xx xx

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

(6) xx xx xx

(7) For the purposes of faceless assessment by -

(i) xx xx xx

(ii) xx xx xx

(iii) xx xx xx

(iv) xx xx xx

(v) xx xx xx

(vi) xx xx xx

(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;

(Emphasis supplied)

6. The aforesaid provision dealing with Faceless Assessment confers right upon the assessee to seek personal hearing to present the case or make oral submissions before the Authority.

7. Learned counsel for the assessee/petitioner submits that despite the said prayer having been made for personal hearing contained in Para 7 of the reply (at Page No. 115 of the Paper Book), no personal hearing was afforded and the impugned order was passed thereby amounting to denial of a statutory right of personal hearing.

7.1 Close scrutiny of the text of Section 144(B)(7)(vii) reveals that the right to make oral submissions before the Assessing Authority is circumscribed by corresponding obligation of assessee to request for the same. The request as alleged by the petitioner to be made in Para 7 of the reply is as follows:-

“7) In view of above facts, I hereby object the show case notice and proposed addition in draft assessment order and request you to complete the assessment on returned income and if there is any doubt I am ready through my consultant for Video-conferencing.”

8. The aforesaid express request made in the reply as reproduced above reveals that the petitioner objected to the show cause notice and the proposed addition in draft assessment order and requested to complete the assessment on returned income and thereafter mentioned

that in case of any doubt, the assessee is ready through his consultant for video conferencing.

8.1 From the aforesaid alleged request, it was left upon the Assessing Authority to grant hearing through video conferencing in case the Assessing Officer is in doubt as regards the contention of the assessee in his reply.

8.2 A bare perusal of the impugned assessment order (Annexure P/1) reveals that notices were issued twice to the petitioner once u/S 143(2) of the IT Act through e-mail and thereafter u/S 142(1) of the Act. Both these notices were responded to by the petitioner-assessee. Both these responses were not found satisfactory and were rejected on reasons mentioned in detail in the impugned assessment order. The Assessing Authority also found that the assessee failed to provide documents supportive of his stand, thereafter, final show cause notice was again issued on 27.01.2021 for proposed additions of Rs. 2,86,01,971/- treating it as unexplained income. The impugned order of the assessment further reveals that in response to this final show cause notice, the assessee/petitioner has submitted details with documents of capital increased which were considered and not found satisfactory, thereafter, another show cause notice was issued on 27.01.2021, in response to which assessee submitted certain details and documents with capital account. After having afforded liberty as aforesaid of being heard which appears to be not only reasonable but sufficient, the Assessing Authority passed the impugned order (Annexure P/1).

9. In the conspectus of aforesaid discussion, what comes out loud and clear is that liberty of being heard was offered to the petitioner. The decision taken by the impugned order may or may not be correct is not for this Court to dwell upon especially when the statutory appeal preferred by the petitioner is pending consideration. More so, since the petitioner did not make any specific express demand for a

personal hearing, the non grant of personal hearing by the Assessing Officer cannot lead to a case of breach of principles of natural justice (*audi alteram partem*) thereby enabling the petitioner to directly approach this Court under Article 226 of the Constitution especially in the face of pending statutory appeal.

10. It is trite law that in a taxing statute one has to look merely at what is clearly said in the terminology employed. There is no presumption as to a taxing statute. Nothing is to be read in and nothing implied in the text of a taxing statute. While interpreting/analyzing taxing statute one can only look at the language used. This was the view taken a century ago by Rowlatt J. in **Cape Brandy Syndicate vs. Inland Revenue Commissioners**.

11. In view of above, the contention of denial of reasonable liberty of being heard cannot be countenanced in law. Accordingly, this petition is **dismissed** with liberty to pursue the remedy of appeal availed by petitioner.

12. It is made clear that no findings on merits of the claim put up by the petitioner-assessee before the Appellate Authority have been made in this order and thus it will be open for the parties to raise all such legitimate contentions in accordance with law before the Appellate Authority.

(SHEEL NAGU)
JUDGE

(SUNITA YADAV)
JUDGE