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

+ W.P.(C) 15911/2022

DLF EMPORIO LIMITED

..... Petitioner

Through: Ms.Kavita Jha with Mr.Vaibhav
Kulkarni and Mr.Udit Naresh,
Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI & ANR.

..... Respondents

Through: Mr.Sanjay Kumar, Sr.Standing
Counsel for the Revenue.

Date of Decision: 18th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J:

C.M.No.49533/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.15911/2022 & C.M.No.49532/2022

1. Present writ petition has been filed challenging the assessment order passed by Respondent No.1 under Section 143(3) read with Section 144B of the Income Tax Act, 1961 ('the Act') for the assessment year 2020-21 and notice of demand of even date issued under Section 156 of the Act

both dated 24th September, 2022 as well as notice for initiation of penalty proceeding issued under Section 270A of the Act.

2. Learned counsel for the Petitioner states that Section 144B of the Act statutorily mandates the procedure to be followed by the NaFAC while conducting faceless assessment, with sub-section (1) thereto clearly providing that assessment shall be completed as per the procedure prescribed. She states that Respondent No.1 erred in passing the assessment order dated 24th September, 2022 without giving a personal hearing in violation of Section 144B(6)(vii) and (viii) of the Act and the principle of natural justice.

3. Learned Counsel for the Petitioner states that in every response filed by the Petitioner to various notices and show-cause notices, the Respondent No.1 was specifically requested to grant opportunity of personal hearing taking into consideration the revised returns/documents before passing the impugned order, but the same was disregarded.

4. Issue notice. Mr.Sanjay Kumar, learned senior standing counsel accepts notice on behalf of the Respondents-Revenue.

5. Having heard learned counsel for the parties, this Court is of the view that the issue involved in the present writ petition is no longer *res integra*. This Court in the case of ***Bharat Aluminium Company Ltd. vs. Union of India & Ors; Ors., [2022] 134 taxmann.com 187 (Delhi)*** has held that the use of the expression “may” in Section 144B(7)(viii) is not decisive. Where discretion is conferred upon a quasi judicial authority, whose decision has civil consequences, the word “may” which denotes discretion should be construed to mean a command. Consequently, the requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory. It was

further held that the classification made by the Respondent between the matters involving disputed questions of fact and questions of law by way of the Circular dated 23rd November, 2020 is not legally sustainable. In any event, the statutory amendment in Section 144B puts the controversy beyond doubt. Consequently, this Court is of the opinion that an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it.

6. Accordingly, the impugned assessment order dated 24th September, 2022 passed by the Respondent No.1 under Section 143(3) read with Section 144B of the Act for the assessment year 2020-21 and the consequential proceedings are set aside and the matter is remanded back to the Assessing Officer for a fresh decision within twelve weeks after giving an opportunity of hearing to the petitioner and after taking into consideration the revised returns/documents, in accordance with law.

7. With the aforesaid direction, the present writ petition along with application stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 18, 2022

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