

Lemon Tree Hotels Limited vs National Faceless Assessment Centre ... on 21 May, 2021

Author: Rajiv Shakdher

Bench: Rajiv Shakdher, Talwant Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5427/2021

LEMON TREE HOTELS LIMITED

..... Pet

Through: Mr. Rohit Jain along with Mr. Anil
D. Agrawal, Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI

(EARLIER NATIONAL E-ASSESSMENT CENTRE DELHI) &

ANR.

..... Respon

Through: Ms. Vibhooti Malhotra, Sr. Stan
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 21.05.2021 [Court hearing convened via video-conferencing on account of COVID-19]

1. Allowed, subject to just exceptions.

2. The prayer made in the captioned application is to grant extension of time for deposit of requisite court fees and filing the duly sworn, notarised and/or affirmed affidavits along with the present petition. The captioned application is disposed of with a direction to the applicant/petitioner to deposit the requisite court fees and file the said affidavits, within three days of the resumption of the normal and usual work pattern by this court.

W.P.(C) No.5427/2021 & CM No.16831/2021[Application filed on behalf of the petitioner seeking stay on the operation of the assessment order dated 22.04.2021]

3. Mr. Rohit Jain, who appears on behalf of the petitioner, says that the impugned assessment order, dated 22.04.2021, issued under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [in short „the Act], has been passed in breach of the principles of natural justice. The impugned assessment order concerns the assessment year [in short „AY] 2018-2019. 3.1. To be noted, the petitioner has also assailed the consequential notices issued to it, i.e., notice of demand, issued under Section 156 of the Act, and notice for initiation of penalty proceedings, issued under Section 274 read with Section 270A of the Act. These notices are also dated 22.04.2021.

4. The record shows that a show cause notice-cum-draft assessment order, dated 13.03.2021, was served on the petitioner. Via the said show cause notice-cum-draft assessment order, the petitioner was called upon to file its response/objections by 23:59 hours on 29.03.2021. 4.1. It is the petitioner's stand that several replies were furnished pursuant to the issuance of the aforesaid show cause notice-cum-draft assessment order. The petitioner also states that since the matter was complex in terms of facts and law, a request for personal hearing was made to respondent no.1, via its designated e-portal, on 27.03.2021.

4.2. Mr. Jain says that respondent no.1 had an obligation to grant a personal hearing to the petitioner in terms of Section 144B(7)(vii) of the Act. It is, therefore, Mr. Jain's contention that since personal hearing was sought and has not been granted by respondent no.1 before passing the impugned assessment order, the same is flawed.

5. On the other hand, Ms. Vibhooti Malhotra, learned senior standing counsel, who appears on advance notice on behalf of the respondents/revenue, draws our attention to clause (viii) of subsection (7) of Section 144B of the Act. Based on the said clause, it is contended by Ms. Malhotra that, the petitioner cannot demand a personal hearing, as a matter of right. In this behalf, it may be relevant to extract the relevant provisions:

"144B. Faceless assessment:

(7)(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); "

6. As would be evident upon perusing the provisions of Section 144B(7)(viii) of the Act, the discretion of the officer in-charge of the Regional Faceless Assessment Centre is tied in with the circumstances covered in sub-clause (h) of clause (xii) of Section 144B(7) of the Act. For the sake of convenience, the said provision is set forth hereafter:

"Section 144B(7)(xii):

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) xxx xxx xxx

(g) xxx xxx xxx

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

6.1. A perusal of the aforesaid provision shows that, the circumstances, in which personal hearing is to be approved, is dependent on standard procedures and processes being framed by respondent no.1, i.e., National Faceless Assessment Centre, Delhi.

6.2. Ms. Malhotra was queried, as to whether standard procedures and processes had been framed by respondent no. 1. Ms. Malhotra says that, in this regard, she would have to revert with instructions.

7. To our minds, prima facie, once an assessee [i.e., the petitioner, in this case] requests for a personal hearing, the officer in-charge, under the provisions of clause (viii) of Section 144B(7) of the Act, would have to, ordinarily, grant a personal hearing.

7.1. In any event, since Ms. Malhotra is not able to inform us as to whether steps under sub-clause (h) of Section 144B(7)(xii) of the Act have been taken by respondent no. 1, we are inclined, at least at this stage, to agree with the contentions advanced on behalf of the petitioner.

8. Accordingly, issue notice. Ms. Malhotra accepts service on behalf of the respondents/revenue.

8.1. Counter-affidavit will be filed within four weeks from today. Rejoinder thereto, if any, will be filed before the next date of hearing.

9. In the meanwhile, there shall be stay on the operation of the impugned assessment order, dated 22.04.2021, as also qua the notice of demand and notice for initiation of penalty proceedings, of even date.

10. List the matter on 18.08.2021.

RAJIV SHAKDHER, J TALWANT SINGH, J MAY 21, 2021/pmc Click here to check corrigendum, if any