

Ritnand Balved Education Foundation ... vs National Faceless Assessment Centre & ... on 27 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) 5537/2021

RITNAND BALVED EDUCATION FOUNDATION (UMBRELLA
ORGANIZATION OF AMITY GROUP OF INSTITUTIONS)

..... Pe

Through: Mr. Ved Jain, Adv.

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ORS.

..... Respond

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

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% 27.05.2021 [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 filing the attested affidavits and deposition of the court-fee, along with the present petition.

2.1 The captioned application is disposed of with a direction to the applicant/petitioner to deposit the requisite court fees and file duly attested affidavits, within three days of the resumption of the normal and usual work pattern by this court.

W.P.(C) 5537/2021 & CM No.14264/2021

3. Issue notice. Ms. Vibhooti Malhotra, learned senior standing counsel, accepts service on behalf of the respondents/revenue.

4. Ms. Malhotra says that in view of the order passed by this Court in W.P.(C) 5427/2021, titled Lemon Tree Hotels Limited vs. National Faceless Assessment Centre Delhi (Earlier National E-Assessment Centre Delhi) & Anr., dated 21.05.2021 [in short "Lemon Tree Case"], and having regard to the directions that we propose to pass, she would argue the matter based on the record, presently, available with the Court. 4.1. Accordingly, the writ petition is taken up for hearing and final disposal, at this stage, itself.

5. The principal grievance of the petitioner is that the impugned assessment order and the consequential notice of demand and notice for initiating penalty proceedings issued to the petitioner are flawed, as they are contrary to the provisions of Section 144B(7)(vii) of the Income Tax Act, 1961 [in short "the Act"] and the Standard Operative Procedure For Personal Hearing Through Video Conference under The Faceless Assessment Scheme, 2019 [in short „SOP], issued by the Central Board of Direct Taxes [in short „CBDT], via Circular dated 23.11.2020.

6. Mr. Ved Jain, who appears on behalf of the petitioner, contends that the revenue was obliged in law to grant a personal hearing to the petitioner, if a request was made in that behalf. Mr. Jain says in this case a specific request was made by the petitioner for two reasons: Firstly, because of the prevalence of COVID-19. Secondly, as the matter was complex and needed to be explained to the assessing officer.

7. As noticed above, Mr. Jain has relied upon, both, the provisions of Section 144B(7)(vii) of the Act and the SOP issued by the CBDT. 7.1. For the sake of convenience, the relevant part of Section 144B(7)(vii) of the Act and the SOP framed by the CBDT are extracted hereafter:

"144B. Faceless assessment -

xxx	xxx
(7) For the purposes of faceless assessment--	
xxx	xxx

(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;

xxx xxx xxx"

"STANDARD OPERATING PROCEDURE (SOP) FOR PERSONAL HEARING THROUGH VIDEO CONFERENCE UNDER THE FACELESS ASSESSMENT SCHEME, 2019 CIRCULAR F. NO. PR. CCIT/NeAC/SOP/2020-21, DATED 23-11-2020 The Principal Chief Commissioner of Income Tax, National e-assessment Centre, with the prior approval of the Central Board of Direct Taxes, New Delhi, lays down the following circumstances in which personal hearing through Video Conference shall be allowed in the Faceless Assessment Scheme, 2019:

Where any modification is proposed in the draft assessment order (DAO) issued by any AU and the Assessee or the authorized representative in his/her written response disputes the facts underlying the proposed modification and makes a request for a personal hearing, the CCIT ReAC may allow personal hearing through Video

Conference, after considering the facts & circumstances of the case, as below:-

1. The Assessee has submitted written submission in response to the DAO.
2. The Video Conference will ordinarily be of 30 minutes duration. That may be extended on the request of the Assessee or authorised representative.
3. The Assessee may furnish documents/evidence, to substantiate points raised in the Video Conference during the session or within a reasonable time allowed by the AU, after considering the facts and circumstances of the case."

7.2. As would be evident, this provision [i.e., Section 144B(7)(vii) of the Act] would squarely apply in this case, as a specific request for personal hearing was made on behalf of the petitioner. The request made by the petitioner is contained in its communication dated 23.04.2021, appended on page 324 of the paper book [See Annexure P-29 (Colly)]. 7.3. We may also note that, in the Lemon Tree Case, we had queried Ms. Malhotra as to whether any standards, procedures and processes have been framed by revenue in terms of sub-clause (h) of clause (xii) of Section 144B(7) of the Act¹. Ms. Malhotra had informed us that, in this regard, she had no instructions. We have queried Ms. Malhotra, once again today. Ms. Malhotra says that she has, still, not received any instructions in that regard.

144B.

xxx xxx xxx

(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:--

xxx xxx xxx 7.4. Therefore, we have to presume that, no standards, procedures and processes have been framed in terms of clause (xii) Section 144B(7) of the Act. These standards, procedures and processes are required to be framed, to guide the assessing officer as to whether or not personal hearing in a given matter should be granted.

7.5. That apart, in our view, since the statute itself makes the provision for grant of personal hearing, the respondents/revenue cannot veer away from the same.

8. Accordingly, the impugned assessment order as well as the impugned notice of demand and notice for initiating penalty proceedings, of even date, i.e., 29.04.2021, are set aside.

8.1. Liberty is, however, given to the respondents/revenue to proceed from the stage of the show cause notice-cum-draft assessment order. 8.2. The respondents/revenue will grant a personal hearing to the authorized representative of the petitioner. The concerned officer will conduct the hearing via video-conferencing mechanism. For this purpose, prior notice, indicating the date and time, will be served on the petitioner, through its registered e-mail. Respondent no. 2 will, after hearing the authorized representative of the petitioner, pass a fresh order, albeit, as per law.

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

9. The writ petition and the pending application are disposed of in the aforementioned terms. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J TALWANT SINGH, J MAY 27, 2021/pmc Click here to check corrigendum, if any