



HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (T) No.241 of 2022

1. Rashmi Lakhotia W/o Shri Bharat Lakhotia Aged About 52 Years 31-42, Industrial Growth Centre, Borai, Police Chowki Anjora, District Durg Chhattisgarh Pin 491001.

---- **Petitioner(s)**

Versus

1. Union of India Through Secretary, Central Board of Direct Taxes, North Block, District : New Delhi, Delhi
2. Chief Commissioner of Income- Tax Aaykar Bhawan Civil Lines, Raipur Chhattisgarh -492001
3. Principal Commissioner of Income- Tax Aaykar Bhawan Civil Lines, Raipur Chhattisgarh -492001
4. Assessment Unit National Faceless Assessment Centre, Income-Tax Department, Through Principal Commissioner of Income-Tax, North Block, New Delhi
5. Assistant Commissioner of Income-Tax Circle- 1(1), Bungalow No. 32/32 Bungalows, Amdi Nagar, Hudco, Bhilai, District : Durg, Chhattisgarh

---- **Respondents**

For Petitioner	:	Shri S. Rajeshwara Rao and Shri Manoj Kumar Sinha, Advocates.
For Respondent No.1	:	Shri Ram Narayan Sahu, Advocate.
For Respondents 2 to 5	:	Shri Amit Choudhary, Smt. Naushina Ali and Shri Ajay Kumrani, Advocates

Hon'ble Shri Justice P. Sam Koshy

Order on Board

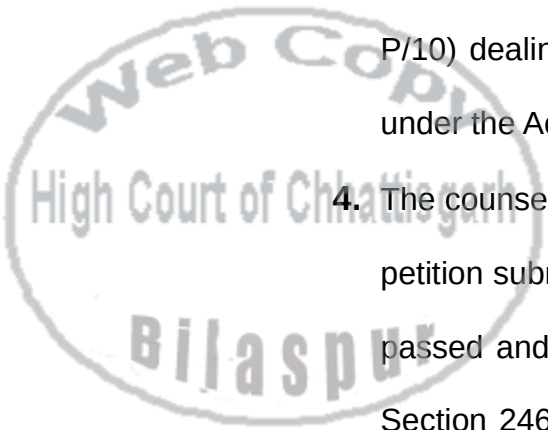
10.11.2022

1. Aggrieved by the assessment order passed under Section 143 read with Section 144B of the Income Tax Act, 1961 (in short, the Act of 1961) dated 29.09.2022, the instant writ petition has been filed.
2. Though there is a remedy of appeal against the final order of assessment, but the petitioner has filed the instant writ petition assailing the assessment order primarily on the ground of not being granted a fair opportunity of hearing in the course of the assessment being made. The assessment period is the assessment year 2021.
3. Learned counsel for the petitioner referring to Annexure P/9 dated 26.09.2022 submits that he had made a request for a personal hearing through Video Conferencing to the concerned assessment authority. The



said application was duly received by the Department also. However, inspite of the application having been duly received by the Department, the authority concerned proceeded with the assessment proceeding and have passed the impugned order without giving a fair opportunity of personal hearing. The counsel for the petitioner referred to Section 144B(6)(vii) & (viii) of the Act of 1961 and submits that it was mandatorily required by the assessing authority for giving an opportunity of hearing upon an application with a request for hearing when made. The counsel for the petitioner further relied upon 2022(6)TMI 551 (Bombay High Court), 2022 (4) TMI 908 (Gujrat High Court), 2022(3)TMI 622 (Delhi High Court) in support of his contention. He also relies upon the Standard Operating Procedure (SOP) issued by the Department dated 03.08.2022 (Annexure P/10) dealing with the aspect of faceless assessment and the provisions under the Act of 1961 in this regard.

4. The counsel appearing for the Department on the other hand opposing the petition submits that since the final assessment order having already been passed and the said assessment order being an appealable order under Section 246A of the Act of 1961, the present writ petition as such should not be entertained and the same should be rejected permitting the petitioner to avail the remedy of appeal under the statute. The counsel for the respondents also relied upon the decision of this Court in WPT No.124 of 2022 (M/s Geekay Millennium Company Vs. Union of India & Ors.) decided on 25.04.2022 and which was subsequently affirmed in Writ Appeal No.243 of 2022 vide order dated 07.07.2022.
5. Conscious of the fact that there is a remedy of appeal available to the petitioner, but this court at this juncture is entertaining the writ petition solitary on the ground whether in the course of passing of the impugned order the principle of natural justice was followed or not? There are





enough judgments passed by the Supreme Court as also by this court which categorically lays down that in a case where principle of natural justice stands violated, the writ court does have the power to subject an order to judicial review to the extent of considering the violation of the principles of natural justice.

6. It would be relevant at this juncture to refer to the provisions of Section 144B(6)(vii)&(viii) of the Act of 1961 in this regard which deals with the procedure which has to be followed in the course of the assessment being made under the provisions of Section 144B. For ready reference the two provisions is reproduced hereinunder:

“(vii) in a case where a variation is proposed in the income or loss determination proposal or the draft 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 such income or loss determination proposal, 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 of the relevant unit;

(viii) where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through National Faceless Assessment Centre, which shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the Board;”

7. The plain reading of the aforesaid provision, particularly the provision of Clause-viii of Sub-clause 6 of Section 144B, it mandates that upon an application/request being made for personal hearing, the income tax authority shall allow the said application by arranging for a Video Conferencing. In the instant case it stands established that the request from the petitioner was made before the authorities within time and there is no reason assigned as to why that application was not entertained or for that matter why the said application was rejected, if at all.





8. The Bombay High Court in case of Premlata Ramakant Fatehpuria Vs. Principal Commissioner of Income Tax-1 Nagpur in Writ Petition No.359 of 2022, 2022(6)TMI 551 (Bombay High Court) in paragraph 6 has held as under:

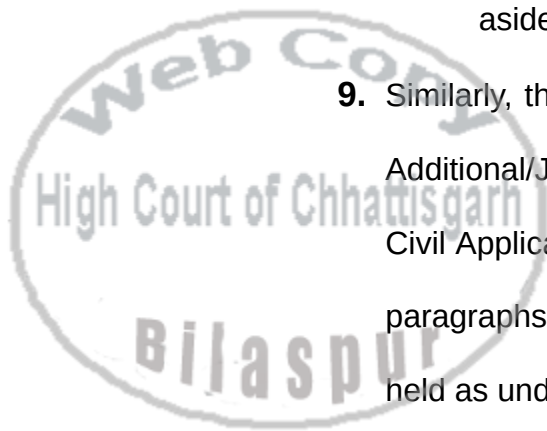
“6. Having heard the learned counsel for the parties and having perused the documents on record, it is clear that in response to the show cause notice dated 22.04.2021, the petitioner had on 23.04.2021 sought an opportunity for grant of personal hearing. Despite receipt of this request by the respondent no.3, the impugned order has been passed after a period of 23-WP-359-22(J) 4/4 almost two months but without granting any such opportunity. The impugned order does not indicate the reason for not granting such opportunity despite request for the same having been made within time and received by the respondent no.3. We find from the facts of the present case that failure to grant such opportunity to the petitioner has definitely caused prejudice to the petitioner. On the ground that the principles of natural justice have been violated, the impugned order of assessment is liable to be set aside.”

9. Similarly, the Gujrat High Court in case of Dr. K.R. Shroff Foundation Vs. Additional/Joint/Deputy/Assistant Commissioner of Income Tax in Special Civil Application No.14779 of 2021, 2022(4)TMI 908(Gujrat High Court) in paragraphs 12 onwards referring to various decisions on the subject has held as under :

“12. The decision of High Court of Orissa in case of Elite Education Society vs. Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue and Others [W.P. (C) No. 18472 of 2021] shall be necessary to be referred to at this stage where the Court has held that the requirement for providing the hearing in terms of Section 144(B)(7)(vii) is not merely directory but mandatory one.

“5. The requirement for providing such hearing in terms of Section 144 B (7) (vii) of the Income Tax Act, 1961 ('Act') is not merely directory, but a mandatory one. It reads as under:-

"144-B (7) For the purposes of faceless assessment--
"(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 assess or his authorized 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."

6. Not only is the Assessee given a right to make a request for personal hearing, but it is mandatory for the authority to provide for such personal hearing.

7. With there being no dispute that the Petitioner did make such a request, it was incumbent on the Opposite Parties to have given it an opportunity of being heard. The reply filed by the Opposite Parties only deals with the merits of the assessment itself and does not dispute that the above mandatory procedural requirement was not complied with.

8. In that view of the matter, on this short ground, the impugned assessment order is set aside and the matter is remanded to the assessing officer, i.e. National e-Assessment Centre, for compliance of the mandatory requirement of Section 144 B (7) (vii) of the Act and provide a personal hearing to the Petitioner as requested by it on a date and time to be conveyed to it at least one week in advance. It is made clear that the hearing can be in either physical or virtual mode. A fresh assessment order shall be passed thereafter within three months. If aggrieved by such order, it would be open to the Petitioner to seek appropriate remedies in accordance with law.

9. The Court makes it clear that it has not expressed any view on the merits of the case, except on the above limited procedural error of non-compliance with the mandatory requirement of Section 144 B (7) (vii) of the Act.



12.1. The decision of Bombay High Court in case of Piramal Enterprises Limited vs. Addl./Jt./Dy./Asstt. Commissioner of Income Tax/Income Tax Officer, Delhi [[2021] 129 taxmann.com 18 (Bombay)], where also the Court held that the faceless assessment is not made in accordance with the procedure laid down under Section 144(B). There is a telling / pronounced rigour, to follow the procedure under section 144B, lest the assessment would be non est. It further held that as per the provisions of Section 144(B), when the hearing has been envisioned and incorporated, it is imperative to observe the principles of natural justice as stipulated.

12.2. The High Court of Delhi in case of Sanjay Aggarwal vs. National Faceless Assessment Centre, Delhi [[2021] 127 taxmann.com 637 (Delhi)] held and observed thus:-

"11.3. In this context, if one were to look at the relevant provisions, [which, for the sake of convenience are extracted hereafter], then, one would get a sense as to why the legislature has provided a personal hearing in the matter: "144B. Faceless assessment -



(1) xxx xxx xxx

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

(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);

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

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

xxx xxx xxx

[Emphasis is ours]

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 Signature Not Verified By:VIPIN KUMAR RAI Signing Date:09.06.2021 00:54:32 (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.”

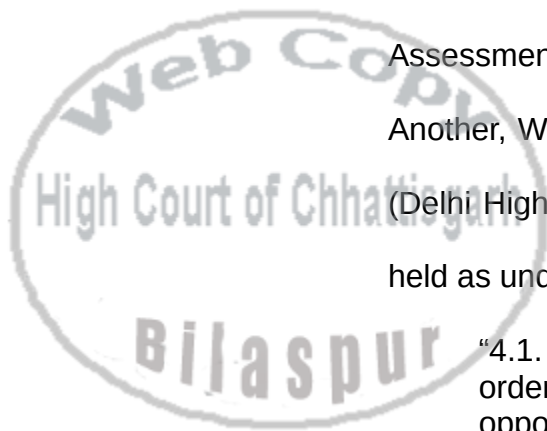
10. In yet another case in case of Omkar Nath Vs. National Faceless Assessment Centre Delhi (Earlier National E-Assessment Centre Delhi) & Another, WPC No.6158 of 2021, decided on 10.03.2022, 2022(3)TMI 622 (Delhi High Court) on the same set of facts in paragraphs 4.1 to 4.3 has held as under :

“4.1. Concededly, the AO passed the impugned assessment order, as indicated above, on 07.06.2021, without granting an opportunity to the petitioner of a personal hearing in the matter.

4.2. This being the position, clearly, the provisions of Section 144B(7)(vii) of the Act would apply in this case.”

11. Further, the Andhra Pradesh High Court in case of Shri Mudar Sudheer Vs. Union of India, 2022(3)TMI 348 (Andhra Pradesh High Court) in writ petition No. 25113 of 2021, decided on 28.02.2022, has held as under :

“.....Having regard to the facts and circumstances of the case and considering the submissions made by the counsel, this court is of the view that the 2nd respondent passed the impugned assessment order in terms of Sections 143 (3) read with 263 read with 144B of the Income Tax, without affording an opportunity of hearing through video conferencing to the petitioner, though a specific request was made by the 9 CPK, J & VS, J W.P.No.25113 of 2021 petitioner for personal hearing through video conferencing in terms of Section 144B (7) (vii) (ix), which is not only in violation of principles of natural justice, but also in violation of





the mandatory provisions as contemplated under Section 144B (7) (vii) (ix) of the Act. Hence, the impugned assessment order is not sustainable in law and the same is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the Assessment Order dated 29.09.2021 passed by the 2nd respondent and the matter is remitted back to the Assessing Officer for a fresh assessment after duly affording a reasonable opportunity of hearing the petitioner and then pass appropriate orders in accordance with law as expeditiously as possible.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.”

12. The Delhi High court in *Bharat Aluminium Company Ltd. Vs. Union of India & Others*, WPCNo. 14528/2021, decided on 14.01.2022, 2022(1)TMI658-Delhi High Court, in paragraphs 14 to 17, 20 and 22 has held as under:

“14. Last but not the least, this Court finds that no opportunity of personal hearing was given despite a specific request made by the petitioner.

15. This Court is of the opinion that a faceless assessment scheme does not mean no personal hearing. It is not understood as to how grant of Signature Not Verified Digitally Signed Signing Date:14.01.2022 22:05:44 personal hearing would either frustrate the concept or defeat the very purpose of Faceless Assessment Scheme.

16. In *Piramal Enterprises Limited vs. Additional/Joint/Deputy Assistant Commissioner of Income-tax/Income-tax Officer & Ors.*, 2021 SCC OnLine Bom 1534, while interpreting Section 144B of the Act, the Bombay High Court has held as under:-

"65. Principles of natural justice firmly run through fabric of section 144B(1) of the Income Tax Act, 1961. Whenever DAO, FDAO is prejudicial to the interest of assessee or RDAO is prejudicial to the interest of assessee in comparison to DAO or FDAO, upon a response to show-cause notice, personal hearing for oral submissions or to present its case before income tax authority is strongly entwined in the provisions on a request from an assessee unless it is absurd, strategised and/or intended to protract assessment etc. It would also emerge from various decisions, referred to above, ordinarily, such a request would not be declined. Judgments cited on behalf of petitioner referred to hereinbefore give exposition on significance and importance of principles of natural justice.

66. Section 144-B of the Income Tax Act, 1961 captioned 'Faceless Assessment' commences vide its sub-section (1) with a non-obstante clause and compulsively requires assessment u/ss 143(3) and





144 shall be by prescribed procedure contained in sub-section (1) of section 144-B in the cases referred to in sub-section (2) thereof.

67. Sub-section (9) of section 144B declares that assessment made under section 143(3) or under section 144(4) referable to subsection (2) other than sub-section (8) on or after 1st day of April, 2021 shall be non est if such assessment is not made in accordance with the procedure laid down under section 144B. There is a telling/pronounced rigour, to follow the procedure under section 144B, lest the assessment would be non est.

68. Going by the provisions under section 144B, when hearing has been envisioned and incorporated, it is imperative to observe principles of natural justice as stipulated.

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70. In the circumstances, when an assessee approaches with response to show cause notice, the request made by an assessee, as referred to in clause (vii) of sub section 7 of section 144B, would have to be taken into account and it would not be proper, looking at the prescribed procedure with strong undercurrent to have hearing on a request after notice, to say that petitioner would have opportunity pursuant to section 144C in the present matter, would intercept operation of the scheme contained under section 144B.

IT IS SETTLED LAW THAT WHERE EXERCISE OF A POWER RESULTS IN CIVIL CONSEQUENCES TO CITIZENS, UNLESS THE STATUTE SPECIFICALLY RULES OUT THE APPLICATION OF NATURAL JUSTICE, THE RULES OF NATURAL JUSTICE WOULD APPLY.

17. This Court is further of the view that where an action entails civil consequences, like in the present matter, observance of natural justice would be warranted and unless the law specifically excludes the application of natural justice, it should be taken as implanted into the scheme. The settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply, including the right to personal hearing. Denial of such opportunity is not in consonance with the scheme of the Rule of Law governing our society. [See: Raghunath Thakur vs. State of Bihar & Ors., (1989) 1 SCC 229]. In fact, the opportunity to provide hearing before making any decision is considered to be a basic requirement in Court proceedings.

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20. The non-obstante clause and the use of expression 'shall be made' in Section 144B(1) creates a mandatory obligation upon the respondent/Revenue to follow the prescribed procedure. This Court is also of the view that the use of the expression "may" in Section 144B (7)(viii) is not decisive. It is settled law that having regard to the context, the expression





"may" used in a statute has varying significance. In some contexts, it is purely permissive, whereas in others, it may make it obligatory upon the person invested with the power to exercise it. The word "may" is capable of meaning "must" or "shall" in the light of the context. In fact, where a 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.

22. Consequently, this Court is of the view that the word "may" in Section 144B(viii) should be read as "must" or "shall" and requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory."

13. Division Bench of Delhi High Court further in Sanjay Aggarwal Vs. National Faceless Assessment Centre Delhi, WPC No.5741 of 2021, decided on 02.06.2021, 2021(6)TMI-336, Delhi High Court, in paragraph 11.4, 12 and 12.1 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 Signature Not Verified By:VIPIN KUMAR RAI Signing Date:09.06.2021 00:54:32 (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.

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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."

14. Given the aforesaid statutory provisions as also the legal position settled by the various High Courts, this court is of the opinion that in the instant case also though the petitioner did move an application requesting for a personal hearing on the first day itself on which she was supposed to make her submissions, the impugned order is silent as to why the said





request was not considered or why the authorities did not find it proper or necessary for giving an opportunity of hearing to the petitioner.

15. Thus, this court is of the firm view that the principles of natural justice to the aforesaid extent, particularly when the Act itself provides for a procedure for the same, stands violated. The impugned assessment order Annexure P/1, dated 29.09.2022, for the aforesaid reason stands set aside/quashed and the matter stands remitted back to the assessment authority for a fresh consideration after giving an opportunity of personal hearing to the petitioner in accordance with Section 144B(6)(vii)&(viii) of the Act of 1961.

16. With the consent of the parties, this court fixes 01.12.2022 for making the petitioner herself available before the Assessment Authority who by that time shall take necessary steps in ensuring all arrangements to be made for personal hearing to be given to the petitioner in respect of the assessment under challenge in the present writ petition. After giving a reasonable opportunity of hearing to the petitioner the authority may pass a fresh order.

17. It is made clear that this court while allowing the writ petition has not entered into the merits of the assessment made by the assessing authority. The authority would be free to take an appropriate decision after hearing the petitioner.

18. The writ petition accordingly stands allowed to the aforesaid extent.

Sd/-
(P. Sam Koshy)
Judge