

## **Request for personal hearing to be considered before passing Faceless Assessment Order**

The Hon'ble Delhi High Court in *Sanjay Aggarwal v. National Faceless Assessment Centre, Delhi [Writ Petition (C) 5471/2021 dated June 2, 2021]* held that the usage of word 'may' under Section 144B(7)(vii) of the Income Tax Act, 1961 ("**IT Act**") could not absolve the Revenue ("**the Respondent**") from the obligation cast upon it to consider the request made for grant of personal hearing. Therefore, the assessment order passed by the Respondent without giving an opportunity of personal hearing to the assessee shall be set aside.

### **Facts:**

Sanjay Aggarwal ("**the Petitioner**") is an individual. The return was filed by the Petitioner for the Assessment Year 2018-19 declaring income of Rs. 33,43,690/-. The return was processed under Section 143(1) of the IT Act and on September 22, 2019, a notice was issued, under Section 143(2) of the IT Act read with Rule 12E of the Income Tax Rules, 1962, ("**IT Rules**") in which the Petitioner's return was picked up for scrutiny.

Further, another notice dated December 6, 2020 was issued to the Petitioner under Section 142(1) of the IT Act for assessment, and a reply dated February 25, 2021 was furnished by the Petitioner.

Subsequently, a show cause notice-cum-draft assessment order dated April 13, 2021, was served by the Respondent which disallowed Rs. 1,00,26,692/- under Section 57 of the IT Act.

The Petitioner made several requests to the Respondent for grant of personal hearing on April 15, 2021, and April 20, 2021, but the Respondent did not pay heed to these requests and issued a second show-cause notice along with a draft assessment order dated April 23, 2021. Consequently, a proposal was made to vary the income, resulting in the enhancement of the declared income to Rs. 1,33,70,380/- by the Respondent.

The Respondent thus without holding a personal hearing passed the assessment order dated April 28, 2021 ("**the Impugned Order**")

Being aggrieved by the Impugned Order, the Petitioner has filed the present writ-application.

**Issue:**

Whether the Revenue was under an obligation to hold personal hearing before passing the Impugned Order?

**Held:**

The Hon'ble Delhi High Court in ***Writ Petition (C) 5471/2021 dated June 2, 2021***, has held as under:

- Agreed that the Petitioner continued to press the Respondent to grant him a personal hearing before it proceeded to pass the Impugned Order.
- Observed that, a liberty has been given to the assessee, if his/her income is varied, to seek a personal hearing in the matter as per the provisions of Section 144B(7)(vii) of the IT Act. Therefore, the usage of the word 'may' cannot absolve the Respondent from the obligation cast upon it, to consider the request made for grant of personal hearing.
- Further observed that, under Section 144B(7)(xii)(h) read with Section 144(7)(viii) of the IT Act, the Respondent has the power to frame standards, procedures and processes for approving the request made for granting personal hearing to an assessee who makes a request qua the same.
- Noted that, no such standards, procedures and processes have been framed to reject the application of personal hearing under the provisions of IT Act as yet.
- Held that, it was mandatory upon the Respondent to grant a personal hearing to the Petitioner as several requests had been made by him for personal hearing, none of which were dealt with by the Respondent.
- Opined that the entire scheme, encapsulated under Section 144B of the IT Act, was laid down to bring transparency as well as accountability in the system. Thus, irrespective of whether such a statutory scheme was framed or not, the system has to be both, transparent, and the persons administering it, have to remain accountable.
- Hence, set aside the Impugned order and directed the Respondent to proceed afresh in the matter.

**Relevant Provisions:**

**Section 144B(7)(vii) of the IT Act:**

*“144B. Faceless assessment.*

*(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 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”*

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