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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

FRIDAY, THE 22ND DAY OF NOVEMBER 2024 / 1ST AGRAHAYANA, 1946

WP(C) NO. 10803 OF 2021

PETITIONER:

THE FEDERAL BANK LTD.
FINANCE & ACCOUNTS DEPARTMENT, CORPORATE OFFICE,
FEDERAL TOWERS, 4TH FLOOR, BANK JUNCTION,
ALUVA - 683 101, REPRESENTED BY ITS MANAGING
DIRECTOR, MR.SHYAM SRINIVASAN.

BY ADVS.JOSEPH MARKOSE (SR.)
V.ABRAHAM MARKOS
ABRAHAM JOSEPH MARKOS
ISAAC THOMAS
ALEXANDER JOSEPH MARKOS
SHARAD JOSEPH KODANTHARA

RESPONDENTS:

1 THE ADDITIONAL/JOINT/DEPUTY/
ASSISTANT COMMISSIONER OF INCOME TAX
INCOME TAX OFFICER,
NATIONAL E-ASSESSMENT CENTRE,
NEW DELHI - 110 001.

2 THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
NATIONAL E-ASSESSMENT CENTRE,
NEW DELHI - 110 001.

3 THE DEPUTY COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 2(1), C R BUILDING,
I.S.PRESS ROAD, KOCHI - 682 018.

4 THE PRINCIPAL COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDING, I.S.PRESS ROAD,
KOCHI - 682 018.

5 CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI - 110 001
REPRESENTED BY ITS SECRETARY.

6 UNION OF INDIA
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI - 110 001
REPRESENTED BY ITS SECRETARY.

BY ADVS.SRI.P.K.R.MENON,SENIOR COUNSEL, GOI(TAXES)
JOSE JOSEPH, SC, FOR INCOME TAX
P.R.AJITH KUMAR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22.11.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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JUDGMENT

The petitioner is a Banking Company licensed by the Reserve Bank of India under the Banking Regulation Act, 1949. Respondent Nos.1 to 5 are the statutory authorities under the Income Tax Act, 1961. The petitioner has been an assessee on the file of respondent No.3 within the jurisdiction of respondent No.4 – the Principal Commissioner of Income Tax. The petitioner challenges the assessment order passed by the Income Tax Department for the Assessment Year 2018-19.

2. The petitioner pleaded the following:-

2.1. The competent authority in the Income Tax Department passed a draft assessment order and issued a show cause notice dated 8.4.2021 (Ext.P3) to the petitioner as to why the assessment should not be completed as per the draft assessment order.

2.2. In Ext.P3 show cause notice, the following provision was given to submit a response through the registered e-filing account of the petitioner:-

> "3. Kindly submit your response through your registered e-filing account at www.incometaxindiaefiling.gov.in by

> 23:59 hours of 13/04/2021, whereby you may either:-
> a. accept the proposed modification; or
> b. file your written reply objecting to the proposed modification; or
> c. if required, you may request for personal hearing so as to make oral submissions or present your case after filing of written reply. On approval of the request, personal hearing shall be conducted exclusively through video conference.
>
> 4. In case no response is received by the given time and date, the assessment shall be finalized as per the draft assessment order."

2.3. The petitioner submitted Ext.P4 response on 13.4.2021. In the response, the petitioner had sought for a personal hearing through video conferencing. The relevant portion in Ext.P4 seeking a request for a personal hearing is extracted below:-

> "Your goodself has given an option to present our case after filing our written reply. We respectfully request your goodself to kindly grant us this opportunity for personal hearing to present our case through video conferencing."

2.4. Without giving an opportunity of personal hearing, respondent No.1 passed Ext.P5 assessment order making an additional demand of Rs.321.26 Crores.

3. The respondent pleaded the following:-

When Ext.P3 show cause notice was issued to the petitioner -

assessee, it had the option to apply for a hearing through video conferencing in the e-filing module. But, in the case of the assessee, it has not opted for a personal hearing through video conferencing in the online module but filed its reply on 13.4.2021 through written submission against the show cause notice dated 8.4.2021. The assessee should have opted for a hearing through video conferencing while replying to the show cause notice online. The assessee cannot leave the choice for a personal hearing to be exercised by the Faceless Assessing Officer (FAO), as the FAO cannot initiate the same. The assessing officer does not have any power to initiate the Video Conferencing proceedings on his own.

4. I have heard the learned Senior Counsel Sri.Joseph Markos and the learned Standing Counsel Sri.Jose Joseph appearing for the respondents.

5. The learned Senior Counsel for the petitioner submitted that Section 143(3) mandates that an assessment order shall be passed only after the assessee has been granted an opportunity for a hearing. Ext.P5 order was passed without affording an opportunity of being heard to the petitioner. Section 144B(7)(vii) of the Income Tax Act

mandates that in a case where a variation is proposed in the draft final assessment order or revised draft assessment order, the assessee has the option to request for personal hearing so as to make his oral submissions or present his case before the income-tax authority. The petitioner has not been given this liberty. The learned Senior Counsel submitted that the statutory authorities are bound to give the opportunity of hearing to the petitioner, even though the petitioner omitted to exercise the option for hearing in the online mode when the request for personal hearing through video conferencing is made within the time limit prescribed. The learned Senior Counsel relied on the notification dated 12.9.2019 (Ext.P1) issued by the Ministry of Finance (Income-Tax) in support of his contentions.

6. The learned Standing Counsel appearing for the respondents submitted that the petitioner has a statutory remedy of appeal as provided under Section 246A of the Income Tax Act. The learned Standing Counsel submitted that the petitioner cannot invoke the jurisdiction of the High Court under Article 226 of the Constitution to challenge Ext.P5 order when there is the equally efficacious remedy. The learned Standing Counsel relied on **Commissioner of Income-**

Tax and Others v. **Chhabil Dass Agarwal [(2014) 1 SCC 603 = (2013) 357 ITR 357 (SC)]** to fortify his contentions.

7. The learned Senior Counsel appearing for the petitioner submitted that the facts considered in **Chhabil Dass Agarwal** are not applicable to the present case as it was a case wherein the High Court delved into the merits of the case and quashed the assessment order. The learned Senior Counsel further submitted that this is a case where there is violation of the principles of natural justice, which is an exception to the Rule of alternate remedy.

8. The Central Government notified a scheme for 'faceless assessment' with the intention of imparting greater efficiency, transparency and accountability in the assessment proceedings by introducing a scheme called 'E-assessment Scheme, 2019', as per Notification No.3264(E) dated 12.9.2019(Ext.P1). The scheme perceived no personal appearance in the Assessment Centres or Units. However, a provision was made, in the notification, for the assessee to seek a personal hearing so as to make his oral submissions or present his case before the Income Tax Authority in any unit through video conferencing in case where a modification is proposed in the draft

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assessment order. While the assessment proceedings were in progress, pursuant to the notification dated 12.9.2019, Section 144B was introduced in the Income Tax Act with effect from 1.4.2021 providing for faceless assessment, which substantially incorporated the provisions of Ext.P1 notification dated 12.9.2019 as amended by Ext.P2.

9. Section 144B(7)(vii) which is relevant for the present facts reads thus:-

> "**144B. Faceless assessment-**
> (1). xx xx xx
>
> (7) For the purposes of faceless assessment-
> xx xx xx
>
> (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 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;
>
> (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);

xx xx xx

(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:-

xx xx xx

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

10. A perusal of Clause (vii) of Section 144B(7) makes it clear that liberty has been given to the assessee, if his income is varied, to seek a personal hearing in the matter. The learned Standing Counsel submitted that if the assessee fails to exercise the option in online mode, he loses the opportunity for personal hearing, in view of the usage of the word "may" in Clause (vii) of Section 144B(7).

11. It is relevant to note that sub-clause (h) of Section 144B(7)(xii) r/w Section 144B(7)(viii) provides that the competent authorities are empowered to frame standards, procedures and

processes for approving the request made for affording personal hearing to an assessee who makes a request for the same. Admittedly, nothing has been placed before the court that any such standards, procedures or processes have been framed as yet.

12. The adherence to principles of natural justice as recognized by all Civilized States is of supreme importance when a competent statutory authority embarks on an action involving civil consequences. The fundamental principle is that no one should be condemned unheard.

13. In the present case, the petitioner assessee has specifically requested for personal hearing through video conferencing. It may be true that in the online mode the assessee had not exercised the option. That is not a ground to deny the opportunity of hearing when the statute provides otherwise and no standards, procedures and processes for approving the request for personal hearing have been framed by the competent authority.

14. Coming to the reliance placed on **Chhabil Dass Agarwal** (supra), as rightly pointed out by the learned Senior Counsel for the petitioner, it was a case where the High Court went into the

merits of the case and quashed the proceedings of the authority. In that background, the Supreme Court held that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Income Tax Act. In **Chhabil Dass Agarwal,** the Supreme Court reiterated that if an order has been passed in total violation of the principles of natural justice, it will serve as an exception to the Rule of alternate remedy. On the Rule of alternate remedy, in **Radha Krishan Industries** v. **State of H.P. [(2021) 6 SCC 771]**, the Supreme Court observed thus:-

> "27. The principles of law which emerge are that:
>
> 27.1. The power Under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;
>
> 27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;
>
> 27.3. Exceptions to the Rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

27.4. An alternate remedy by itself does not divest the High Court of its powers Under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This Rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

15. In the present case, admittedly, the assessee specifically made request for a personal hearing, which has not been considered. Therefore, there has been violation of the principles of natural justice, and hence, the petitioner has rightly invoked the provisions of Article 226 of the Constitution. In my view, having regard to the facts and circumstances, the statutory authority was bound to afford a personal hearing to the petitioner through video conferencing as mentioned above. The result of this infraction would be that the impugned orders will have to be set aside. It is ordered accordingly.

The statutory authorities are at liberty to pass fresh assessment orders in accordance with law after affording an opportunity of being heard to the petitioner through video conferencing mechanism. For this purpose, the assessing officer shall issue notice indicating the date and time of the hearing through the registered e-mail of the petitioner.

The writ petition is allowed as above.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF WP(C) 10803/2021

PETITIONER'S EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE NOTIFICATION NO.S.O.3264(E) DATED 12/09/2019 INTRODUCING "E-ASSESSMENT SCHEME 2019".**
EXHIBIT P2	**TRUE COPY OF THE NOTIFICATION NO.S.O.2745(E) DATED 13/08/2020 ISSUED BY THE CENTRAL GOVERNMENT.**
EXHIBIT P3	**TRUE COPY OF THE SAID SHOW CAUSE NOTICE DATED 08/04/2021 ISSUED TO THE PETITIONER.**
EXHIBIT P4	**TRUE COPY OF THE PETITIONER'S DETAILED REPLY DATED 13/04/2021 TO THE SHOW CAUSE NOTICE.**
EXHIBIT P5	**TRUE COPY OF THE ASSESSMENT ORDER, COMPUTATION SHEET AND NOTICE OF DEMAND DATED 18/04/2021.**
EXHIBIT P6	**TRUE COPY OF THE PROCEEDINGS OF THE DELHI HIGH COURT DATED 16/10/2020 IN W.P.NO.8044 OF 2020.**

TKS