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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 03.10.2023

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W.P.(C) 9179/2023 & CM Appl.34897/2023**KARUNA ABHUSHAN PRIVATE LIMITED** Petitioner

Through: Mr Prakash Kumar, Adv.

versus

ASSESSMENT UNIT, INCOME TAX DEPARTMENT,**NATIONAL FACELESS ASSESSMENT****CENTRE & ORS.**

..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Parth Semwal,
Standing Counsel.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. On 12.07.2023, after hearing counsel for the parties, and perusing the record, we had etched out the broad contours of the case. For convenience, the relevant parts of the order are set for hereafter:

“2. This writ petition concerns Assessment Year (AY) 2017-18.

3. The petitioner, inter alia, seeks to challenge the assessment order dated 18.05.2023.

4. Mr Prakash Kumar, who appears on behalf of the petitioner/assessee, says that there has been a breach of principles of natural justice.

4.1 In this behalf, Mr Kumar has made following two submissions:

(i) First, the reply dated 14.05.2023 filed by the petitioner/assessee, in response to the show cause notice issued concerning proposed variation of income dated 09.05.2023, was not taken into account.

(ii) Second, although a request for grant of hearing via video-conferencing was made, the same was not provided.

4.2 In the context of the second submission, Mr Kumar submits that via show cause notice dated 09.05.2023, the petitioner was given time to file a



response till 12.05.2023 (10.00 A.M.). Mr Kumar says that an adjournment request was made through the designated portal on the midnight of 11th/12th May, 2023.

4.3 It is also emphasized that the petitioner had made a request for hearing through video-conferencing, as indicated above. In this context, our attention has been drawn to Annexures 16 to 19 appended with the writ petition. In particular, our attention is drawn to Annexure-18, which is a screenshot of the designated portal, in support of the petitioner's plea that a request for hearing through video-conferencing appears to have been made.

5. The fact that the petitioner had filed a detailed reply is not in dispute, as the date of reply finds mention in the impugned assessment order.

6. According to Mr Kumar, although there is a reference to the fact that reply was filed by the petitioner, which was dated 14.05.2023, contents of reply have not been dealt with, or discussed in the impugned assessment order.

7. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondents/revenue, says that he will have to take instructions concerning the submissions made by Mr Kumar before us. In particular, Mr Maratha says that he will have to ascertain whether a request for hearing via video-conferencing was made by the petitioner.

8. Accordingly, issue notice.

8.1 Mr Abhishek Maratha accepts notice on behalf of the respondents/revenue.

9. In case **Mr Maratha receives instructions to resist the petition, a counter-affidavit will be filed, before the next date of hearing.**

10. In the meanwhile, no precipitate action will be taken against the petitioner/assessee.

11. List the matter on 22.08.2023.”

[Emphasis is ours]

2. As would be evident from the aforementioned extract, concerning the order dated 12.07.2023, we had indicated that if instructions are received to resist the writ petition, a counter-affidavit will be filed.

3. No counter-affidavit has been filed yet.

4. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondents/revenue, has, however, returned with instructions that seem to indicate that the ITBA Technical Team has



informed the Assessing Officer (AO) that the petitioner's/assessee's request for video-conferencing, which was received on 12.05.2023, was not actioned upon by the Faceless Assessing Officer (FAO). This input is based on the system log.

5. Mr Maratha says that there is a lack of clarity on this aspect of the matter, having regard to the latter part of the instructions received in the email that reads as follows:

*“It may please be noted that the ITBA-ITD officers do not have ready access to any data or details related to the assessment proceedings in a case: Such requests are referred to the ITBA technical/backend team for extraction of details. Therefore, it would be appreciated if a reasonable lead time is given to ITBA for any requests regarding systems-related details/inputs for any case that is required in connection with any writ or appeal matter. **When such requests are submitted at short notice, it poses challenges in ensuring the accuracy and completeness of the information to be provided.**”*

[Emphasis is ours]

6. According to us, the system log is, perhaps, presently, the best available proof of whether the request for hearing *via* video-conferencing did fructify. Given the fact that the petitioner has made an assertion concerning denial of hearing that has not been refuted, as a counter-affidavit has not been filed, we have no good reason to disbelieve the petitioner.

7. Besides the aforesaid issue, the other aspect noticed in our order dated 12.07.2023, which is that the reply dated 14.05.2023 was not considered by the AO while passing the impugned assessment order, persuades us to accept the plea made by the petitioner.

8. Thus, having regard to the aforesaid, we are of the view that the best way forward would be to set aside the impugned assessment order dated 18.05.2023 with liberty to the AO to pass a fresh order, *albeit*, as per law.



- 8.1 It is ordered accordingly.
9. The AO will have liberty to pass a fresh assessment order after abiding by the principles of natural justice.
10. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 3, 2023/pmc