IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

VIRTUAL COURT

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No. 110/Asr/2022
Assessment Year: 2017-18

Sh. Sunil Mehta, B-Ix/552, Santokh Pura, Jalandhar 144001, Punjab, [PAN: CYAPS 8440Q] **(Appellant)**	Vs.	Income Tax Officer, Ward-2(4), Jalandhar **(Respondent)**

Appellant by : Sh. Parikshit Aggarwal, CA
Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 10.10.2022
Date of Pronouncement: 20.10.2022

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order dated 31.03.2022 passed by the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi in respect of Assessment Year 2017-18, challenging therein the order passed ex-parte qua the assessee.

2. At the outset, the ld. counsel for the assessee has submitted that the ld. CIT(A) has passed the order ex-parte qua the assessee stating therein vide para 5.1 of the impugned order that the assessee was granted for opportunities that on the given date neither any compliance nor any adjournment letter was filed is factually incorrect. The ld. counsel submitted that the assessee has filed adjournment application to each notice of hearing (APB pg. nos. 17 to 20) and that photo prints of the uploading of the adjournment applications during the appellate proceedings before the worthy CIT(A), are also filed before us (APB pg. nos. 21 to 24). The AR stated that Assessee had e-filed the adjournment applications on the Income Tax Portal dated 07.12.2021, 04.01.2022, 25.01.2022 and 21.03.2022. He further stated that the copy of the screenshot from the Income Tax Portal was attached therewith. It is also stated that the worthy CIT(A) had erred in mentioning the facts in the order that he had not filed any application for adjournment or reply and that is why he is not interested in prosecuting the appeal. He requested that the matter may be remanded back to the ld. CIT(A) to pass a speaking order on merits after granting proper opportunity of being heard and taking into consideration the submissions of the assessee.

3. The ld. DR stands by the impugned order, however, he has no objection to the request of the assessee to remand back the matter to the ld. CIT(A).

4. We have heard both the sides, perused the material on record and the impugned order. From the record, the contention of the ld. counsel that the assessee has filed adjournment application is verifiable and therefore, the observation of the ld. CIT(A) that no adjournment applications were filed on the given date in compliance to the notices, is factually incorrect. We find that no opportunity of personal hearing was given despite a specific request made by the appellant by adjournment applications (APB pg. nos. 21 to 24). In our opinion, a faceless assessment scheme does not mean no adjournment or no virtual hearing. It is not understood as to how grant of virtual hearing in person would either frustrate the concept or defeat the very purpose of Faceless Assessment Scheme where the recently Hon'ble High courts even held that personal hearing wouldn't frustrate the concept or defeat the very purpose of Faceless Assessment Scheme.

5. In the case of *'Bharat Aluminium Company Ltd. Vs. Union of India',* [2022] 134 taxmann.com 187 (Delhi) it has been held that an assessee has a vested right to personal hearing and the same has to be given, if an

assessee asks for it. The right to personal hearing cannot depend upon the facts of each case, [Para 25]. The relevant para of the Judgement are summarized here under:

> The *non obstante* clause and the use of expression 'shall be made' in section 144B(1) creates a mandatory obligation upon the revenue to follow the prescribed procedure. It is also opined 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. [Para 20]
>
> It is further opined that a quasi judicial body must normally grant a personal hearing as no assessee or litigant should get a feeling that he never got an opportunity or was deprived of an opportunity to clarify the doubts of the Assessing Officer [Para 21]
>
> Consequently, 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. [Para 22]
>
> The argument of the revenue that personal hearing would be allowed only in such cases which involve disputed questions of fact is untenable as cases involving issues of law would also require a personal hearing and the classification made by the revenue by way of the Circular dated 23-11-2020 is not legally sustainable as the classification between fact and law is not founded on intelligible differentia and the said differentia has no rational relation to the object sought to be achieved by section 144B. [Para 23]
>
> Consequently, an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it. The right to personal hearing cannot depend upon the facts of each case. [Para 25]
>
> For the aforesaid reason, the impugned final assessment order and impugned notice issued by revenue to the petitioner are *set aside* and the matter is remanded back to the Assessing Officer who shall issue a show cause notice and a draft assessment order and thereafter pass a reasoned order in accordance with law. [Para 26]

6. Similarly, the Hon'ble High Court of Andhra Pradesh in the case of *'Mudar Sudheer v. Union of India',* [2022] 138 taxmann.com 47 (Andhra Pradesh) held that where lower authorities passed assessment order

without affording opportunity of hearing to assessee, though a specific request was made by assessee for personal hearing in terms of section 144B(7)(vii)(ix), it amounted to violation of principles of natural justice as well as mandatory provisions of section 144B(7)(vii)(ix) and, hence, impugned assessment order was not sustainable in law and same was liable to be set aside and Matter remanded.

7. In another case of '*Piramal Enterprises Ltd.* v. *Addl./Jt./Dy./Asstt. CIT/ITO',* [2021] 127 taxmann.com 189/281 Taxman 1 (Bom.), the High Court of Bombay, while interpreting section 144B and the principles of natural justice, categorically held that when hearing has been envisioned and incorporated, it is imperative to observe principles of natural justice as stipulated. It is further held that when an assessee approaches with response to a 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, which would intercept the operation of the scheme contained under section 144B.

8. Having considered the facts and circumstances of the case and the submissions made by the counsel, we are of the view that the CIT(A) passed the impugned order without affording an opportunity of hearing through video conferencing to the appellant assessee, though a specific request was made by the Ld. counsel for personal hearing through video conferencing 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 order is not sustainable in law and the same is liable to be set aside.

9. Accordingly, the matter is remitted back to the Ld. CIT(A) to adjudicate the matter afresh after affording a reasonable opportunity of hearing to the assessee and pass an appropriate order in accordance with law.

10. In result, the subject appeal is allowed for statistical purpose.

Order pronounced in the open court on 20.10.2022

Sd/- **(Anikesh Banerjee)** **Judicial Member**	**Sd/-** **(Dr. M. L. Meena)** **Accountant Member**

GP/Sr/PS

Copy of the order forwarded to:
(1) The Appellant:
(2) The Respondent:
(3) The CIT(Appeals)

(4) The CIT concerned
(5) The Sr. DR, I.T.A.T.

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By Order