

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.54 to 60/Pat/2023
Assessment Years: 2013-14 to 2019-20**

Anu Kumar, Flat No. 304, Block-C, Sita Apartment, Khajpura, Patna, Bihar-800014. (PAN: AODPK3265N)	Vs.	Deputy/Assistant Commissioner of Income-tax, Central Circle-2, Patna
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Rakesh Kumar, Advocate
Respondent by : Smt. Rinku Singh, CIT, DR

Date of Hearing : 11.07.2023
Date of Pronouncement : 31.08.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

All the present seven appeals are directed at the instance of assessee against the separate orders of Commissioner of Income Tax (Appeals), Patna-3 dated 26.12.2022 for AY 2013-14 and 27.12.2022 for AYs. 2014-15 to 2019-20.

2. The facts on all vital points are common in all these seven years. For the facility of reference, we are taking up the facts from A.Y. 2013-14.

3. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of Income Tax Appellate Tribunal Rules. They are argumentative in nature. The assessee has taken 19 grounds of appeal in AYs 2013-14 to 15-16 and 2017-18, 23 grounds of appeal in AY 2016-17, 18 grounds of appeal in AY 2018-19 and 20 grounds of appeal in AY 2019-20. In Ground Nos.11 and 12 in AYs 2013-14 to 2015-16, 2017-18 and 2018-19, ground nos. 15 and 16 in AY 2016-17, and ground nos. 13 and 14 in AY 2019-20, the assessee has pleaded that ld. CIT(Appeals) has erred in not granting an opportunity of personal hearing and thus has violated the principle of equality and natural justice. We take all the above stated grounds in all these years together, being identical.

4. The ld. Counsel for the assessee while representing the matter before the Tribunal has submitted a letter dated 11.07.2023 stating that exactly identical matter was heard by the Division Bench of this Tribunal at Ranchi Bench on 27.04.2023 in ITA Nos. 69, 70 & 71/Ran/2022 for AYs 2015-16, 2016-17 and 2017-18 in the case of Sunil Kumar Vs. ITO for which the order was reserved. In the said letter, Ld. Counsel prayed that the hearing of the present seven appeals may be blocked until disposal of the aforesaid analogous matters. Copy of the said letter is reproduced as under:

Date of hearing : 11/07/2023

Before,

The Income Tax Appellate Tribunal,
Patna Bench, Patna.

Regarding : The humble Time Petition in the case of Anu Kumar, Patna in ITA No.54,55,56,57,58,59,60/Pat/2023 (by the assessee) – A.Y. 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 respectively.

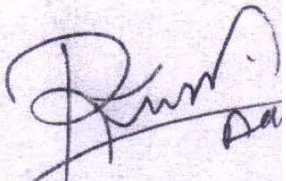
Sir,

The aforesaid appeal has been fixed for virtual hearing on 11/07/2023.

It is hereby intimated that exactly identical matter has been heard on 27/04/2023 by a Division Bench of Hon'ble Tribunal, Kolkata Bench presided over by Hon'ble the Vice President and Hon'ble AM Sri. Rajesh Kumar in ITA No.s 69/70/71/RAN/2022 for A.Yrs.2015-16, 2016-17 & 2017-18 and the order has been reserved. Copy of printout from the official website of the Hon'ble Tribunal is attached for ready reference.

In the circumstances, it is humbly prayed that the hearing of the appeal may kindly be block till disposal of the analogous matter (details given above).

Submitted,


(Rakesh Kumar)
Advocate

4.1.Considering the submissions made by the Ld. Counsel, this bunch of seven appeals was heard and was kept reserved for orders. Subsequently, order was pronounced in the identical matters referred by the Ld. Counsel above, on 19.07.2023. In the said order, the appeals of the assessee were allowed for statistical

purposes by remitting the issues to the file of Ld. AO, directing him to comply with the provisions of section 144B (6) and (7) of the Act for granting of personal hearing and thereafter framing the assessment order afresh.

4.2. We have perused the said order and note that ground nos. 11 and 12 in the present case before us are analogous to ground no. 2 dealt by the Co-ordinate Bench in the aforesaid order of Sunil Kumar (supra), pronounced on 19.07.2023. The observations and findings of the Co-ordinate Bench in the said pronounced order are extracted below for ready reference:

“5. The ld. Counsel for the assessee brought to our notice two aspects. He submitted that as per Section 250(6B) to (6D) inserted by Finance Act, 2020 w.e.f. 1st April, 2020, ld. Commissioner was supposed to give personal hearing through Video Conferencing if such a request is being made by the assessee. For buttressing this, he made reference to the CBDT Circular bearing No. 139/2021, the relevant part extracted supra. Similarly he brought to our notice section 144B(6)(vii) & (viii) of the Act and submitted that as per Section 144B(7)(vii), the ld. Assessing Office was required to provide an opportunity of hearing through Video Conferencing before finalizing the assessment of income of the assessee. Thus according to the ld. Counsel for the assessee, both the Revenue Authorities have failed to adhere the mandatory procedure. He submitted that specific request was made to both the authorities. He prayed that opportunity of hearing be granted to the assessee and only thereafter his income is to be determined.

6. On the other hand, ld. D.R. was unable to controvert this contention of the ld. Counsel for the assessee.

7. We have duly considered the rival contentions and gone through the record carefully. Though while taking cognizance of the written submission of the assessee, we have noticed the relevant provisions, but at the cost of repetition, we take note the relevant part as again:-

The Ld. CIT(A) has dismissed all the three appeals without allowing any opportunity to file written submission as also without allowing opportunity of personal hearing and thus, the present order is a blatant example of violation of natural justice besides violating the

mandatory provisions contained in section 250(6B) to (6D) inserted by Finance Act, 2020 w.e.f 01/04/2020 and notification issued by CBDT bearing no. 139/ 2021 dated 28/12/2021, the relevant portion of the notification reads as under:

"(xxiii) "video conferencing or video telephony " means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

.....
.....

12. No personal appearance in the Centres or Units.—(1) A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the income-tax authority at the National Faceless Appeal Centre or appeal unit set up under this Scheme. (2) The appellant 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 Commissioner (Appeals), through the National Faceless Appeal Centre, atider this Scheme, (3) The concerned Commissioner (Appeals) shall allow the request for personal hearing and communicate the date and time of hearing to the appellant through the National Faceless Appeal Centre. (4) Such hearing shall be conducted 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. (5) Any examination or recording of the statement of the appellant or any other person shall be conducted by Commissioner (Appeals) under this Scheme, 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. (6) The Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the appellant, or his authorised representative, or any other person is not denied the benefit of this Scheme merely on the ground that such appellant or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end. "

It is further submitted that the cardinal principle of law that no person should be condemned unheard has been blatantly violated by the Ld. CIT(A). The Apex Court in its judgments (relevant portion quoted below) have severely condemned the practice of violation of natural justice by not allowing proper and adequate opportunity of being heard

8. *Similarly an opportunity of hearing is to be granted by the ld. Assessing Officer as per the Scheme of Income Tax Act contemplated in section 144B(7)(vii) & (viii). The relevant clauses as reproduced in the written submission read as under:-*

“In ground no. 10 of memo of appeal before Ld. CIT(A), the appellant has especially assailed the assessment order on the ground of non-allowance of opportunity of personal hearing which is mandatory in view of section 144B(7)(vii) & 144B(6)(vii) & (viii)

144B(7)(vii)

“(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; ”

144B(6)(vii) & (viii)

“(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; ”

Besides the aforesaid mandatory provision, the views expressed by the Apex Court (quoted in GoA nos. 1 & 2) as far as Rule of Natural Justice and necessity of proper and adequate opportunity of hearing has been followed in the faceless assessment regime as well and authority, if any, be had from the following Judgments”.

9. *A perusal of the above provision would indicate that once an assessee made an application for personal hearing through Video Conferencing, then, such an opportunity is to be granted to the assessee. During the assessment proceeding, whether such*

opportunity is to be granted or not, it has to be adjudicated. But in the present case, it reveals that nobody has bothered about the submissions of the assessee. They are to be construed as impliedly rejected /not rejected specifically. We are of the view that determination of income has not been finalized by giving due opportunity to the assessee as contemplated in the Scheme of Faceless Assessment as well as Faceless Adjudication of appeals. Therefore, we set aside both the orders. We would have remitted it back to the ld. CIT(Appeals) but that would only enhance the multiplicity of litigation because ld. CIT(Appeals) would call for a report from the ld. Assessing Officer on the submissions of the assessee. Therefore, we deem it appropriate to remit these issues directly to the file of ld. Assessing Officer. The ld. Assessing Officer is directed to adjudicate the applications of the assessee filed under Sub-Clause (6) & (7) of Section 144B of the Income Tax Act for grant of personal hearing and only thereafter frame the fresh assessment order.

10. In the result, all the appeals of the assessee are allowed for statistical purposes.”

5. Considering the prayer made by the Ld. Counsel in terms of his letter dated 11.07.2023 as extracted above and the order of the Co-ordinate Bench of ITAT, Ranchi in ITA No. 69 to 71/Ran/2022 (supra), we take the consistent view and remit the present appeals before us to the file of Ld. AO with similar directions and observations made therein, as extracted above.

6. In the result, all the seven appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 31st August, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31st August, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), Patna-3, Patna
 4. CIT,
 5. DR, ITAT, Patna Bench, Patna
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata