

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Inturi Rama Rao, Accountant Member
&
Shri Sandeep Singh Karhail, Judicial Member**

ITA No.395/Coch/2024 :Asst.Year2021-2022

Sri.George Sumesh Chakkalamoolayil House Brahmapuram, Ambalamedu Ernakulam – 682 303. PAN :CWKPS8140M.	v.	The Income Tax Officer Ward -1& TPS Ernakulam.
(Appellant)		(Respondent)

Appellant by :Sri.AivanRaj, Advocate
Respondent by :Smt.Leena Lal, Sr.AR

Date of Hearing :24.03.2025	Date of Pronouncement : 26.03.2025
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ORDER

Per Sandeep Singh Karhail, JM :

The assessee has filed the present appeal against the order dated 26th February, 2024, passed u/s.250 of the Income-tax Act, 1961 (“the Act” hereinafter) by the Commissioner of Income-tax (Appeals), National Faceless Assessment Centre, Delhi, [“Id.CIT(A)” hereinafter], for the assessment year 2021-2022.

2. During the hearing, the learned Authorized Representative (“Id. AR” hereinafter), at the outset, submitted that during the assessment proceedings, the assessee specifically sought personal hearing through video conferencing (“VC” hereinafter), and the assessment was concluded without granting the assessee the opportunity for personal

hearing as sought for by the assessee. The ld.AR submitted that in this regard, a plea was specifically taken before the ld.CIT(A), however, the ld.CIT(A) rejected the same, contrary to the facts available on the record. Thus, the ld.AR submitted that by not granting the assessee the opportunity for a personal hearing through VC, the Assessing Officer ("the AO" hereinafter) violated the provisions of section 144B of the Act, which specifically mandates granting the opportunity for a personal hearing where such a request is made by the assessee.

3. Having considered the submissions and perusal of the material available on record, we find that in response to the show-cause notice dated 14.12.2022 and 15.12.2022, the assessee requested for personal hearing through VC during the assessment proceedings. We find that in this regard on the same date, i.e., 17.12.2022, the assessee also received a system-generated email on his email address confirming the successful submission of the request for a personal hearing through VC, a copy of which forms part of the appeal set at page 128. However, we find that the AO, vide its order dated 28.12.2022, passed u/s.143(3) r.w.s. 144B of the Act concluded the assessment, making an addition u/s.69A of the Act and on account of long-term capital gains without granting the facility of VC to the assessee. At this stage, it is also pertinent to note that on page 8 of the assessment order, the AO specifically records that no such request was made by the assessee in this regard. We find that the ld.CIT(A) though recorded the submission of the assessee that the opportunity of personal hearing through VC was not granted. However, the ld. CIT(A) proceeded to hold that the AO

gave sufficient opportunity of being heard to the assessee as multiple notices were issued during the assessment proceedings.

4. We find that under the Faceless Assessment Procedure as introduced from 1st April, 2021 secs.144B(6)(vii) and 144B(6)(viii) specifically mandate granting the personal hearing to the assessee through VC where such a request is made by the assessee. We find that the Hon'ble Delhi High Court in the case of Global Vectra Helicorp Limited v. Assessment Unit, NFAC, reported in (2024) 467 ITR 172 (Delhi) held that where request for VC was made by the tax payer and the same was not granted during the assessment proceedings, the same is violative of the principles of natural justice and statutory requirement as provided u/ss.144B(6)(vii), 144B(6)(viii) of the Act. The relevant findings of the Hon'ble Delhi High Court, in the aforesaid judgment, are reproduced as under:-

“13. A plain reading of Section 144B(6)(viii) of the Act indicates that where a request for personal hearing is received, the Income Tax Authority of the relevant unit shall allow a hearing through National Faceless Assessment Centre, which shall be effected exclusively through a video conferencing or video telephone. Since the request for video conferencing was made by the petitioner, it is mandatory for the respondent to accede to the same in terms of Section 144B(6) (viii) of the Act. It is well recognized that an opportunity to be heard is an important facet of natural justice. Thus, before passing an adverse order, a reasonable opportunity of hearing is required to be afforded to the petitioner.

14. In C.B. Gautam v. Union of India &Ors.: MANU/SC/0673/1992: 1992:INSC:313 (1993) 1 SCC 78, the Constitution Bench of the Supreme Court also observed that even in case where statute does not provide for an opportunity to be heard, the same is one of the principles of natural justice.

15. Undisputedly, in the present case, the Act expressly provided for the concerned Unit to afford the assessee an opportunity of hearing. In this view, we find merit in Mr. Kapoor's contention that the impugned

assessment order falls foul of the principles of natural justice and the statutory requirement of affording the assessee an opportunity of being heard.

16. Accordingly, we set aside the impugned assessment order and remand the matter to the concerned Assessing Officer to consider afresh after affording a reasonable opportunity to be heard through video conferencing as is required in terms of Section 144B(6)(vii) of the Act.”

5. Therefore, in view of the facts and circumstances of the present case, legal position and the judicial pronouncement as noted above, we are of the considered view that by not granting the opportunity of personal hearing through VC, despite the fact specific request in this regard was made by the assessee, violates the procedure for faceless assessment as provided u/s.144B of the Act. Accordingly, the impugned order is set aside, and the matter is restored to the file of the AO for *de novo* assessment after granting due opportunity of hearing to the assessee as per the law and procedure prescribed under the Act. As a result, the grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 26th day of March, 2025.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(Sandeep Singh Karhail)
JUDICIAL MEMBER

Cochin; Dated : 26th March, 2025.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT, Cochin.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin