

W.P.No.24422 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

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THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.P.No. 24422 of 2021

and

W.M.P.Nos. 25748 & 25752 of 2021 and 17955 of 2022

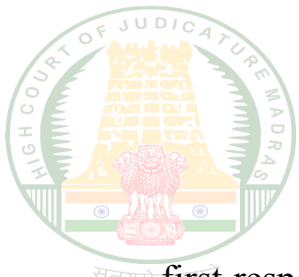
M/s.Bay-Forge Private Limited,
Represented by its Managing Director,
Mr.Julian Chirstopher Amirtharaj Adaikalam,
Pukkarthurai Village, Vedhanthangal Road,
Palayanoor P.O. Madurantakam Taluk,
Kancheepuram District,
Chennai – 603 308, Tamil Nadu. .. Petitioner

Vs

1.Additional/Joint/Deputy/Assistant Commissioner of Income Tax/
Income Tax Officer, National Faceless Assessment Centre,
New Delhi.

2.The Income Tax Officer,
Corporate Ward – 1(3),
No.121, Nungambakkam High Road,
Chennai – 34. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the records on
the file of the first respondent and quash the impugned order in
ITBA/AST/S/143(3)/2021-22/1035383190(1) dated 08.09.2021 passed by the



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first respondent as illegal and consequently direct the first respondent to pass a fresh assessment order after granting the petitioner, sufficient opportunity of being heard through video conferencing in accordance with law.

For Petitioner : Mr. R. Sivaraman
For Respondents : Mr. D. Prabhu Mukunth,
Junior Standing Counsel

ORDER

The Writ Petition is filed challenging the order of assessment dated 08.09.2021 for the Assessment Year 2018-2019 on the limited ground that despite a specific request for personal hearing made by the petitioner and expressing his difficulty in availing the opportunity of personal hearing through video conference, personal hearing was not granted, on the premise that the petitioner had not clicked on the Assessee Request Button/Icon and also not filled up the “Box of agenda of VC”.

2. It is submitted by the learned counsel for the petitioner that the show cause notice was issued calling upon the petitioner to show cause as to why the assessment should not be completed as per the draft assessment order vide notice dated 17.05.2021. The petitioner responded to the same along with



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relevant information / documents on 22.05.2021 which was also duly acknowledged by the respondent. Thereafter, in addition on the very same day, the petitioner had also made a request for virtual hearing through “NaFAC”. On 09.06.2021, the petitioner was requested to make an application for hearing through video conference within 7 days of receipt of the said communication. The petitioner vide letter dated 10.06.2021 responded by stating that though he attempted to login for applying for personal hearing through video conference, however, there was some problem with the web portal and he was unable to apply online. The said letter was addressed to the Additional / Joint / Deputy / Assistant Commissioner of Income Tax, National e-Assessment Centre, Delhi who is the signatory of the letter, directing the petitioners to make a request for virtual hearing. Thereafter, the respondent on 28.07.2021, directed the petitioner to request to apply through NaFAC immediately for virtual hearing. The petitioner on 28.07.2021 once again reiterated his request for a personal hearing through video conference.

3. The first respondent vide letter dated 02.09.2021, stated that the petitioner has not clicked on “Assessee Request” and also not filled up the box of agenda of VC and that was the reason why the personal hearing through



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video conference was not extended and therefore, requested the petitioner to once again click on the “Assessee Request” and seek a personal hearing, failing which it would be considered that video conference was not required. The petitioner once again on 06.09.2021 wrote a letter to the respondent indicating that despite trying to login to apply for personal hearing they were unable to apply online. Thereafter, the respondent vide Email dated 07.09.2021 stated that the petitioner may submit the replies through e-filing portal as per the Faceless Assessment / Penalty Scheme so that the reply reaches the Faceless Assessing / Penalty Officer.

4. However, the petitioner vide email dated 08.09.2021 addressed to 'efilingwebmanager@incometax.gov.in' stated that there is no option / “Box of agenda of VC”. Thereafter, on the very same day, the impugned order of assessment has been made.

5. It is submitted by the learned counsel for the petitioner that under similar circumstances, this Court had held that mere failure on the part of the petitioner / assessee to click on the request button does not by itself indicate that personal hearing is not required, more so, in the present case, when the



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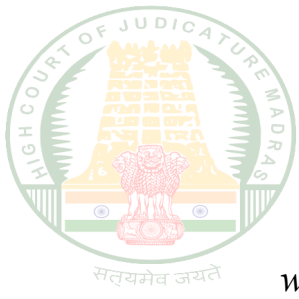
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petitioner has expressed difficulty in making the request for personal hearing through web portal. In this regard, the relevant paragraphs of the order passed by this Court in W.P.No.12760 of 2021 and batch dated 28.06.2022 are extracted herein under: -

“6. That apart, learned counsel for the petitioner would submit that a show cause notice has been issued, for which the assessee was also permitted to upload its reply, that was duly uploaded. Though the petitioner had specifically sought an opportunity of personal hearing via the written submissions no opportunity was granted, which constitutes a violation.

7. According to the respondent, the website of the income tax department specifically provides for a link that has to be activated for availing of an opportunity of personal hearing. The petitioner has not activated the link, and thus, the question of personal hearing does not arise. In my considered view, this cannot constitute a fatal flaw that would stand in the way of an effective and efficacious opportunity of hearing. Admittedly the petitioner has sought an opportunity of hearing in the written submissions filed and this constitutes a legitimate request that cannot be brushed aside by the authorities.

8. The contention of the respondents is rejected and the impugned order set aside. The assessment shall be framed after affording adequate opportunity to the petitioner in line



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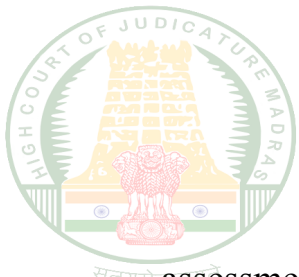
with the following directions. Learned counsel for the petitioner would submit that there are additional written submissions to be made and seeks liberty to file additional written submissions, for which, learned Senior Standing Counsel does not express any objection.”

6. To the contrary, the learned counsel for the respondents would submit that the petitioner, as suggested by the authorities, ought to have clicked on the “Assessee Request” and the Box for video conference. Having failed to do so, the petitioner cannot find fault in the assessing officer for not granting personal hearing.

7. Heard both side.

8. I find there is merit in the submissions of the learned counsel for the petitioner, since under identical circumstances, this Court has already held that personal hearing ought to have been extended, though the petitioner assessee might have failed in clicking on the appropriate button.

9. In view of the same, the impugned order is set aside. The



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assessment order shall be passed after affording the petitioner reasonable opportunity and personal hearing through video conference. The above exercise shall be carried out within a period of twelve weeks from the date of receipt of copy of this order.

10. In the result, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.03.2024

Index : Yes / No

Neutral Citation : Yes / No

AT

To

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MOHAMMED SHAFFIQ, J

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