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FACELESS ASSESSMENTS UNDER INCOME-TAX LAW: FACING A NEW CHALLENGE

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Introduction

In a recent order in M/s DJ Surfactants v National e-Assessment Centre, Income Tax Department, New Delhi and Others (Writ Petition No. 4814/2021) (Order), the Hon'ble Delhi High Court (High Court) has granted interim stay on the assessment order (Assessment Order) passed in faceless assessment proceedings. The High Court, in doing so, observed that DJ Surfactants (Taxpayer) established a *prima facie* case of violation of the 'principles of natural justice' by National e-Assessment Centre (Tax Department) in doing faceless assessment.

Background

With an intent to eliminate human interface between taxpayers and tax officers and to bring greater transparency during tax administration, the government had introduced Faceless Assessment Scheme, 2019 (Faceless Assessments) in September 2019. Please see our [ERGO](#) dated 26 September 2019 in this regard. One of the salient features of Faceless Assessments was that personal hearing (through video conferencing) would be given only if the taxpayer's request for personal hearing is approved by the prescribed authority. Thus, currently, all income tax assessments (subject to certain exceptions) are being carried out in a faceless manner. For the purpose of carrying out Faceless Assessments, the government had set up different units (i.e., National Faceless Assessment Centre, Regional Faceless Assessment Centres, assessment units, verification units, technical units, and review units).

Section 68 of the Income-tax Act, 1961 (IT Act) provides for taxation of any sum (i.e., in the nature of share capital, unsecured loan etc.) credited in the books of account of a taxpayer if such taxpayer is unable to provide any satisfactory explanation about its nature and source (Section 68 Addition). In light of the judgments pertaining to this issue, the legal position is well-settled that a Section 68 Addition cannot be made if the taxpayer has discharged its *prima facie* onus of providing details regarding the 'identity' of the payer / share applicant, the 'creditworthiness' of the payer / share applicant and the 'genuineness of the transaction' (ICG Test), to the tax department.

The instant case of the Taxpayer pertained to assessment year 2018-19 (relevant for financial year (FY) 2017-18), wherein the issue under consideration was with respect to Section 68 Addition of INR 9,56,00,000 on account of alleged unexplained unsecured loans. During the course of assessment proceedings, a show cause notice dated 1 March 2021 (SCN) along with a draft assessment order of even date was issued by the Tax Department on the Taxpayer. The Taxpayer was required to file its response to SCN by

8 March 2021 and explain as to why the aforesaid Section 68 Addition should not be made.

In response to the SCN, the Taxpayer sought an adjournment on 8 March 2021 for a week's time to enable it to file the response. As no response was received from the Tax Department in response to the adjournment request, the Taxpayer filed its response on 12 March 2021 and demonstrated the merits of its case by attempting to establish/satisfy the ICG Test with respect to unsecured loans. A personal hearing was also sought by the Taxpayer to explain its case further.

However, despite the request for personal hearing and submission of response on merits, the Tax Department passed the Assessment Order on 13 March 2021 without considering the response filed by the Taxpayer. Aggrieved by the Assessment Order, the Taxpayer filed a writ petition before the High Court and requested that the Assessment Order be quashed on account of violation of the 'principles of natural justice'.

Judgement

The High Court ruled that the Taxpayer has established a *prima facie* case of violation of the 'principles of natural justice' by observing that:

- the Assessment Order was passed without considering the response filed by the Taxpayer on 12 March 2021; and
- the request for personal hearing was not granted by the Tax Department.

The High Court also granted an interim stay on the Assessment Order till further orders. The matter has been now posted for hearing on 2 June 2021.

Comments

Since Faceless Assessments have been recently introduced, lately, instances have been noticed wherein taxpayers' submission were not considered on merits and, in some instances, request for personal hearing was also not approved. Interestingly, other High Courts have also passed similar orders as below:

- The Hon'ble Telangana High Court in *Axis Wind Farms (Anantapur) Private Limited v Union of India and Others* (Writ Petition No. 11812 of 2021), has granted an interim stay on an assessment order passed under the faceless assessment regime involving similar facts.
- The Hon'ble Madras High Court in *M/s Magick Wood Exports Private Limited v National e-Assessment Centre, Delhi* (Writ Petition No. 10693 of 2021) also set aside an assessment order passed under the faceless assessment regime without considering the adjournment request filed by the taxpayer. In that case, the Hon'ble Madras High Court directed the Tax Department to consider the taxpayer's submission and complete the assessment proceedings in accordance with the law.
- The Hon'ble Bombay High Court in *Shelf Drilling Offshore Services (India) Private Limited v Deputy Commissioner of Income Tax, Mumbai and Others* (Writ Petition No. 10949 of 2021) granted an interim stay on an assessment order passed under the faceless assessment regime by observing that the taxpayer's submissions were not heard at all in respect of the new additions made in the

assessment order. The Hon'ble Bombay High Court further remarked that 'there are a lot of glitches in operation of faceless assessment scheme'.

This Order and the aforesaid orders of the Hon'ble Telangana High Court, the Hon'ble Madras High Court and the Hon'ble Bombay High Court are important orders as the taxpayers in whose case assessment orders have been passed on similar lines under the faceless assessment regime may evaluate the merits/facts of their cases and evaluate the further course of action. These orders of the High Courts are a testimony to an important principle that a taxpayer must be given full opportunity to present and establish its case and that its submissions/arguments must be duly taken into consideration by the tax authorities in making an assessment order in accordance with law.

It is also worth mentioning here that even the first appeal before the Commissioner (Appeals) is now made faceless. Therefore, similar issues/challenges may arise in such appellate proceedings as well, and one may have to again knock on the door of the courts.

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