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Are the Income Tax guidelines and charter playing favorites- the unsolved question!!



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Natural justice is technical terminology for the rule against bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*). Section 142/143 faceless assessment scheme 2019 says that assessee be given 'opportunity' for the purpose of assessment. The word 'adequate' is missing.

There is a stage during assessment when the AO has to issue a show cause notice in case of proposed variations that are prejudicial to the interest of the assessee. No minimum or extended time is specified in section 143 or 144B.

"Sec 142(3) The assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry under sub-section (2) or any audit under sub-section (2A) and proposed to be utilised for the purposes of the assessment."

With the result the AO has a liberty to his side entirely who often may

give 1-3days time to file response which may not be adequate given the complexities of the subject.

In the absence of the timelines the Appellate Courts also do not entertain pleas for inadequate opportunity in a writ.

The ***Telangana High Court in Chandra Sekar Reddy Bokkalapally v. NFAC*** [2022] 444 ITR 581 held that there is no straight jacket formula to know whether opportunity granted in a case was adequate and reasonable or not and that according to them would depend on facts and circumstances of each case to be ascertained in appeal before Commissioner (Appeals). In this case according to the High Court there did not exist any exceptional circumstances to invoke writ jurisdiction while the assessee pleaded more time due to auditor's sickness.

In this high value assessment case a draft assessment order was framed on 4th September served on 6 September seeking show cause response to proposed variations by 9 September which was further extended to 13 September failing the assessee to get justice in his making resubmissions to the findings in the draft order.

In another case of ***C Thillainatesan v. Additional CIT*** [2021] 133 taxmann.com 131 /439 ITR 614/ [2022] 284 Taxman 388 (Mad.) the Assessing Officer issuing a show cause notice enclosing the draft assessment order and granted one day time to file objection. The single judge dismissed the writ. Against an appeal to the Division bench it was held that the assessee was not given adequate opportunity to be heard considering that the assessee was an individual in full time employment and also carrying part time multilevel marketing for Amway and to expect him to respond within one day would be impossibility which may not be with companies or other financial institutions as the would gave a large team of legal experts to assess.

As these circumstances would vary from case to case ideally also this show cause notice procedure must be with some timelines or formulas as in case of section 148A scheme of notice for not less than 7 days (extendable)lest the AO would follow 1-3 day ritual for final show cause in all cases. Also with regard to opportunity the Supreme Court in their decision in ***Tin Box Company v. CIT*** [2001] 116 Taxman 491/ 249 ITR 216 (SC) held that opportunity of hearing by the appellate authority or the Tribunal or the Court can be of no substitute to that of

the opportunity that will be provided by the Assessing Officer, at the first instance.

The opportunity of being heard should be real, reasonable and effective. The same should not be for name sake. It should not be a paper opportunity. This was so held in *CIT v. Panna Devi Saraogi* [1970] 78 ITR 728 (Cal.). In *Smt. Ritu Devi v. CIT* [2004] 141 Taxman 559/271 ITR 466 (Mad.), time of just one day was given to the assessee to furnish reply. This was held as denial of opportunity. As held in *E. Vittal v. Appropriate Authority* [1996] 221 ITR 760 (AP), where a decision is based upon a document in a proceeding, copy of the same should be provided to the affected party. Otherwise, it would violate the principles of natural justice as the opportunity of being heard should be an effective opportunity and not an empty formality.

The principle of natural justice has evolved through civilization. It has not evolved from the constitution but from mankind itself. Every person has the right to speak and be heard when allegations are being put towards him or her. The Latin maxim, 'Audi Alteram Partem' is the principle of natural justice where every person gets a chance of being heard. The principles of natural justice are not defined in any statute. Yet, they are accepted and enforced. In practical terms, the essential principles of natural justice are the following:

- ◆ Justice should not only be done but seen to be done.
- ◆ One cannot be a judge in his own cause.
- ◆ No party should be condemned unheard.
- ◆ Impartial hearing must be extended to the person against whom a charge is framed to state his case.
- ◆ Final decision should be by way of a speaking order, for such an order prevents any bias or prejudice creeping into the decision

It is also mentioned in the Taxpayer's charter

"2. treat taxpayer as honest - The Department shall treat every taxpayer as honest unless there is a reason to believe otherwise."

So there should be adequate opportunity given to him which has escaped the mention. Natural justice means that justice should be given to both the parties in a just, fair and reasonable manner. Before the court, both the parties are equal and have an equal opportunity to

represent them. The principle is inviolable.

Though the charter mentions

"12. provide a fair & just system The Department shall provide a fair and impartial system and resolve the tax issues in a time-bound manner"

But that is ultra virus the Act as the department has no authority to devise any "**systems**" for assessment as it is already prescribed. Such clauses are not bonafide and can cause damnum sine injuria to the assesseees.

