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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1083 OF 2021**

Trendsutra Client Services Pvt. Ltd. ...Petitioner  
having its registered office at Warehouse Nos.1  
and 2, K. Square Project, Village Kurund,  
Taluka Bhiwandi, NH-3, Thane - 101

Vs.

1. The Assistant Commissioner of Income Tax  
– Circle.

2. The National e-Assessment Centre, Delhi.

3. Union of India ...Respondents

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Mr. Percy Pardiwala, Senior Advocate with Mr. Paras S. Savla and  
Mr. Pratik Poddar for the Petitioner.  
Mr. Sham V. Walve with Prithvi Chatterjee for Respondents.

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**CORAM: K.R. SHRIRAM &  
R.I. CHAGLA, JJ.**

**DATE : 14TH SEPTEMBER, 2021**

**ORDER ( Per R. I. CHAGLA, J. )**

1. By this Petition, Petitioner is seeking the quashing and setting aside impugned assessment order 18th April, 2021, which pertains to the assessment year 2018-19 and which was passed by Respondent No.2 computing the total income of Petitioner at Rs.62,18,03,460/- and issuing consequent demand notice of Rs.63,35,29,950/-.

2. Initially a notice dated 10th January 2020 was issued by Respondent No.1 calling upon Petitioner to furnish certain information. Petitioner responded to the said notice dated 10th January, 2020 by filing submissions on 16th January, 2020 and 11th February, 2020.

3. Respondent No.1 addressed a communication dated 15th October, 2020 to Petitioner by which Petitioner was informed that its case (assessment proceedings) shall be completed under Faceless Assessment Scheme, 2019. Thereafter, a notice dated 16.12.2020 under Section 142(1) of the Act was issued by Respondent No.2 seeking further details / information followed by reminders dated 29.12.2020, 4.2.2021 and 4.3.2021. Petitioner responded vide its letters dated 28.12.2020, 5.1.2021, 18.2.2021 and 13.3.2021. What is material to note is that by a notice dated 9.4.2021 issued by Respondent No.2, which was under the faceless assessment scheme as per Section 144B of the Act, Petitioner was called upon to furnish further details for unsecured loans as well as certain other particulars. Petitioner was given time upto 6.54 p.m. on 13 April 2021 to furnish the relevant information. This notice has been digitally signed at 19:00:28 IST. The day was over by the

time the notice was issued. 10th April 2021 was second Saturday, 11th April 2021 was Sunday and 13th April 2021 was Gudi Padwa, a public holiday in Maharashtra and many parts of India. So effectively Petitioner had one working day to respond.

4. Notwithstanding this grossly inadequate time being granted, Petitioner filed its submissions dated 13th April, 2021 submitting partial details / documents and requested further time to provide balance details considering the short time given vide notice dated 9th April, 2021. Another reason for further time was the Covid-19 situation where strict lock down was in force. Petitioner filed additional submission dated 17th April, 2021 giving further details and explanation.

5. Respondent No.2 passed assessment order dated 18th April, 2021 under Section 143(3) read with Section 144 of the Income Tax Act, 1961 (“the Act”) without giving any further opportunity to the Petitioner and also ignoring the submissions made by Petitioner. Respondent No.2 also did not issue any show cause notice as mandated by Section 144B of the Act for faceless assessment. The draft assessment order was also not furnished to

the Petitioner as per Section 144B of the Act. The impugned assessment order contains additions and disallowances. Petitioner being aggrieved by the impugned assessment order dated 18th April, 2021 has filed the present Petition.

6. The Finance Act, 2018 introduced three new sub-section (3A) to (3C) in section 143 of the Act (governing the assessment process), to notify a new scheme of faceless and paperless assessments. Faceless Assessment Scheme, 2019 ('the Scheme') was introduced vide Notification No.S.).3264(3), dated 12.09.19 issued by the CBDT under section 143(3A) and 143(3B) of the Act and amended by notification no.S.).2745(E), dated 13-08-20, and Faceless Assessment (First Amendment) Scheme 2021, vide notification no. S.O. 741 (E), dt.17.02.21.

7. The Faceless Assessment Scheme has now been incorporated into the Act. Section 144B was inserted in the Act vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Earlier, Section 144B was omitted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1st April 1989.

The Act vide section 143(3D) also specified a sunset date 31 March 2021 for existing section 143(3A) and 143(3B).

8. A standing operating procedure was laid down by Principal Chief Commissioner of Income Tax, National e-assessment Centre with the prior approval of CBDT for assessment units under Faceless Assessment Scheme.

9. Mr. Pardiwala, learned Senior Advocate has taken us through Section 144B of the Act which provides for faceless assessment. He submitted that under Section 144B (1) (xvi), the National Faceless Assessment Centre (“NaFAC”), upon receipt of the draft assessment order prepared by the assessment unit, shall examine the draft assessment order and it may decide to provide an opportunity to the assessee, in case of any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made. Mr. Pardiwala further referred to Section 144B (1) (xxv)(b), which provides that where there are variations proposed in the revised draft assessment order, which are prejudicial to the interest of the assessee in comparison to the draft assessment order

or the final draft assessment order, the NaFAC shall provide an opportunity to the assessee, by serving a notice calling upon him to show cause as to why the proposed variation should not be made.

10. Mr. Pardiwala has further relied upon Sub-section (9) of Section 144B which provides that notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) shall be *non est* if such assessment is not made in accordance with the procedure laid down under this section. He submitted that the final assessment order dated 18th April, 2021 had been passed without serving upon Petitioner a show cause notice and draft assessment order as well as not granting Petitioner a personal hearing as mandated under Section 144(B) of the Act for faceless assessment. Mr. Pardiwala has accordingly submitted that such non-conformity with the provisions of Section 144 (B) of the Act would result in the impugned assessment order dated 18th April, 2021 being *non est* and requires to be set aside.

11. Mr. Walve, learned Counsel for Respondents, relying upon an Affidavit in Reply dated 13th August, 2021 filed by one D. Ghosh, DCIT, Circle – 1, Kalyan, submitted that inspite of ample opportunities, Petitioner / Assessee is still claiming that reasonable time has not been given. Petitioner had responded 10 times to the notices issued by the department but four issues out of seven have not been properly represented. It was presumed from the Petitioner's reply dated 17th April, 2021, that Petitioner had nothing more to explain. In the list of chronology of dates which forms part of the said Affidavit in Reply, at serial number 18, the date 22nd March, 2021 is mentioned and against which it is stated that the DAO (Draft Assessment Order) submitted by previous AO (Assessment Officer) ReAc was duly approved by the Range Head. He submitted that in view of the opportunities given to the assessee, the Petition deserves to be dismissed.

12. Having considered the submissions, it is necessary to note that the faceless assessment scheme, 2019 which was modified by notification No.60/2020 dated 13th August, 2020, prescribed in paragraph 5, the procedure for making assessment. For the first time, the principle of natural justice has been

embodied in the piece of legislation itself. It would be relevant to note that after 1st April, 2021, the assessments are to be completed as per provisions of Section 144B of the Act. The objectives of the faceless assessment scheme provides for imparting greater efficiency, transparency and accountability. However, one of the features of the scheme is stated to be passing of objective, fair and just orders. The above objectives are visible on the website of the department itself. The benefit of the scheme is slated to include “improvement in quality of assessment”. The relevant provisions of section 144B are set out as under:-

***144B : Faceless Assessment:***

*(1) Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—*

*(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to –*

*(a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the*

*demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or*

*(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or*

*(c) ....*

*(xxv) (a) in case the variations proposed in the revised draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and –*

*(A) in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of the assessee proposed in draft assessment order or the final draft assessment order, forward the said revised draft assessment order to such assessee;*

*(B) in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment.*

*(b) in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made;*

*(9) Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) (other than the*

*cases transferred under sub-section (8)], on or after the 1st day of April, 2021, shall be non est if such assessment is not made in accordance with the procedure laid down under this section.*

To summarize, Section 144B provides for (a) issuance of a show cause notice to the assessee, providing draft assessment order if any modification or variation prejudicial to interest of the assessee is proposed; (b) granting reasonable time to the assessee to submit its reply; (c) extension of time to reply by the assessee; (d) consideration of reply filed by the assessee before passing the assessment order; and (e) granting of personal hearing if a request is made in this regard and such request is the one prescribed. It has been clearly held by this Court that the principles of natural justice cannot be violated and a show cause has to be issued before passing any order prejudicial to the assessee.

13. It is clear from reading of Section 144B that the assessee is required to be given an opportunity in case the variation proposed in the draft assessment order upon its examination by NaFAC is prejudicial to the interest of assessee by having served upon him a show cause notice calling upon him to show cause as to why the proposed variation should not be made.

This would be equally applicable in case variation is proposed in a revised draft assessment order which is prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order. In that case too an opportunity shall be provided to the assessee by serving a show cause notice calling upon him to show cause as to why the proposed variation should not be made. It has been further provided in sub-section (9) of Section 144B that in the event that the final assessment order is not made in accordance with procedure laid down under Section 144B for faceless assessment, the assessment order shall be *non est*. Thus, Sub-section (a) of Section 144B makes it amply clear that the Section 144B is a mandatory provision and non-compliance thereof would make the assessment order *non-est*.

14. In the present case the notice issued on 9th April, 2021 under Section 142 sub-section (1) of the Act called upon Petitioner to submit by 6.54 p.m. on 13th April 2021 the accounts and documents specified in the annexure to the said notice. Petitioner had issued its response on 13th April, 2021 and in view of the short time given for filing of the response as well as prevailing Covid-19 situation, Petitioner had been able to provide

only partial details and requested for further time. Petitioner thereafter filed additional submissions dated 17th April, 2021 giving details and explanation in relation to the points raised in the notice dated 9th April, 2021. Respondent No.2, however, in haste, passed the impugned assessment order dated 18th April, 2021, under Section 143 (3) read with Section 144B of the Act without granting Petitioner the opportunities as provided in Section 144B of the Act, 1961, viz., issuance of show cause notice mandated under the said section for faceless assessment as well as serving the draft assessment order.

15. Although, the relevant paragraph 24 of the Petition has adverted to the fact that Section 144B of the Act had not been complied with by Respondent No.2 not issuing any show cause notice to Petitioner inspite of the impugned assessment order containing additions / disallowances, the said Affidavit in Reply of the Respondents is silent in that respect. It only mentions that Petitioner had been given ample opportunities to respond to the notices issued and that Petitioner was unable to address four out of seven issues properly.

16. We find from the impugned assessment order that there are variations from the return filed by Petitioner by containing additions / disallowances. The final assessment order is not made in accordance with the procedure laid down under Section 144B (xvi)(b) of the Act as inspite of the variation being prejudicial to the interest of assessee, no opportunity has been provided to the assessee by having him served with a show cause notice as well as draft assessment order calling upon him to show cause as to why the proposed variation should not be made. Thus, the impugned assessment order dated 18th April, 2021 is *non est* as the assessment is not made in accordance with procedure laid down under Section 144B of the Act. Hence, we pass following order:-

- (a) The assessment order issued by Respondent No.2 dated 18th April, 2021 along with consequential demand notice is quashed and set aside.
- (b) The Respondents may take such denovo proceedings as required in accordance with law.

(c) Writ Petition is accordingly disposed in the above terms. There shall be no order as to costs.

( R. I. CHAGLA J. )

(K.R. SHRIRAM, J.)