**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**WRIT PETITION NO. 1378 OF 2021**

Multiplier Brand Solutions Pvt Ltd. ....Petitioner

V/s.

Additional Joint Deputy Assistant
Commissioner of Income Tax Officer & Ors, ...Respondents

----

Mr. Ajay Singh i/b Mr. Sameer Dalal for Petitioner
Mr. Arvind Pinto for Respondents – Revenue

----

**CORAM : K.R. SHRIRAM &**
**AMIT B. BORKAR, JJ**
**DATED : 25th OCTOBER 2021**

**P.C. :**

1 Petitioner is impugning the assessment order dated 13th May 2021 on the ground that respondents have not issued the mandatory draft assessment order as required under Section 144B(1)(xvi)(b) of the Income Tax Act, 1961 (the said Act).

2 In the affidavit in reply filed by one Jayshree Thakur affirmed on 2nd August 2021, respondents admit that no draft assessment order has been issued but according to respondents the assessment unit has reported that since the Risk Unit did not indicate that a show cause notice or draft order be issued, the assessment was finalized and sent to petitioner. According to affiant, Section 144B(1)(xvi)(b) is not mandatory and the question of draft assessment order falls within the purview of the Risk Unit.

3 This court has in many orders held that provisions of Section 144B are mandatory. Under Section 144B(1)(xvi)(b), if there is going to be a variation prejudicial to the assessee, a draft assessment order has to be

issued. Admittedly it has not been issued.

It has also been held by this court that non compliance with the procedure laid down under Section 144B of the Act would make the assessment order *non est* in view of the provisions of sub Section 9 of Section 144B of the Act.

4 Since admittedly, there has been non compliance with the mandatory procedure laid down under Section 144B, the assessment order dated 13th May 2021 is also *non est.* The order impugned is hereby quashed and set aside. Consequent demand notice and penalty notice both dated 13th May 2021 are also quashed and set aside.

5 Revenue may take such further steps as advised in accordance with law. We also clarify that we have not made any observations on merits of the case.

6 Petition disposed.

**(AMIT B. BORKAR, J)** **(K.R. SHRIRAM, J.)**