

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1221 OF 2021

Abacus Real Estate Pvt Ltd.

....Petitioner

V/s.

Deputy Commissioner of Income  
Tax-Circle 14(1)(1) Mumbai & Ors.

...Respondents

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Mr. P. J. Pardiwalla, Senior Advocate i/b Ms Vasanti B Patel for Petitioner  
Mr. Akhileshwar Sharma for Respondents - Revenue

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CORAM : K.R. SHRIRAM &  
AMIT B. BORKAR, JJ  
DATED : 25<sup>th</sup> OCTOBER 2021

PC. :

1 Petitioner is impugning the assessment order, demand notice and penalty notice all dated 19<sup>th</sup> April 2021 for A.Y.-2018-109 on the grounds that respondents have failed and neglected to follow the mandatory procedure prescribed under Section 144B of the Income Tax Act, 1961 (the said Act), in as much as the show cause notice with a draft assessment order, was not even sent to petitioner. Therefore, petitioner was not provided an opportunity to show cause as to why the proposed variation should not be made. Clauses (xiv), (xvi), (xvii), (xviii), (xix), (xx), (xxi) of Sub Section (1) of Section 144B of the Act, read as under:

*(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;*

.....

*(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) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;*

*(xvii) the review unit shall conduct review of the draft assessment order referred to it by the National Faceless Assessment Centre whereupon it may decide to—*

*(a) concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or*

*(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;*

*(xviii) the National Faceless Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in—*

*(a) sub-clause (a) of clause (xvi); or*

*(b) sub-clause (b) of clause (xvi);*

*(xix) the National Faceless Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;*

*(xx) the assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National Faceless Assessment Centre;*

*(xxi) the National Faceless Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in—*

*(a) sub-clause (a) of clause (xvi); or*

*(b) sub-clause (b) of clause (xvi);*

Sub Section 5 of Section 144B reads as under:

*5) All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other*

*person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre.*

2      Petitioner had received certain communications from respondents under Section 143(2) and Section 142(1) of the Act to which, petitioner had responded. Mr. Pardiwalla submitted that respondents had not accepted the returns filed by petitioner as it was and were proposing to make a variation prejudicial to the interest of petitioner and, therefore, ought to have issued to petitioner a show cause notice with draft assessment order. Mr. Pardiwalla submitted that even the assessment order dated 19<sup>th</sup> April 2021 which is impugned in the petition, does not even state that such show cause notice was sent with draft assessment order.

3      We have perused the assessment order impugned in the petition with the assistance of Mr. Pardiwalla. The assessment order is totally silent about the issuance of any show cause notice with draft assessment order.

4      Mr. Sharma submitted that it is petitioner's case that no draft assessment order was served whereas, it is respondents' case that draft assessment order has been issued on 12<sup>th</sup> April 2021 and relied upon an affidavit in reply as well as sur-rejoinder filed by one Jayshree Thakur. Mr. Sharma submitted that details of chronological order of events reproduced in the affidavit in reply would show that the draft assessment order has been served on petitioner. We are not inclined to accept the explanation given by the affiant on behalf of respondents because if any such draft assessment

order had been issued, that would have certainly found a mention in the assessment order impugned in the petition. Moreover, in the affidavit in reply, it is stated that the draft assessment order under Section 143(3) of the Act was issued on 12<sup>th</sup> April 2021 by the Assessing Officer – Regional E-Assessment Unit to petitioner. Apart from the fact that it is petitioner's case that no such draft assessment order was received and no evidence that it has been served, has been filed, it is respondents' case in the affidavit in reply that the Regional E-Assessment Unit issued the draft assessment order. Provisions of Section 144B in our view are mandatory provisions because sub-Section 9 of Section 144B states that if the assessment is not made in accordance with the procedure laid down under Section 144B, the assessment shall be *non est*. Sub Section 5 reproduced earlier provides that all communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre. Even the final assessment order has been issued by the National Faceless Assessment Centre. Therefore, even for a moment we accept what the affidavit in reply says that Regional Unit sent draft assessment order under Section 143(3) of the Act, it could not have sent any such communication to the assessee. The said communication should have originated from the National Faceless Assessment Centre.

5 Affidavit in reply has not been filed by the person who passed the assessment order. Nobody knows, even counsel does not know, who is the faceless person who passed the assessment order. The only person who could have answered this point categorically was the person who wrote and pass the assessment order and not some other officer who is relying upon input received from the National Faceless Assessment Center .

6 In the circumstances, we have to hold that the assessment order has been issued without following the mandatory procedure prescribed under Section 144B of the Act, in as much as, if the review unit of respondents had reviewed the draft assessment order, it should have followed the procedure laid down under sub clause (b) of clause (xvi) of sub-Section (1) of Section 144B.

7 In the circumstances, the impugned order, demand notice and penalty notice all dated 19<sup>th</sup> April 2021 for A.Y.-2018-2019 are quashed and set aside as *non est* . It is, however, open to respondents to take such steps as advised in accordance with law for the purpose of making the faceless assessment. We also clarify that we have not made any observations on the merits of the case.

8 Petition disposed.

**(AMIT B. BORKAR, J)**

**(K.R. SHRIRAM, J.)**