IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1275 OF 2021

Tatwajnana Vidyapeeth & Ors. ….Petitioners

V/s.

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

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Mr. Nitin Thakker, Senior Advocate a/w Mr. Aditya Bhatt, i/b Mr. Sameer Dalal for Petitioners

Mr. Sham Walve a/w Mr. Pritish Chatterjee for Respondent - Revenue

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CORAM : K.R. SHRIRAM &
M.S.KARNIK, JJ.
DATED : 16th SEPTEMBER 2021

P.C. :

1 The petitioner is impugning the assessment order dated 22nd April 2021 along with the consequential demand notice under Section 156 of the Income Tax Act (the said Act) and the notice for penalty under Section 274 read with Section 270A of the Act both dated 22nd April 2021 on the ground that the assessment order itself has been passed in breach of the mandatory requirements under Section 144B of the Act. One of the requirement, under Section 144B is to serve upon the assessee a show cause notice alongwith a draft assessment order. In the affidavit in reply filed by one Ambernath Khule, the Jurisdictional Assessing Officer, affirmed on 31st August 2021 on behalf of respondents, in paragraph 5 it is admitted that no specific show cause notice under Section 144B was issued.

2 In the circumstances, as provided in Sub-Section 9 of Section 144B of the Act, the assessment order will be non-est. The assessment order which

is impugned in the petition is, therefore, quashed and set aside. The consequent demand notice as well as the notice for penalty also are quashed and set aside. It is open to the department to take steps as advised in accordance with law.

3 Petition accordingly stands disposed.

4 Registry to take on file the affidavit in rejoinder for completion of record.

(M.S. KARNIK, J.) **(K.R. SHRIRAM, J.)**