IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1623 OF 2021

ND's Art World Private Limited)
(PAN: AABCN7882R) a Company)
having its registered office at 201-A)
Second Level, Ventura Shopping,)
Hiranandani Business Park, Powai,)
Mumbai 400 076) ...Petitioner

Vs.

1 National Faceless Assessment)
Centre (formerly known as)
National E-Assessment Centre))
Income Tax Department, New Delhi)

2 Deputy Commissioner of Income)
Tax Circle – 16(1), Aayakar)
Bhavan, M. K. Road, Mumbai-40020)

3 The Principal Commissioner of)
Income Tax -8, Mumbai, Aayakar)
Bhavan, M. K. Road, Mumbai-400020)

4 The Central Board of Direct Taxes)
Noth Block, New Delhi-110002)

5 The Union of India)
Through the Secretary, Ministry of)
Finance, Government of India)
North Block, New Delhi-110001) ...Respondents

Ms Radha Halbe i/b Mr. Devendra H. Jain for Petitioner
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ
DATED : 13th OCTOBER 2021

ORAL JUDGMENT :

1 Since pleadings are completed, we decided to dispose this petition at the admission stage itself by consent of the parties.

Rule.

Rule made returnable forthwith.

2 Petitioner is aggrieved by the assessment order dated 4th June 2021 and consequent notice of demand dated 4th June 2021 issued under Section 156 of the Income Tax Act, 1961 (of the Act) and show cause notice dated 4th June 2021 for initiating penalty proceedings under Section 274 read with Section 271AAC and Section 271B of the Act. According to petitioner, assessment order has been passed without strictly complying with the mandatory provisions under Section 144B of the Act and also without giving a personal hearing. Ms Halbe, learned counsel for petitioner submitted that in petitioner's reply dated 22nd February 2021 itself petitioner had requested for personal hearing.

3 For the A.Y. 2018-2019, petitioner filed return of income on 13th February 2019 declaring total income at Rs,2,29,11,790/-. Petitioner's case was selected for complete scrutiny under the CASS and accordingly notice under Section 143(2) of the Act was issued on 10th August 2017. Thereafter, a notice dated 10th December 2020 was issued under Section 143(1) of the Act, to which petitioner submitted a detailed reply dated 11th February 2021. Respondent no.1 issued notices even under Section 133(6) of the Act on 8th February 2021 to petitioner's lenders calling for information about unsecured loans. Thereafter, respondent no.1 issued a notice dated 19th February 2021 informing petitioner that none of the lenders to whom notice under Section 133(6) of the Act have responded and called upon petitioner to show cause why the amount of Rs.51,21,70,000/- shown as

loan taken be not added to the income of petitioner. Petitioner submitted detailed reply dated 22nd February 2021 and sought personal hearing as well.

4 By a notice dated 17th March 2021, petitioner was informed that on perusal of petitioner's balance sheet, entry of Rs.99,22,68,184/- was shown as capital work in progress and petitioner was called upon to provide details regarding the same and also explain why this amount should not be treated as bogus. Petitioner submitted its reply on 20th March 2021 in four parts giving details. Thereafter, petitioner received a notice dated 29th March 2021 calling upon petitioner to show cause why assessment should not be completed as per the draft assessment order.

5 We have perused the said notice dated 29th March 2021 with the assistance of Learned Counsel for petitioner and we agree with the counsel that even though this communication is referred to as 'show cause notice as to why assessment should not be completed as per draft assessment order', this communication by no stretch of imagination can be referred to as draft assessment order. By this communication, respondent is only seeking further details regarding the amount spent on certain theme park, relevant plans, copies of contract with employees etc. Petitioner replied to this notice by its communication dated 19th April 2021. Respondent, thereafter, passed the assessment order on 4th June 2021 disallowing expenses in the sum of Rs.72,33,00,000/- and assessed total income of Rs.74,62,11,790/-. This assessment order, however, was not preceded by any draft assessment order

as required under Section 144B of the Act. No reply has been filed to the petition but Mr. Suresh Kumar submitted that even notice dated 19th February 2021 states "why the assessment should not be completed as per the draft assessment order" and, therefore, the requirements of Section 144B has been complied with. We do not agree with Mr. Suresh Kumar because the notice dated 19th February 2021 is also a show cause notice and not a draft assessment order.

6 In the circumstances, there is a non compliance with the mandatory provisions of Section 144B of the Act, where sub Section 1(xvi)(b) provides for an opportunity to the assessee, in case any variation prejudicial to the notice of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made.

7 Sub Section 9 of Section 144B provides that any order passed not in accordance with the proceedings laid down in Section 144B will be *non-est*. Therefore, the assessment order dated 4th June 2021 is *non-est.* The same together with demand notice issued under Section 156 of the Act and show cause notices 274 r/w Section 271AAC and Section 271B, all dated 4th June 2021 are quashed and set aside as *non-est*.

Respondents may take such steps as they deem fit in accordance with law within 6 weeks from today.

8 Petition disposed.

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