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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10.08.2021

+ W.P.(C) 5087/2021 & C.M.No.15585/2021

M/S SAS FININVEST LLP

..... Petitioner

Through Mr.Kapil Goel, Advocate.

versus

NATIONAL E-ASSESSMENT CENTRE INCOME TAX

DEPARTMENT NEW DELHI

..... Respondent

Through Mr.Anant Ram Mishra,
Advocate on behalf of Mr.Ajit
Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the Assessment Order dated 31st March 2021 passed under Section 143(3) of the Income Tax Act, 1961 [the Act] and disputed demand raised under Section 156 of the Act, along with all consequent proceedings thereto.
3. Learned counsel for the Petitioner states that the Impugned assessment order passed is jurisdictionally flawed and bad in law since it is violative of the mandatory and binding natural justice

requirements stipulated in faceless assessment scheme and relevant CBDT instructions.

4. He emphasises that no mandatory valid show cause notice as well as draft assessment order were issued before drawing an adverse inference against the petitioner-assessee qua stated addition of short-term capital loss of Rs 870,00,000 thus creating a colossal tax demand coupled with initiation of penalty u/s 270A (9) of the Act.

5. He relies on para 4 of the Central Board of Direct Taxes instruction no. 20/2015, dated 29th December 2015 which inter alia provides for a fair opportunity to the Petitioner to explain its case and mandates issuing a show cause notice. The relevant portion of the said instruction is reproduced hereinbelow:-

"4. The Board further desires that in all cases under scrutiny, where the Assessing Officer proposes to make additions or disallowances, the assessee would be given a fair opportunity to explain his position on the proposed additions/disallowances in accordance with the principle of natural justice. In this regard, the Assessing Officer shall issue an appropriate show-cause notice duly indicating the reasons for the proposed additions/disallowances along with necessary evidences/reasons forming the basis of the same. Before passing the final order against the proposed additions/disallowances, due consideration shall be given to the submissions made by the assessee in response to the show-cause notice. "

6. Per contra, learned counsel for the respondent states that the present writ petition is not maintainable as the petitioner has an alternative effective remedy by filing an appeal.

7. This Court is of the view that the Faceless Assessment Scheme mandatorily provides for issuance of a prior show cause notice and draft assessment order before issuing the final assessment order. The relevant portion of the scheme is reproduced hereinbelow:-

“(v) where a case is assigned to the assessment unit, it may make a request to the National e-assessment Centre for (a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify; (b) conducting of certain enquiry or verification by verification unit; and (c) seeking technical assistance from the technical unit;

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(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 e-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 modifying the said income or sum, and send a copy of such order to the National e-assessment Centre;”

8. It is settled law that the Government is bound to follow the rules and standards they themselves had set on their pain of their action being invalidated [*See: Amarjit Singh Ahluwalia Vs. State of Punjab & Ors.; 1975 (3) SCR 82 and Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors.; (1979) 3 SCC 489*].

9. Since in the present case no prior show cause notice as well as draft assessment order had been issued, there is a violation of principles of natural justice as well as mandatory procedure prescribed under “Faceless Assessment Scheme”. It is well settled law that where

there is violation of principles of natural justice, appeal is not an alternative effective remedy and a writ petition is maintainable.

10. Consequently, keeping in view the aforesaid facts, the impugned assessment order dated 31st March 2021 passed under Section 143(3) the Act and disputed demand raised under Section 156 of the Act, are set aside and the matter is remanded back to the Assessing Officer, who shall issue a show cause notice and draft assessment order and thereafter pass a reasoned order in accordance with law. With the aforesaid direction, the present writ petition along with pending application stands disposed of.

11. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

**AUGUST 10, 2021
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