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

+ **W.P.(C) 5249/2021 & CM APPL. 16131/2021**

INTERGLOBE ENTERPRISES PRIVATE LIMITED Petitioner

Through: Mr. Rohit Jain, Advocate with
Mr. Aniket D. Agrawal, Advocate.

versus

**NATIONAL FACELESS ASSESSMENT CENTRE DELHI
(EARLIER NATIONAL E-ASSESSMENT CENTRE DELHI) &
ANR. Respondents**

Through: Mr. Ajit Sharma, Advocate.

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Date of Decision: 22nd July, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

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 under Section 143(3) read with Section 143(3A) and 143(3B) dated 09th April, 2021 and the accompanying notice of demand under Section 156 of the Income Tax Act, 1961 (for short 'Act') in the case of the petitioner for Assessment Year [AY] 2018-19 passed by the Respondent.
3. Learned counsel for the Petitioner states that the impugned order and the accompanying notice issued by the Respondents are patently illegal, bad in law, passed without application of mind and against the principles of

natural justice. Learned counsel for petitioner submits that the impugned assessment order has been finalized without issuing prior notice as well as draft assessment order and without affording an opportunity of being heard to the petitioner as well as without providing an opportunity to the petitioner to file its objections.

4. 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.

5. Having heard learned counsel for the parties, this Court is of the view that once the assessment has been done by the respondent No. 1-National Faceless Assessment Centre, Delhi, it has to be in accordance with the procedure prescribed for assessment by the said Authority and cannot be in accordance with the procedure prescribed in the earlier regime.

6. This Court is also of the view that Section 144B (7) mandatorily provides for issuance of a prior show cause notice and draft assessment order before issuing the impugned assessment order. The said Section also provides for an opportunity of personal hearing, if requested, by the assessee. The relevant portion of Section 144B (7) and Section 144B (9) are reproduced hereinbelow: -

“144B. Faceless assessment –

(1) xxxx xxxx xxxx xxxx

(7) For the purposes of faceless assessment—

xxxx xxxx xxxx xxxx

(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show-cause as to why the assessment should not be completed as per the such draft or final

draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit;

(viii) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (vii) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (h) of clause (xii);

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(xii) the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely: —

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(h) circumstances in which personal hearing referred to clause (viii) shall be approved;

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(9) Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) [other than the cases transferred under sub-section (8)], on or after the 1st day of April, 2021, shall be non est if such assessment is not made in accordance with the procedure laid down under this section. ”

7. Since in the present case no prior show cause notice as well as draft assessment order had been issued and no hearing had been given before

passing the impugned assessment order, there is a blatant violation of principles of natural justice as well as mandatory procedure prescribed in “Faceless Assessment Scheme” and stipulated in Section 144B of the Act.

8. It is also settled law that an alternative statutory remedy does not operate as a bar to maintainability of a writ petition where the proceeding is carried out in violation of principles of nature justice – like in the present case.

9. Keeping in view the aforesaid facts and mandate of law, the impugned assessment order dated 09th April, 2021 and notice of demand for the assessment year 2018-19 are set aside and the matter is remanded back to the Assessing Officer, who shall issue a draft assessment order and grant an opportunity of hearing to the petitioner by way of Video Conferencing 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.

10. 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

JULY 22, 2021
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