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

\+ W.P.(C) 5298/2021 & CM No.16306/2021

GLOBE CAPITAL FOUNDATION ..... Petitioner

Through Mr.Salil Kapoor, Mr.Sumit Lalchandani, Ms. Ananya Kapoor and Ms. Soumya Singh, Advs.

versus

NATIONAL E-ASSESSMENT CENTRE ..... Respondent

Through Mr.Abhishek Maratha, Sr. SC.

% Date of Decision: 30th July, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

MANMOHAN, J: (Oral)

1. The hearing has been conducted through video conferencing.

2. Present writ petition has been filed challenging the impugned assessment order dated 17th April 2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [the Act] in the case of the Petitioner for Assessment Year [AY] 2018-19 and all consequent proceedings thereto.

3. Learned counsel for the Petitioner states that the impugned order passed by the Respondent is illegal, bad in law and in violation of principles of natural justice. He emphasises that in the present case, the Petitioner was not issued a show-cause notice and draft assessment order.

4. Today also, learned counsel for the respondent prays for an adjournment to obtain instructions. Though, on 13th May, 2021, the learned counsel for the respondent had been granted six weeks to file a counter affidavit, yet no response has been filed. Consequently, the request for adjournment is declined.

5. This Court is of the view that Section 144B (7) mandatorily provides for issuance of a prior show cause notice and draft assessment order before issuing the final assessment order. 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;*
>
> *xxxx xxxx xxxx xxxx*
>
> *(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."*

6. 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 the mandatory procedure prescribed in "Faceless Assessment Scheme" and stipulated in Section 144B of the Act.

7. Keeping in view the aforesaid, the impugned assessment order dated 17th April, 2021 is set aside and the matter is remanded to the Assessing Officer, who shall issue a draft assessment order and thereafter pass a reasoned order in accordance with law.

8. With the aforesaid direction, the present writ petition along with pending application stands disposed of.

9. 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 30, 2021/Arya