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

% *Decision delivered on: 02.06.2021*

\+ **W.P.(C) 5348/2021 & CM No. 16497/2021**

SMART VISHWAS SOCIETY ..... Petitioner

Through: Ms. Kavita Jha with Mr. Vaibhav Kulkarni, Advocates.

versus

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

Through: Mr. Ruchir Bhatia, Senior Standing Counsel for Revenue.

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CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):

1. On the previous date, i.e., 18.05.2021, we have recorded the following: -

> "3. *Via* this writ petition, a challenge is laid to the assessment order dated 15.04.2021 and consequential orders passed by respondent no. 1 in view of the fact that although the petitioner's declared income was varied, no show-cause notice cum draft assessment order was issued, as mandated under Section 144(B) [sic: Section 144B] of the Income Tax Act, 1961 (in short 'the Act').
> 4. Accordingly, issue notice.
> 4.1 Mr. Ruchir Bhatia, who appears on behalf of the respondent/revenue, accepts notice.

4.2 Mr. Bhatia says that he will revert with instructions. In case instructions are received to resist the petition, a counter-affidavit will be filed before the next date of hearing.
5. List the matter on 02.06.2021.
6. In the meanwhile, there shall be a stay on the operation of the assessment order dated 15.04.2021 and notice of demand as well as the notice for initiating penalty proceedings.
7. Interim order will continue to operate till further orders of the court."

2. It is to be noted that counter-affidavit has not been filed on behalf of the respondent/revenue. Therefore, the assertions made in the petition, which are supported by an affidavit, have to be accepted.

3. Mr. Ruchir Bhatia, senior standing counsel appearing on behalf of the respondent/revenue, says that the record presently placed before the Court would show that although no show cause notice-cum-draft assessment order was issued, several opportunities were granted by the respondents/revenue, to the petitioner, before the said date, to explain its case.

3.1 This stand of the respondents/revenue is contrary to the statutory scheme, as engrafted in Section 144B of the Income Tax Act, 1961 (in short "the Act").

4. Therefore, in our opinion, Ms. Kavita Jha, learned counsel for the petitioner, is correct in submitting that the provisions of Section 144B of the Act have been violated.

5. That being the position, there is no option, but to set aside the impugned assessment order dated 15.04.2021, issued under Section 143(3), read with Sections 143(3A) and 143(3B) of the Act, along with accompanying notice of demand, issued under Section 156 of the Act and

notice for initiation of penalty proceedings, issued under Section 270A of the Act.

6. It is ordered accordingly. The writ petition and pending application stand disposed of.

7. At this stage, Mr. Bhatia says that the liberty should be given, to the concerned officer, to pass a fresh assessment order. To our minds, if such a leeway is available under the law, there can be no impediment caused, in that regard, at least by this order.

8. It is, however, made clear, that if any such step(s) is/are taken, it would be open for the petitioner to take recourse to an appropriate remedy, available, to it, in law.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JUNE 2, 2021/*mr*

Click here to check corrigendum, if any