$~14

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

Date of Decision: <u>04.08.2021</u>

\+ W.P.(C) 5413/2021 & C.M.Nos.16749/2021, 18049/2021

AKASHGANGA INFRAVENTURES INDIA LIMITED

..... Petitioner

Through Mr.Prakash Kumar, Advocate & Ms. Rashmi Singh, Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE, DELHI (EARLIER NATIONAL E-ASSESSMENT CENTRE DELHI)

..... Respondent

Through Mr.Zoheb Hossain, Sr.Standing Counsel for the Department.

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, notice of demand and notice of penalty dated 19th April 2021 passed under Section 143(3) read with Section 144B, Section 156 and Section 274 read with Section 271AAC(1) of the Income Tax Act, 1961 [the Act] pertaining to the Assessment Year 2018-19.

3. Learned counsel for the Petitioner states that there has been a breach of principles of natural justice, inasmuch as the respondent/revenue has failed to issue the mandatory Show Cause

Notice-cum-draft assessment order to the petitioner/assessee, prior to passing of the impugned assessment order.

4. Per contra, the counsel for the Respondent-Revenue states that the final Assessment order has been passed without issuance of a formal Show Cause Notice due to program and systemic glitches and he points out that the petitioner has been given ample opportunities and time for furnishing the requisite details and making submissions and hence there was no violation of principles of natural justice.

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*
> *(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 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 as stipulated in Section 144B of the Act.

7. Keeping in view the aforesaid facts, the impugned assessment order, notice of demand and notice of penalty dated 19th April, 2021 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 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

AUGUST 4, 2021
KA