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

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Decision delivered on: 04.06.2021

+ **W.P.(C) 5849/2021**

GURGAON REALTECH LIMITED

.....Petitioner

Through: Mr. Ajay Vohra, Senior Advocate
with Mr. Aditya Vohra, Advocate.

versus

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

..... Respondent

Through: Mr. Ajit Sharma, Senior Standing
Counsel for revenue

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

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

CM No. 18316/2021

1. Allowed, subject to just exceptions.

CM No. 18317/2021

2. The prayer made in the captioned application is to grant exemption from filing sworn/notarised and/or affirmed affidavits along with the present petition. The captioned application is disposed of with a direction to the petitioner to place on record the duly sworn/notarised and/or affirmed affidavits, within three days from the resumption of the normal and usual work pattern by this court.

W.P.(C) 5849/2021 & CM No.18315/2021 [Application filed on behalf of the petitioner seeking stay on the operation of the impugned assessment

order and consequential actions]

3. Issue notice. Mr. Ajit Sharma accepts service on behalf of the respondent/revenue.

4. Mr. Sharma says that since an issue concerning the jurisdiction of the Assessing Officer has been raised, he does not wish to file a formal reply and will argue the matter based on the record presently available with the Court.

5. Thus, with the consent of the parties, the writ petition is taken up for hearing and final disposal.

6. *Via* the instant petition, challenge has been laid to the assessment order dated 15.04.2021 passed by the respondent/revenue under Section 143(3) read with Sections 143(3A) and 143(3B) of the Income Tax Act, 1961 (in short the “Act”).

6.1. Besides this, challenge has also been laid to the notice of demand issued under Section 156 of the Act as well as notice for initiating penalty proceedings issued under Section 274 read with Section 270A of the Act. These notices are also dated 15.04.2021.

7. To be noted, the impugned assessment order concerns the assessment year (‘AY’) 2018-2019.

8. The principal ground on which the impugned assessment order has been challenged is that the said order could not have been passed under Sections 143(3A) & 143(3B) of the Act after 01.04.2021.

8.1 In support of this plea, Mr. Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner, has relied upon the provisions of Sections 143(3D) and Section 144B of the Act, as also the Central Board of Direct Taxes (in short ‘CBDT’) notification dated 31.03.2021. (See

Annexure 'F', which is appended on page 55 of the paper book). Pertinently, the said notification has been issued by the CBDT in exercise of its power under Section 144(B)(2) of the Act.

8.2. Mr. Vohra, thus, submits that the impugned assessment order, being without jurisdiction, is *non-est* in the eyes of law.

8.3. Mr. Vohra fairly informs us that an appeal against the impugned assessment order was filed by the petitioner with the Commissioner of Income Tax (Appeals) [in short 'CIT(A)'] on 29.05.2021, *albeit*, having regard to the fact that at that juncture, the period of limitation was expiring on 31.05.2021. It is, however, contended by Mr. Vohra that since the Assessing Officer lacked the jurisdiction to pass the impugned assessment order, the writ petition is maintainable, despite an appeal having been filed by the petitioner. [See *Kiran Singh vs. Chaman Paswan*¹, (1955) 1 SCR 117]

8.4. On the other hand, Mr. Sharma contends that since the petitioner has already taken recourse to the alternate remedy by preferring an appeal with CIT(A) against the impugned assessment order, the issues raised in the writ petition by the petitioner should be agitated before the said forum.

9. We have considered the submissions made by the learned counsel for the parties.

9.1. To our minds, if the challenge to the assessment order is made on the ground that it was passed without jurisdiction, then, notwithstanding the fact

¹ “6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by

that an appeal was filed, *albeit*, only to ensure that the limitation is not crossed, is not an impediment in proceeding ahead with the matter. In this particular case, the reason that we are proceeding ahead with the matter, is that, we are persuaded by the arguments advanced by Mr. Vohra that the impugned assessment order dated 15.04.2021 could not have been passed under Section 143(3A) and 143(3B) after March 31, 2021, having regard to the provisions of Section 143(3D) of the Act. For the sake of convenience, the said provisions are extracted below:

“Section 143. Assessment

XXX XXX XXX
(3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based assessment with dynamic jurisdiction.

(3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2021,

XXX XXX XXX
(3D) Nothing contained in sub-section (3A) and sub-section (3B) shall apply to the assessment made under sub-section (3) or under section 144, as the case may be, on or after the 1st day of April, 2021.]”

9.2. Besides this, Mr. Vohra is also right in his contention that the CBDT notification dated 31.03.2021, to which, we have made a reference

consent of parties. ... “

hereinabove, also says, in effect, the same thing, i.e., that after 01.04.2021, the assessment order could have only have been passed in consonance with the provisions of Section 144B of the Act.

10. In view of the foregoing reasons, we are inclined to set aside the impugned assessment order dated 15.04.2021 as also the notice of demand issued under Section 156 of the Act and the notice for initiating penalty proceedings issued under Section 274 read with Section 270A of the Act.

10.1. That being said, the respondent/revenue will have liberty to proceed with the assessment process, *albeit*, under the provisions of Section 144B of the Act. Needless to add, if a show cause notice-cum-draft assessment order is served on the petitioner, an opportunity would be given to the petitioner to file its response/objections to the same. Furthermore, if there is a variation proposed in the income of the petitioner, an opportunity of personal hearing will also be accorded. In sum, the procedure prescribed under Section 144B of the Act will be followed by the respondent/revenue.

11. The writ petition is disposed of in the aforesaid terms. Pending applications also stands closed. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JUNE 4, 2021/mr

Click here to check corrigendum, if any