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

+ **W.P.(C) 6662/2021**

RANI PROMOTER PRIVATE LIMITED Petitioner

Through: **Mr. Arvind Kumar, Advocate.**

versus

**ADDITIONAL COMMISSIONER OF
INCOME TAX**

..... Respondent

Through: **Mr. Ruchir Bhatia, Advocate.**

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Date of Decision: 19th 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)

CM APPL. 20993/2021

1. Allowed, subject to all just exceptions.
2. Accordingly, the application stands disposed of.

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3. The petition has been heard by way of video conferencing.
4. Present writ petition has been filed challenging the assessment order and notice of demand dated 06th April, 2021 for the Assessment Year [AY] 2018-19 and seeking a stay on the operation of the impugned assessment order and the consequential initiation of penalty proceedings.

5. Learned counsel for the Petitioner submits that the Assessment Order dated 06th April, 2021 for assessment year 2018-19 under Section 143(3) of the Income Tax Act, 1961 read with Sections 143(3A) & 143(3B) is *void ab initio* as Sections 143(3A) and 143(3B) of the Act had ceased to exist with effect from 01st April, 2021, in terms of Section 143(3D) of the said Act.
6. He further submits that the impugned Assessment Order also deserves to be quashed for being illegal and bad in law because of the failure of the Respondent to comply with the mandatory provision of the “Faceless Assessment” under Section 144B (1) (xvi) of the said Act, by not serving a Notice as well as the draft assessment order to the Petitioner.
7. According to learned counsel for petitioner, the impugned assessment order was without jurisdiction and non-est in the eyes of law.
8. Issue notice, Mr. Ruchir Bhatia, learned counsel for respondent, accepts notice and waives opportunity to file a counter affidavit.
9. Mr. Ruchir Bhatia states that no prior notice or service of draft assessment order was required as all the documents were already on record.
10. Since the present case primarily pertains to interpretation and effect of Section 143(3D), the same is reproduced hereinbelow :-

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

11. Keeping in view the mandatory language of Section 143(3D) of the Act, this Court is of the view that after 01st April, 2021, the assessment orders could have been passed in consonance with Section 144 B of the Act alone.

12. In any event, this issue is no longer res integra as a Coordinate Bench of this Court in ***Gurgaon Realtech Limited v. National Faceless Assessment Centre Delhi, W.P. (C) 5849/2021*** has held that the Assessment Order could not have been passed under Section 143(3A) and 143(3B) of the Act by the Revenue after 31st March, 2021 having regard to Section 143(3D) of the Act.

13. This Court also agrees with the submissions of the learned counsel of the Petitioner that there was failure on the part of the Respondents to comply with the mandatory obligation laid down in Section 144B (1) (xvi) of the Act inasmuch as there was non-service of prior notice and draft assessment order. The relevant portions of Section 144B xvi (a) and (b) as well as Section 144B(9) of the Act are reproduced hereinbelow:-

“144B. (1) Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely: —.....

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to—

(a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or
(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or.....

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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.”

(emphasis supplied)

14. Keeping in view the aforesaid, this Court is of the opinion that learned counsel for the petitioner is correct in submitting that Section 144B of the Act had been violated and the assessment proceeding had been completed in the present case in violation of the principles of natural justice.

15. Consequently, this Court sets aside the impugned assessment order dated 06th April, 2021 as also the notice of demand issued under Section 156 of the Act and the notice for initiating the penalty proceedings under Section 274 read with Section 270A of the Act.

16. However, the respondent/revenue will be at 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 have to be followed by the respondent/revenue.

17. The writ petition is disposed of in the aforesaid terms.

18. 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 19, 2021
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