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

\+ W.P.(C) 7189/2021

ST MICROELECTRONICS PRIVATE LIMITED ..... Petitioner
Through: Mr. Vishal Kalra, Advocate.

versus

THE NATIONAL FACELESS
ASSESSMENT CENTRE & ANR. ..... Respondents
Through: Mr. Ruchir Bhatia, Advocate.

% Date of Decision: 29th 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)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the final assessment order dated 22nd June 2021 passed under section 143(3) read with Section 144B of the Act, and the impugned notices issued under Section 156 and Section 274 read with section 271(1)(c) of the Act by the Respondent No. 1 in the case of the petitioner for Assessment Year [AY] 2016-17 and all proceedings initiated pursuant thereto.

3. Learned counsel for the Petitioner submits that the respondent no. 1 erred in assuming jurisdiction to pass the final assessment order dated 22nd June 2021 under Section 143(3) read with Section 144B of the Act without

adhering to the conditions laid down in case of an eligible assessee as per Section 144C(1) of passing first a draft assessment order. In support of his submission, he relies upon the judgment in the case of ***Vijay Television Private Limited vs DRP: [2014] 369 ITR 113 (Mad)*** wherein it has been held as under:-

> *"33...In any event, such an order dated 26.03.2013 passed by the second respondent can only be construed as a final order passed in violation of the statutory provisions of the Act. The corrigendum dated 15.04.2013 is also beyond the period prescribed for limitation.* ***Such a defect or failure on the part of the second respondent to adhere to the statutory provisions is not a curable defect by virtue of the corrigendum dated 15.04.2013.*** *By issuing the corrigendum, the respondents cannot be allowed to develop their own case.*
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> *(emphasis supplied)"*

4. Issue notice. Mr. Ruchir Bhatia, learned counsel for the Revenue accepts notice. He states that even if the averments in the writ petition are believed to be true then also the respondent no. 1 would be at liberty to continue with the proceeding and issue a fresh draft assessment order, as in the present case the limitation period for issuance of the same has not expired.

5. This Court is of the view that it is a settled law that prior to passing a final assessment order, the Assessing Officer has to mandatorily pass and forward a draft assessment order to the Assessee under Section 144C(1) of the Act. [See: ***DCIT v. Control Risks India Pvt. Ltd. [2019] 264 Taxman 291 (SC)*** upholding the decision of the High Court in ***Control Risks India Pvt. Ltd. Vs. DCIT : [2019] 107 taxmann.com 82 (Del.)***, ***Turner International Pvt. Ltd. V. DCIT [2017] 398 ITR 177 (Del), JCB India Ltd.***

V. DCIT [2017] 398 ITR 189 (Del), International Air Transport Association v. DCIT [2016] 290 CTR 46 (Bom), CIT v. C-Sam (India) P. Ltd. [2017] 398 ITR 182 (Guj)]

6. Keeping in view the aforesaid, the impugned Assessment Order dated 22nd June, 2021 and impugned notices under Section 156, 274 read with Section 271(1)(c) of the Act for Assessment Year 2016-2017 are set aside and the matter is remanded back to the Assessing Officer who shall issue a draft assessment order within two weeks and grant an opportunity of hearing to the petitioner and pass a reasoned order in accordance with law. With the aforesaid direction, the present writ petition stands disposed of.

7. 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 29, 2021
AS