IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.24695 of 2021
and
W.M.P. Nos.25989 and 25990 of 2021

Prakash Chand Jain ..Petitioner

Vs.

1.The Additional/ Joint/ Deputy/ Assistant Commissioner of Income Tax/ Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

2.Deputy Commissioner of Income Tax,
Central Circle 3(4), Chennai,
3rd Floor, Investigation Building,
No.46(Old No.108), Mahatma Gandhi Road,
Chennai-600 034. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the 1st Respondent and quash the impugned order in ITBA/AST/S/144/2021-22/1035673895(1) dated 17.09.2021 under Section 144 read with Section 144B of the Income Tax Act, 1961 passed by the 1st Respondent as illegal and not in accordance with law.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.Mahalingam

Standing Counsel (for R1)
Mr.A.N.R.Jayaprathap (for R2)
Standing Counsel

ORDER

The writ petition is filed praying for a writ of certiorari to quash the impugned order passed by the 1st Respondent under Section 144 read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) dated 17.09.2021 for the assessment year 2018-19 on the premise that the procedure laid down in Section 144B of the Act is not complied thereby vitiating the order.

2. Brief Facts:

For the assessment year 2018-19, the petitioner filed its return of income declaring a total income of Rs.28,21,400/-. The petitioner's case was selected for scrutiny through CASS under E-Assessment Scheme, 2019 for limited scrutiny. Notice under Section 143(2) of the Act dated 22.09.2019 was issued by the ACIT(e-verification). This was followed by a communication by the DCIT directing the petitioner to furnish their submission along with evidence including Profit and Loss Account, Balance Sheet on or before 17.11.2020. In response, the petitioner submitted a request for adjournment before the 2nd Respondent. It is relevant to note that the proceeding referred to thus far was carried out by the 2nd Respondent viz., DCIT, Central Circle 3(4), Chennai.

3. Whileso, the petitioner was served with notices under Section 142(1) of the Act dated 19.05.2021 from the National e-Assessment Centre and 07.06.2021 and 11.08.2021 from the National Faceless Assessment Centre. It is submitted that no notice under Section 143(2) of the Act was issued to the petitioner as contemplated under Section 144B(1)(i) of the Act. The 1st Respondent thereafter proceeded to issue the impugned draft assessment order dated 03.09.2021 under Section 144 read with Section 144B of the Act proposing to complete the assessment under Section 144 read with Section 144 B of the Act in terms thereof, while granting an opportunity to the petitioner to submit its response on or before 10.09.2021. The 1st Respondent has thereafter proceeded to pass the final impugned order dated 17.09.2021 under Section 144 read with Section 144B of that Act confirming the addition in terms of draft assessment order.

4. It is this order of assessment which is under challenge on the

following premise viz.,

a) Admittedly, the petitioner was originally assessed by the DCIT Central Circle 3(4), Chennai. If the assessment was to be transferred to regular assessment circle, there ought to be a proceeding shifting the assessment from the Central Assessment Circle to the regular assessment circle, concededly there is no such proceeding.

b) If the assessment was to be made under Faceless Assessment in terms of Section 144B of the Act, the National Faceless Assessment Centre shall intimate the assessee under Section 144B(1)(iii) of the Act, that assessment shall be completed in accordance with the procedure laid down under Section 144 B of the Act. However, no such intimation was issued.

c) The impugned assessment order dated 17.09.2021 is bad in law insofar as the petitioner was neither notified about the assignment of their assessment to the 1st respondent or the National Faceless Assessment Centre, Delhi nor was any notice under Section 143(2) of the Act issued by the aforementioned authorities as stipulated under Section 144B(iii) of the Act, nor was the petitioner served with any Notice under Section 144(B)(xi) of the Act.

d) The impugned actions of the 1st respondent in passing the impugned

Assessment Order under Section 144 read with Section 144B, dated 17.09.2021 for AY 2018-19, is in contravention of mandatory provisions of Section 144B of the Act and hence, non-est under Section 144B(9) of the Act.

5. It is submitted by placing reliance on W.P.No.25303 of 2021 dated 05.09.2023 that draft assessment order and show cause notice cannot be combined. On the other hand, the draft assessment order has to be preceded by a show cause notice.

6. The learned counsel for the Respondents would submit that the writ petition is not maintainable inasmuch as there is an effective alternate remedy by way of appeal and there is no need to by-pass the same.

7. This Court is conscious of the fact that writ petition under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is available. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed

restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India. In this case, the procedure that is provided under the Act is not complied with, thus, resulting in violation of principles of natural justice.

8. On a perusal of the proceeding dated 03.09.2021, I find that it is a composite proceeding comprising of show cause notice and draft assessment order. To a pointed question to the learned counsel for the Respondents as to whether the proceeding dated 03.09.2021 is traceable to Section 144B(1)(xi) i.e., show cause notice or 144B(1)(xvi) of the Act i.e., draft assessment order, it was submitted that this must be treated as a proceeding under Section 144(2)(1)(xi) of the Act. Assuming it to be so, the absence of any proceeding under Section 144B(1)(xvi) of the Act, i.e., a draft assessment order having been passed the impugned order of assessment cannot be sustained. It may be relevant to note that this Court in W.P.No.25303 of 2021 dated 05.09.2023 had held that it is impermissible to combine show cause notice and draft assessment order

and failure to issue draft assessment order would vitiate the proceeding. The relevant portions of the order is extracted hereunder:

> *"9. In this case, the Department has combined the Show Cause Notice as is contemplated under Section 144B(11) with the procedure under Section 144(1)(xiv) of the IT Act. 10. The proceedings cannot be short circuited particularly when the provisions are categorical notwithstanding the fact that the petitioner may have failed to reply to some of the notices that were issued under Section 142(1) of the IT Act or there was a failure on the part of the petitioner to file the returns immediately after a notice under Section 148 of the IT Act issued on 23.03.2020.*
>
> ....
>
> *11. Be that as it may, the matter is that the impugned Assessment Order has been passed directly without issuance of a Draft Assessment Order. Combining of the Draft Assessment Order and the Show Cause Notice is not permissible under the provisions of the IT Act.*
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> *12. Considering the above, the impugned Assessment Order is set aside and the case is remitted back to the respondents to refer the matter to the Assessment Unit to pass a Draft Assessment Order within a period of three months from the date of receipt of a copy of this order."*

9. In view thereof, the impugned order of assessment is set aside inasmuch there is a gross non-compliance with the procedure contemplated under Section 144 B of the Act. However, liberty is granted to the appropriate Authority to proceed from the stage of Section 144B(1)(xi)(i) of the Act, by treating the proceeding dated 03.09.2021 as one traceable under Section 144B(1)(xi) and complete the assessment in

compliance with the procedure laid down in Section 144B of the Act, after affording the petitioner an opportunity of hearing in accordance with law.

10. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

22.03.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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of Income Tax/ Income Tax Officer,
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MOHAMMED SHAFFIQ, J.

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