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

\+ W.P.(C) 5622/2021

IDFC FOUNDATION ..... Petitioner

Through: Mr.Rahul Yadav, Adv.

versus

NATIONAL E-ASSESSMENT CENTRE ..... Respondent

Through: Mr.Gaurav Gupta, Sr.SC with Mr.Shivendra Singh, Jr.SC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **15.02.2024**

1. The instant writ petition has been preferred seeking the following reliefs :-

> "(a) Issue a writ, order or direction in the nature of a writ of certiorari or any other appropriate writ, order or direction setting aside and quashing the Impugned Assessment Order dated 24 April 2021 (being Annexure "P-1 "), notice of demand dated 24 April 2021 (being Annexure "P-2"), along with the computation sheet dated 24 April 2021 (being Annexure "P-3"), and notice for penalty dated 26 April 2021 (being Annexure "P-4") , issued by the Respondent.
> (b) Pass any such further or other order(s) or direction(s), as this Hon'ble Court may deem fit and proper in the interest justice."

2. The challenge which fundamentally stands raised was succinctly captured by us in our order dated 31 May 2021 which is extracted here in below:-

> "3. Via this writ petition, challenge has been laid to the assessment order, passed by the Assessing Officer [in short "AO"] under Section 143(3) read with Section 144B of the Income Tax Act, 1961 [in short "the Act"] as well as consequential notices, issued to the petitioner, under Section 156 and Section 270A of the Act.

3.1. To be noted, the impugned orders concern the assessment year 2018-19.

4.Mr. Percy Pardiwalla, learned senior counsel, who appears for the petitioner, says that the impugned orders have been passed in complete breach of the principles of natural justice. According to Mr. Pardiwalla, the show cause notice-cum-draft assessment order was issued on 22.04.2021 requiring the petitioner to file a reply/objection qua the same by 23:59 hours on 24.04.2021. The petitioner's case is that the reply/objections to the said notice were filed on 24.04.2021 by 21:16 hours

4.1According to Mr. Pardiwalla, the AO has done something, which is, very strange and curious. Although, the date shown, both, in the impugned assessment order as well as in the notice of demand, issued under Section 156 of the Act, is 24.04.2021; these two orders have been digitally signed on 26.04.2021.

5.Given this position we would have, ordinarily, taken the date of the said assessment order, and notice under Section 156 of the Act, as the date when the orders were digitally signed but for the following reasons, we are not inclined to accept this position, at least at this stage:

(i) The notice for initiation of penalty proceedings is dated 26.04.2021, which is, usually, issued along with the assessment order. Therefore, it facially aligns with the fact that all orders were digitally signed on 26.04.2021. There is, however, a catch, as in the body of the said notice, issued under Section 274 read with Section 270A of the Act, dated 26.04.2021, the petitioner was asked to respond to the same by 23:59 hours on 23.04.2021.

(ii) Furthermore, at least at three places in the assessment order, the AO has asserted that, no reply/objections were filed by the petitioner qua the show cause notice-cum-draft assessment order, dated 22.04.2021. In this regard, our attention has been drawn by Mr. Pardiwalla to pages 88, 90 and 92 of the paper book. As an illustration, one such extract is set forth hereunder :

> "Further a show cause notice was issued to assessee vide notice dated:22.04.2021 with regard to the above issue. The assessee failed to comply with the said show cause notice."

5.Thus, for the foregoing reasons, we are inclined to issue notice in the writ petition and the interlocutory application. It is ordered accordingly. Mr. Ajit Sharma, senior standing counsel, accepts service on behalf of the respondent/revenue. Counter-affidavit will be filed within four weeks from today. Rejoinder thereto, if any, will be filed before the next date of hearing.

6.In the meanwhile, there shall be a stay on the operation of the impugned assessment order, dated 24.04.2021 as well as the notice of demand of even date, and the notice for initiation of penalty proceedings, dated 26.04.2021.

7. List the matter on 16.07.2021."

3. As is manifest from the recordal of facts in that order, the show

cause notice-cum-draft assessment order under Section 144B of the Income Tax Act, 1961 ["**Act**"] was framed and issued on 22 April 2021. It required the writ petitioner to submit a reply by 23:59 hours of 24 April 2021. It is the case of the petitioner that notwithstanding the limited opportunity which was accorded, objections were submitted on 24 April 2021 itself and more particularly by 21:16 hours. However, the order of assessment which ultimately came to be passed neither notices nor considers the objections which were raised.

4. Not stopping there, the Assessing Officer, ["**AO**"] also appears to have issued a notice dated 26 April 2021 for initiation of penalty proceedings. Although that notice is dated 26 April 2021, it required the writ petitioner to furnish a response by the midnight of 23 April 2021. It is thus ex facie evident and manifest that the AO has proceeded in utter and gross violation of the principles of natural justice.

5. In view of the aforesaid, we allow the instant writ petition and quash the impugned order of assessment dated 24 April 2021, notice of demand dated 24 April 2021, as well as the penalty proceedings dated 26 April 2021. We further leave it open to the AO to draw proceedings afresh, if otherwise permissible in law.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 15, 2024/MJ