IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.A.Nos.727, 728, 778, 779, 780, 781, 782 and 784 of 2024
and C.M.P.Nos.4936, 4938, 5174, 5175, 5177, 5178, 5264 and 5266 of 2024

Ahmed Buhari .. Appellant in all WAs

vs

The Assistant Commissioner of Income Tax,
Central Circle 1(1), Chennai
New No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. .. Respondent in W.A.Nos.727, 728, 778, 779 of 2024

The Deputy Commissioner of Income Tax,
Central Circle 1(1), Chennai
New No.46, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. .. Respondent in W.A.Nos.780, 781, 782, 784 of 2024

Prayer: Appeals filed under Clause 15 of the Letters Patent against the common order dated 8.9.2023 passed by the learned Single Judge in W.P.Nos.24386, 24388, 24374, 24380, 24375, 24384, 24367 and 24363 of 2021.

For Appellant	:	Mr.N.V.Balaji
For Respondents	:	Mr.A.P.Srinivas Sr. Panel Counsel

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

In W.A.No.1024 of 2024, dated 24.06.2025 [*M/s.GE Oil & Gas India Private Ltd. v. Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income-tax Officer, National Faceless Assessment Centre, Delhi*], this Court was pleased to pass the following order:

> *"Appellant has filed a writ petition impugning an order dated 29.09.2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (in short 'the Act'), pertaining to Assessment Year 2018-19.*
>
> *2. It was appellant's case that appellant was an eligible assessee and as required under Section 144C(1) of the Act, appellant was to be issued a draft assessment order which was not done and hence, appellant was deprived of a valuable right to raise objections before the Dispute Resolution Panel (DRP). It is appellant's case that it was a mandatory requirement and not merely a procedural requirement. The learned Single Judge, after hearing the parties, set aside the impugned order, but remitted the matter back to the Assessing Officer by directing*

respondents to treat the assessment order as a draft assessment order and to facilitate appellant to work out remedy against the same.

3. It is appellant's case before us that the learned Single Judge could not have passed such an order and he should have stopped it by simply setting aside the impugned order.

4. A similar issue came up before a Division Bench of the Hon'ble Bombay High Court in ***Shell India Market Pvt. Ltd. vs. Additional/Joint/ Deputy/Assistant Commissioner of Income Tax/Income Tax Officer and Ors. W.P.No.1802 of 2021, dated 22.12.2021****, which came to be disposed on 22.12.2021. The Division Bench, of which, one of us (Chief Justice) was a member, held that the requirement under Section 144C(1) of the Act, to first pass the draft assessment order and to provide a copy thereof to the assessee is a mandatory requirement that gave substantive right to the assessee to object to any variation, that is prejudicial to the assessee. Depriving assessee of this valuable right to raise objection before DRP would be denial of substantive right to the assessee. Following another judgment of the Bombay High Court in* ***SHL (India) Private Limited vs. Deputy Commissioner of Income Tax, Circle 8(2)(1), Mumbai, (438) ITR 317 (Bom)****, the Division Bench held that failure to follow the procedure under Section 144C(1) of the Act would be a jurisdictional error and not merely procedural error or a mere irregularity and it is an incurable irregularity.*

5. Therefore, we, to the extent that the impugned order remits the matter to the Assessing Officer, set aside and quash the impugned order and to the extent the order dated 29.09.2021 sets aside the impugned order, it is not interfered with. Appeal is disposed. There shall be no order as to costs. Consequently, the interim application stands closed."

2. Shri Balaji submits that, in the appeals before us, learned Single Judge having observed that appellant was an eligible assessee and the provisions of Section 144C(1) of the Income Tax Act, 1961 (Act) would apply, should have also held that it is a mandatory requirement and not a

procedural lapse, which is curable. Hence, the impugned order has to be interfered with to the extent revenue has been given a second inning.

3. Shri Srinivas submitted that the learned Single Judge could not have held assessee was an eligible assessee. Unfortunately, that finding of the learned Single Judge has not been challenged by revenue. Hence, this submission of Shri Srinivas is not acceptable.

4. This Court having held that issuance of a draft assessment order under Section 144C(1) of the Act is mandatory and non-issuance is not just a procedural lapse, which is curable, we are unable to accept the learned Single Judge's view that the impugned assessment orders have been passed by mistake and that the mistake occurred on account of change of law and, therefore, the assessments cannot abate, as there was only infraction of one of the procedures prescribed under the amended Section 144C(1) of the Act. We do not agree with the learned Single Judge that the matter ought to have been remanded to the Assessing Officer to pass draft assessment order under Section 144C(1) of the Act.

5. To that extent, the impugned order is quashed and set aside. Appeals are disposed of. There shall be no order as to costs. Consequently, interim applications are closed.

(K.R.SHRIRAM, CJ.) (SUNDER MOHAN, J.)
24.06.2025

Index : Yes/No
NC : Yes/No
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To

1.The Assistant Commissioner of Income Tax,
Central Circle 1(1), Chennai
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