IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.09.2024
Pronounced On	03.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24631 of 2021
and W.M.P.Nos.25902 & 25903 of 2021,
2164 of 2022, 32878 & 32880 of 2023

Sri SNS Charitable Trust,
Represented by its
Managing Trustee Mrs.S.Rajalakshmi
536, Thudiyalur – Saravanampatti Road,
Vellakinar Post,
Coimbatore – 641 029

... Petitioner

Versus

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

2.The Joint/Additional Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records on the file of the First Respondent and quash the impugned order in PAN:AABTS7079L dated 28.09.2021 in DIN.ITBA/AST/S/143(3)/2021/22/1035982293(1) passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2018-19.

For Petitioner : Ms.N.V.Lakshmi

For Respondents : Mr.V.Mahalingam,
Senior Standing Counsel

ORDER

The petitioner is before this Court as against the impugned Assessment Order dated **28.09.2021** passed under **Section 143(3)** read with **Section 144B** of the **Income Tax Act, 1961** for the Assessment Year 2018-2019.

2. Relevant portion of the impugned order reads as under:-

"9. Upon considering the return of income filed, submissions made and details/documents filed, the total income of the assessee is computed as under:-

Particulars	*Rs.*	*Rs.*
Income as per Income Expenditure account		*92,44,66,677*
Less		

Particulars		*Rs.*	*Rs.*
Income as per Income Expenditure account			
	1.Expenses on object of the trust)	*51,77,58,568*	
	2.Accumulation u/s 11(1)(a) @ 15% (to the extent income available)	*6,09,06,149*	*59,59,66,677*
	3.Capital expenditure	*1,73,01,960*	
	TOTAL INCOME		*32,85,00,000*
	ROUNDED OFF TO		*32,85,00,000*

> *10. Assessed u/s. 143 (3) rws 144B of the I.T.Act, 1961. Credit is given for taxes paid after due verification. Computation of tax and interest is as per ITNS-150 which forms a part of this order. Demand notice/refund is issued accordingly. Issue penalty notice u/s. 270A for under reporting of income."*

3. The specific case of the petitioner is that the petitioner has made an application before the 2nd respondent namely the Joint Commissioner under **Section 144A** of the **Income Tax Act, 1961**, for issuance of such direction as he may think fit for the guidance of the Assessing Officer to enable him to complete the Assessment.

4. It is submitted that **Section 144A** of the **Income Tax Act, 1961** was inserted with effect from **01.04.2021** and is a complete code in itself. However, assessment has been completed under **Section 143(3)** read with **Section 144B** of the **Income Tax Act, 1961** is in gross violation of the principles of natural justice.

5. The learned counsel for the petitioner would submit that even though an application was filed on **13.09.2021** for a direction under **Section 144A** of the **Income Tax Act, 1961**, the assessment was completed on 28.09.2021 without awaiting for orders of the Joint Commissioner under **Section 144A** of the **Income Tax Act, 1961**. That apart, it is submitted that the petitioner had a gross receipt of Rs.92.44 crores and was entitled to accumulate a sum of Rs.32.85 crores under Section 11(2) of the Income Tax Act, 1961 and spend it over a period of five years.

6. However, the request of the petitioner has been ignored with a one line order without any proper reasons.

7. That apart, the learned counsel for the petitioner submits that the petitioner was alternatively entitled to restrict the accumulation to **Rs.13,86,70,000/-** in terms of **Section 11(1)(A)** which has also been ignored and therefore, on this count also the impugned order has to be quashed, as there is a total non-application of mind.

8. The learned counsel for the petitioner further submits that entire computation of income is based on rejection of the benefit under **Section 11(2)**, which has resulted in a huge tax liability on the petitioner.

9. Finally, the learned counsel for the petitioner submits that the accumulation, if any, can be determined only during the succeeding Assessment year and not during the same Assessment year of the receipt for the relevant financial year and therefore submits that on this count also the impugned order is liable to be interfered with.

10. The learned counsel for the petitioner also drew attention to E-assessment Scheme, 2019 which was notified on 12.09.2019. It is submitted that the Scheme has been now codified in **Section 144B** of the

Income Tax Act, 1961 by incorporating all the provisions in the said Rules apart from few other conditions. It is submitted that there is no scope for rendering safeguard under **Section 142A** of the **Income Tax Act** otiose under **Section 144B** of the **Income Tax Act**. Hence, prays for allowing this writ petition.

11. The learned Senior Standing Counsel appearing for the respondents would submit that the Impugned Order does not warrant any interference under **Article 226** of the **Constitution of India,** as the Petitioner has an alternate remedy by way of an appeal under **Section 246A** of the **Income Tax Act, 1961**.

12. That apart, the learned Senior Standing Counsel for the respondents would submit that in view of the amendments to the provisions of the **Income Tax Act, 1961** particularly in view of **Section 144B** of the **Income Tax Act, 1961**, **Section 144A** has become redundant.

13. It is further submitted that the reassessment proceedings commenced as early as on **22.09.2019** with the issuance of notice under **Section 143(2)** of the **Income Tax Act, 1961**. However, the petitioner has filed an application under **Section 144A** of the **Income Tax Act, 1961** only on **13.09.2021** i.e., few days before the impugned Assessment Order was passed on **28.09.2021**.

14. It is therefore, submitted that the 1st respondent cannot be found fault for passing orders on **28.09.2021**.

15. The learned Senior Standing Counsel for the respondents would submit further that in the light of the amendment to **Income Tax Act** with incorporation **Section 144B** on **01.04.2021**, the requirement for a direction from the Joint Commissioner and the Assistant Commissioner as the case may be under **Section 144A** has become redundant.

16. It is submitted that **Section 144B** is a complete in itself and has a in-built mechanism for transparency in the assessment proceedings. It is submitted that assessment is completed by an Assessing Unit which

consists of Senior Income Tax Officer, Assistant Commissioner of Income Tax, Deputy Commissioner of Income Tax and ITO, where an assessment is made by the faceless unit.

17. It is therefore submitted that the same officer cannot be expected to give a separate direction under **Section 144A** of the **Income Tax Act, 1961**. In any event, it is submitted that the proceedings commenced long before, however application was made only on **13.09.2021**.

18. That apart, the learned counsel for the respondent would submit that the assessing unit which is headed by Additional Commissioner, Deputy Commissioner and Income Tax Officer and that entire proceeding falls under **Section 142B** of the **Income Tax Act, 1961** and therefore, on this count also there cannot be a direction to be issued to the Joint Commissioner.

19. As far as the merits is concerned, the learned counsel for the respondent submits that issue as to whether the petitioner is entitled to

accumulate or not of the benefit of **Section 11(2)** is a subject matter which the petitioner can take it on appeal before the CIT (Appeals) under **Section 246A** of the **Income Tax Act** and thereafter before the Income Tax Appellate Tribunal, if the petitioner is so aggrieved.

20. It is further submitted that **Section 144A** of the **Income Tax Act, 1961** grants discretionary powers to the Joint Commissioner as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment.

21. It is further submitted that under **Section 144B** of the **Income Tax Act, 1961** prescribes the procedure as to how a faceless assessment has to be completed. It is further submitted that the assessment had to be completed with time bound manner in accordance with the limitation prescribed under **Section 153** of the **Income Tax Act, 1961** and that **Section 153** of the **Income Tax Act, 1961** does not calculate time undertaken under **Section 144A** of the **Income Tax Act, 1961** within its core and therefore, there is no merits in the writ petition.

22. It is submitted that there is no case made out for interference with the impugned order and submits that writ petition is to be dismissed as exemplary costs.

23. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

24. In this case, a notice dated 22.9.2019 under section 143 (2) of the Income Tax Act, 1961 was issued to the petitioner. This was in response to the Return of Income filed by the petitioner on 01.10.2018. In the aforesaid notice, it has been clearly stated that the petitioner may submit its response with supporting documents (if any) on the issues mentioned therein with the Assessing Officer electronically in "e- Proceedings" facility account in e-filing website at its convenience on or before 7.10.2019.

25. The said notice also encloses at note on "e-Proceeding". This was at the time when the petitioner was to be assessed by the Jurisdictional Assessing Officer under the provisions of E-Assessment

proceeding 2019 read with the provisions of the Income Tax Act, 1961 as it stood then.

26. However, during the interregnum, the method of assessment under the provisions of the Income Tax Act, 1961 underwent a change with the incorporation of Section 144B into the Income Tax Act, 1961 with effect from 01.04.2021 vide Taxation And Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

27. Now, Section 144B of the Income Tax Act, 1961 is a complete code by itself. Section 144B of the Income Tax Act, 1961 as it stood during the period in dispute reads as under:-

Section 144B. FACELESS ASSESSMENT :

(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:-

(i) the National Faceless Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143;

(ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (1), file his response to the National Faceless Assessment Centre;

(iii) where the assessee-

(a) has furnished his return of income under section 139 or in response to a notice issued under sub-section (1) of section 142 or under sub-section (1) of section 148, and a notice under sub- section (2) of section 143 has been issued by the Assessing Officer or the prescribed income-tax authority, as the case may be; or

(b) has not furnished his return of income in response to a notice issued under sub-section (1) of section 142 by the Assessing Officer; or

(c) has not furnished his return of income under sub-section (1) of section 148 and a notice under sub-section (1) of section 142 has been issued by the Assessing Officer,

the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;

(iv) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(v) where a case is assigned to the assessment unit, it may make a request to the National Faceless Assessment Centre for-

(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;

(b) conducting of certain enquiry or verification by verification unit; and

(c) seeking technical assistance from the technical unit;

(vi) where a request for obtaining further information, documents or evidence from the assessee or any other person

has been made by the assessment unit, the National Faceless Assessment Centre shall issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit;

(vii) the assessee or any other person, as the case may be, shall file his response to the notice referred to in clause (vi), within the time application in this regard, to the National Faceless Assessment Centre;

(vii) where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request verification by the National Faceless Assessment Centre to a verification unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(ix) where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a technical unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(x) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, based on the request referred to in clause (viii) or clause (ix) to the concerned assessment unit;

(xi) where the assessee fails to comply with the notice referred to in clause (vi) or notice issued under sub-section (1) of section 142 or with a direction issued under sub-section (2A) of section 142, the National Faceless Assessment Centre shall serve upon such assessee a notice under section 144 giving him an opportunity to show-cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment;

(xii) the assessee shall, within the time specified in the notice referred to in clause (xi) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre;

(xiii) where the assessee fails to file response to the notice referred to in clause (xi) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;

(xv) the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any;

(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

(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;

(xvii) the review unit shall conduct review of the draft assessment order referred to it by the National Faceless Assessment Centre whereupon it may decide to-

(a) concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or

(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in-

(a) sub-clause (a) of clause (xvi); or

(b) sub-clause (b) of clause (xvi);

(xix) the National Faceless Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;

(xx) the assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National Faceless Assessment Centre;

(xxi) the National Faceless Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in-

(a) sub-clause (a) of clause (xvi); or

(b) sub-clause (b) of clause (xvi);

(xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;

(xxii) the National Faceless Assessment Centre shall-

(a) where no response to the show-cause notice is received as per clause (xxii)-

(A) in a case where the draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of said assessee, forward the draft assessment order or final draft assessment order to such assessee; or

(B) in any other case, finalise the assessment as per the draft assessment order or the final draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in any other case, send the response received from the assessee to the assessment unit;

(xxiv) the assessment unit shall, after taking into account the response furnished by the assessee, make a revised draft assessment order and send it to the National Faceless Assessment Centre;

(xxv) the National Faceless Assessment Centre shall, upon receiving the revised draft assessment order,-

(a) in case the variations proposed in the revised draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and-

(A) in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of the assessee proposed in draft assessment order or the final draft assessment order, forward the said revised draft assessment order to such assessee;

(B) in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to

the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made;

(xxvi) the procedure laid down in clauses (xxiii), (xxiv) and (xxv) shall apply mutatis mutandis to the notice referred to in sub-clause (b) of clause(xxv);

(xxvii) where the draft assessment order or final draft assessment order or revised draft assessment order is forwarded to the eligible assessee as per item (A) of sub-clause (a) of clause (xxiii) or item (A) of sub-clause (a) of clause (xxv), such assessee shall, within the period specified in sub-section (2) of section 144C, file his acceptance of the variations to the National Faceless Assessment Centre;

(xxviii) the National Faceless Assessment Centre shall.-

(a) upon receipt of acceptance as per clause (xxvii); or

(b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C, finalise the assessment within the time allowed under sub-section (4) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel, the National Faceless Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the con- cerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, prepare a draft assessment order in accordance with sub-section (13) of section 144C and send a copy of such order to the National Faceless Assessment Centre;

(xxxi) the National Faceless Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C and serve a copy of such order and notice for initiating penalty proceed- ings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxxii) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

(3) The Board may, for the purposes of faceless assessment, set up the following Centres and units and specify their respective jurisdiction, namely:-

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make faceless assessment;

(ii) Regional Faceless Assessment Centres, as it may deem necessary, to facilitate the conduct of faceless assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make faceless assessment;

(iii) assessment units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the

function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the t Act, seek- ing information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment;

(iv) verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification;

(v) technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, account- ing, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this section; and

(vi) review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of variations proposed, if any, and such other functions as may be required for the purposes of review.

(4) The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:-

(a) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(b) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(c) such other income-tax authority, ministerial staff, executive or con- sultant, as considered necessary by the Board.

(5) All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;

(6) All communications between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres and various units shall be exchanged exclusively by electronic mode:

***Provided** that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances referred t to in sub-clause (g))of clause (xii) of sub-section (7);*

(7) For the purposes of faceless assessment-

(i) an electronic record shall be authenticated by-

(a) the National Faceless Assessment Centre by affixing its digital signature;

(b) assessee or any other person, by affixing his digital signature if he is required to furnish his return of income under digital signature, and in any other case, by affixing his digital signature or under electronic verification code in the prescribed manner;

(ii) every notice or order or any other electronic communication shall be (delivered to the addressee, being the assessee, by way of-

(a) placing an authenticated copy thereof in the assessee's registered account; or

(b) sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or

(c) uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert;

(iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;

(iv) the assessee shall file his response to any notice or order or any other or electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;

(v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000);

(vi) a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before the income-tax authority at the National Faceless Assessment Centre or Regional Faceless Assessment Centre or any unit set up under this sub-section;

(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assess- ment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit.

(viii) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (vii) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (h) of clause (xii);

(ix) where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, such hearing shall be conducted exclu- sively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board;

(x) subject to the proviso to sub-section (6), any examination or recording of the statement of the assessee or any other person (other than statement recorded in the course of survey under section 133A of the Act) shall be conducted by an income-tax authority in any unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony in accordance with the procedure laid down by the Board;

(xi) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;

(xii) the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including format,

mode, procedure and processes in respect of the following, namely:-

(a) service of the notice, order or any other communication;

(b) receipt of any information or documents from the person in response to the notice, order or any other communication;

(c) issue of acknowledgment of the response furnished by the person;

(d) provision of "e-proceeding" facility including login account facility, tracking status of assessment, display of relevant details, and facility of download;

(e) accessing, verification and authentication of information and response including documents submitted during the assessment proceedings;

(f) receipt, storage and retrieval of information or documents in a centralised manner;

(g) circumstances in which proviso to sub-section (6) shall apply; (h) circumstances in which personal hearing referred to clause (viii) shall be approved;

(h) general administration and grievance redressal mechanism in the respective Centres and units.

(8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General in charge of National Faceless Assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.

(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

nonest if such assessment is not made in accordance with the procedure laid down under this section.

[(10) Notwithstanding anything contained in this section, the function of verification unit under this section may also be performed by a verification unit located in any other faceless center set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned by the National Faceless Assessment Centre to such verification unit.]

***Explanation** - In this section, unless the context otherwise requires-*

(a) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2[69a] of the Information Technology Act, 2000 (21 of 2000);

(b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288;

(c) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;

(d) automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;

(e) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2[69b] of the Information Technology Act, 2000 (21 of 2000);

(f) "computer system" shall have the same meaning as assigned to it in clause (1) of sub-section (1) of section 2[69b] of the Information Technology Act, 2000 (21 of 2000);

(g) "computer resource of assessee" shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered

mobile number of the assessee, or the registered email address of the assessee with his email service provider;

(h) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 269% of the Information Technology Act, 2000 (21 of 2000);

(i) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre;

(j) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of section 144C;

(k) "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;

(1) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2^{69b} of the Information Technology Act, 2000 (21 of 2000);

(m) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of section 144C;

(n) "email" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(0) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 369h of the Information Technology Act, 2000 (21 of 2000);

(p) "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;

(q) "originator" shall have the same meaning as assigned to it in clause (za) of sub-section (1) of section 2696 of the Information Technology Act, 2000 (21 of 2000);

(r) 'real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;

(s) "registered account of the assessee means the electronic filing account registered by the assessee in designated portal;

(t) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including-

(i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or

(ii) the e-mail address available in the last income-tax return furnished by the addressee; or

(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

(vi) any e-mail address made available by the addressee to the income- tax authority or any person authorised by such authority;

(u) "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;

(v) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

28. Section 144B of the Income Tax Act, 1961 replaces the "e – Assessment Scheme, 2019" that was earlier introduced on 12.09.2019.

29. The procedure under **Section 144B** of the **Income Tax Act, 1961** makes it clear that there are adequate safeguards during assessment. Clause (iii) Sub- Section (1) Section 144B of the Income Tax Act, 1961 mandates that the assessment will be completed in accordance with the procedure laid down under section 144B of the Income Tax Act, 1961.

30. Clause (iv) to Sub-Section 144B of the Income Tax Act, 1961 also makes it clear that the National Faceless Assessment Centre shall assign the case selected for the purpose of Faceless Assessment to a Specific Assessment Unit (SAU) in any one of the Regional Assessment Centre (RAC) through an automated allocation system. The Assessing Unit under **Section 144B** consist of Senior Officials of the **Income Tax Act, 1961**.

31. As per sub- section (4) of the Income Tax Act, 1961 the Assessment Unit, Technical Unit and the Review Unit shall have the following authorities namely:-

> *(a) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;*
>
> *(b) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;*
>
> *(c) such other income-tax authority, ministerial staff, executive or con- sultant, as considered necessary by the Board.*

32. Therefore, the case of the petitioner that the impugned Assessment Order dated 28.9.2021 has been passed without awaiting for order under Section 144A of the Income Tax Act, 1961 of the Joint Commissioner in response to be application dated 13.09.2021 filed by the petitioner under the aforesaid provision cannot be countenanced.

33. That apart, the Joint Commissioner of Income tax is a functionary of the Assessment unit. Therefore, the jurisdictional Joint Commissioner cannot issue any directions to the Assessment Unit contemplat-

ed for completing the assessment under Section 144B of the Income Tax Act, 1961.

34. With the incorporation of Section 144B of the Income Tax Act, 1961, the role of the Jurisdictional Joint Commissioner of Income Tax under Section 144A of the Income Tax Act, 1961 has become redundant to the extent where the assessment under section 144B of the Income Tax Act, 1961 is contemplated.

35. Section 144A of the Income Tax Act, 1961 will apply under limited circumstances, where the assessment continues with the Jurisdictional Assessing Officer.

36. Section 144A of the Income Tax Act, 1961 is reproduced below:-

> "***Section 144A.*** *Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do,*

he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer."

37. That apart, under the provisions of **Section 144B** of the **Income Tax Act, 1961** with effect from **01.04.2021** which was in force during the period in dispute, the assessment is faceless. There is interplay only between an assessee and the National Faceless Assessment Centre and the Jurisdictional Joint Commissioner will have no role to play.

38. The National Faceless Assessment Centre has to assign case, to a specific Assessment Unit (SAU) in any Regional Faceless Assessment Centre (RFAC) through an Automated Allocation System. The specific Assessment Unit can request the National Faceless Assessment Centre for obtaining such information, documents or evidence from the assessee or any other person or for conducting an enquiry or Verification Unit or seek technical assistance from the Technical Units.

39. The Assessment Unit makes a draft assessment order which is again to be examined by the National Faceless Assessment Centre in

accordance with 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*
>
> *(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;*

40. The draft assessment is to be also reviewed by a Review Unit and it may decide to -

> *(a) concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or*

(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;

41. After receipt of concurrence from the Review Unit on the draft assessment order, the National Faceless Centre has to once again follow the procedure in clause 16 sub-Clause A or B or Clause 16 of **Section 144B(1)**. It is therefore, the National Faceless Assessment Centre assigned the case to an Assessment Unit or other than an Assessment Unit which has made a draft assessment order through an Automated Allocation System.

42. The Assessment Unit too, thereafter considers the variation suggested by the Review Unit, final draft assessment order from the National Faceless Assessment Centre. Where again the procedure under Clause (A) or (B) of Clause XVI to **Section 144B** of the **Income Tax Act, 1961** has to be followed. Thus there is no scope for interplay between **Section 144A** of the **Income Tax Act, 1961** and where assessment is made under **Section 144B** of the **Income Tax Act, 1961**.

43. In the light of the above discussion, I find no merits in the present writ petition. Hence, this writ petition is liable to be dismissed.

44. Accordingly, this Writ Petition is dismissed. However, liberty is given to the petitioner to file a Statutory Appeal before the Appellate Commissioner, within a period of 30 days from the date of receipt of a copy of this order. On filing of such Appeal by the petitioner, the Appellate Commissioner shall dispose of the same on merits, without referring the limitation for filing the Appeal. No costs. Consequently, connected miscellaneous petitions are closed.

03.01.2025

rgm/jas/nst/mrr

Index : Yes/No

Neutral Citations : Yes/No

Speaking Order/Non Speaking Order

To:

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

2.The Joint/Additional Commissioner of Income Tax
National Faceless Assessment Centre,
Delhi.

C.SARAVANAN, J.

rgm/jas/nst/mrr

Pre-Delivery Order
in W.P.No.24631 of 2021

03.01.2025