

(2021) 07 DEL CK 0066

In the Delhi High Court

Case No : Civil Writ Petition No. 6233 Of 2021, Civil Miscellaneous No. 19732-19733 Of 2021

Anju Jalaj Batra

APPELLANT

Vs

National E-Assessment Centre Additional Joint Deputy
Assistant Commissioner Of Income Tax Officer.

RESPONDENT

Date of Decision : 08-07-2021

Acts Referred:

Income Tax Act, 1961 — Section 142(1), 144, 144B, 144B(xvi)(a), 144B(xvi)(b), 144B(9), 156, 270A, 270AAC(I)

Citation : (2021) 07 DEL CK 0066

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Salil Kapoor, S.K.Gambhir, C.S.Anand, Sumit Lalchandani, Ananya Kapoor, Sanjay Kumar

Final Decision : Disposed Of

Judgement

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging assessment order dated 22nd April, 2021 passed by respondent no.1-National Faceless Assessment Center, Delhi under Section 144 read with section 144B of the Income Tax Act, 1961 [for short "the Act"] for assessment year 2018-19.
Petitioner seeks to restrain the respondent from giving effect to/proceeding further pursuant to the impugned order as well as demand notice and penalty notice dated 22nd April, 2021.
3. Learned counsel for the petitioner states that the petitioner was issued Notice under Section 142(1) of the Act, to which the petitioner replied and furnished relevant details/explanations. He further states that despite the petitioner's replies, the respondent issued impugned assessment order

without issuing a mandatory draft assessment order or a show cause notice to the petitioner.

4. He points out that in a similar case being *Smart Vishwas Society vs. National Faceless Assessment Centre Delhi* (Earlier National E-Assessment

Centre Delhi) & Ors, WP(C) 5348/2021, the learned predecessor Division Bench of this Court had quashed the assessment order and consequential notices.

5. Issue Notice. Mr. Sanjay Kumar, learned counsel for respondent/revenue accepts notice. Learned counsel appearing on behalf of

respondent/revenue states that the record presently placed before the Court would show that though no show cause notice-cum-draft assessment

order was issued, yet several opportunities had been granted by the respondents/revenue to the petitioner, before the said date, to explain its case.

6. This argument of the respondent/revenue is contrary to the statutory scheme, as provided in Section 144B of the Act. The relevant portions of

Section 144B xvi (a) and (b) as well as Section 144B(9) of the Act are reproduced hereinbelow:-

144B. (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:—

(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; orâ?|â?|â?| xxx xxx xxx

(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 subsection (2) [other than the cases transferred undersub-section (8)], on or after the 1st day of

April, 2021, shall be non est if such assessment is not made in accordance with the procedure laid down under this section.â? (emphasis

supplied)

7. In our opinion, learned counsel for the petitioner is correct in submitting that Section 144B of the Act has been violated and the assessment

proceeding has been completed in the present case in violation of the principles of natural justice.

8. Consequently, the impugned assessment order dated 22nd April, 2021 issued under Section 144 read with Section 144B of the Act for the

assessment year 2018-2019 as well as demand notice issued under Section 156 of the Act and notice for initiating penalty proceedings issued under

Section 270A and 271AAC(I) of the Act are set aside. However, the respondent/revenue is given liberty to pass a fresh assessment order in

accordance with law. The petitioner is also given liberty to challenge any action of the respondent/revenue in accordance with law, in the event she is

aggrieved by the same.

9. Accordingly, the present writ petition along with pending applications stands disposed of.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.