(2021) 09 DEL CK 0213

In the Delhi High Court

Case No : Civil Writ Petition No. 10745 Of 2021, Civil Miscellaneous No. 33168-33169 Of 2021

Clarks Future Footwear Private Limited — APPELLANT

Vs

National Faceless Assessment Centre & Ors. — RESPONDENT

Date of Decision : 23-09-2021

Acts Referred:
Income Tax Act, 1961 — Section 144B, 144B(1)(xvi)(b), 144C, 144C(1)

Citation : (2021) 09 DEL CK 0213

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

Bench : Division Bench

Advocate : Ved Jain, Richa Mishra, Sanjay Kumar, Sanjay Kumar Kadian

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the impugned draft assessment order dated 29th August 2021 passed by the Respondents under Section 144C(1) of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] as well as the show cause notice dated 27th August 2021.

2. Learned counsel for the Petitioner states that the impugned draft assessment order and show cause notice are non est since the mandatory provision, namely, Section 144B has not been complied with by the Respondents and the same is also violative of the principles of natural justice. He states that the Respondents, vide the show cause notice dated 27th August, 2021 and draft assessment order dated 29th August 2021, proposed to assess the income of the Petitioner at Rs.48,07,37,965/- as against the returned loss of Rs.2,42,15,980/- declared by the Petitioner.

3. Learned counsel for the Petitioner states that in the impugned show cause notice, the Petitioner was given time upto 23:59 hours of 03rd September, 2021 whereby the Petitioner was required to file its written objections to the proposed

variation and if required, request for a personal hearing. The contention of counsel for the Petitioner is that the Respondents, without waiting for the expiry of the time period to file a reply to the show cause notice, passed the impugned draft assessment order under Section 144C of the Act on 29th August 2021 i.e. five days prior to the due date of filing the reply and has proposed to make disallowances to the tune of Rs.50,49,53,945 in aggregate.

4. Issue notice. Mr.Sanjay Kumar, Advocate accepts notice on behalf of the Respondents. Keeping in view the fact that the dead line for issuing the draft assessment order under Section 144C of the Act is 30th September, 2021, he waives his right to file a reply.

5. At this stage, learned counsel for the Respondents states that keeping in view the limited time available to pass an assessment order, the Petitioner shall not seek personal hearing in the present proceedings.

6. This Court is of the view that in the present case, there has been a violation of principle of natural justice as well as Section 144B(1)(xvi)(b) of the Act inasmuch as the impugned draft assessment order under Section 144C(1) of the Act has been passed five days prior to the last date for filing of the reply/objections to the Show Cause notice by the petitioner. Consequently, the draft assessment order dated 29th August, 2021 passed by respondent under Section 144C(1) of the Act is hereby quashed. Further, this Court directs that the Petitioner shall file its reply/objections to the Show Cause Notice dated 27th August, 2021 on or before 24th September, 2021 and the Assessing Officer shall pass a fresh draft assessment order in terms of Section 144C(1) of the Act on or before 30th September, 2021. To facilitate the filing of the reply/objections by the petitioner, the Assessing Officer is directed to open functionality on the online portal. The Petitioner is also directed to file its reply/objections to the Show Cause Notice by email.

7. With the aforesaid directions, the present writ petition along with pending applications stands disposed of.

