
(2021) 09 DEL CK 0064

In the Delhi High Court

Case No : Civil Writ Petition No. 9027 Of 2021, Civil Miscellaneous Application
No. 28086 Of 2021

Floral Realcon Pvt. Ltd.

APPELLANT

Vs

National Faceless Assessment Centre

RESPONDENT

Date of Decision : 09-09-2021

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 144B(1)(xiv), 144B(1)(xv), 144B(1)(xvi), 144B(1)(xvi)(b), 144B(9), 153(6)(i), 156, 270A

Citation : (2021) 09 DEL CK 0064

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

Bench : Division Bench

Advocate : P.Roychaudhuri, Zoheb Hossain, Vipul Agarwal, Parth Semwal

Final Decision : Disposed Of

Judgement

Manmohan, J

The petition has been heard by way of video conferencing.

1. Present writ petition has been filed challenging the Impugned Assessment Order under Section 143(3) read with section 144B and also the impugned notice of demand issued under Section 156 of the Income Tax Act, 1961 [the Act], both dated 23rd April 2021 and notice for penalty dated 11th June 2021 issued under Section 270A of the Act issued by the Respondent in the Petitioner's case for the Assessment Year 2018-19.

2. Learned counsel for the Petitioner states that the impugned assessment order has been passed without issuing a show cause notice and draft assessment order mandated under Section 144B(1)(xvi)(b) of the Act. He submits that the Respondent's action is violative of the principles of natural justice and the provisions contained in clauses (xiv) to (xvi) of Section 144B(1) and Section 144B(9) of the Act.

3. Per contra, Mr. Zoheb Hossain, learned counsel for the respondent states that

the show cause notice and draft assessment order were uploaded by the Assessing Officer. He, however, candidly admits that proof of service of the said documents upon the petitioner is not available with the Assessing Officer.

4. This Court is of the view that Section 144B(1)(xvi)(b) mandatorily provides for issuance of a prior show cause notice and draft assessment order before issuing a final assessment order. The relevant portions of Section 144B(1)(xvi)(b) as well as Section 144B(9) of the Act are reproduced hereinbelow:-

"144B. Faceless assessment -

(1) xxxx xxxx xxxx xxxx xxxx xxxx

(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-

xxxx xxxx xxxx

(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

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 sub_section (2) [other than the cases transferred under sub-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."

5. Since in the present case the averment that no show cause notice as well as draft assessment order has been issued, has not been shown to be false, there is violation of mandatory procedure stipulated in Section 144B of the Act.

6. Keeping in view the aforesaid, the impugned assessment order, notice of demand dated 23rd April 2021 and notice of penalty under Section 270A of the Act, dated 11th June 2021, are set aside and the matter is remanded back to the Assessing Officer, who shall issue another copy of the draft assessment order and a show cause notice under Section 144B(xvi) within two working days. Thereafter, the petitioner shall file its response within seven working days and the Assessing Officer shall pass a reasoned order in accordance with law. It is pertinent to mention that the learned counsel for the petitioner states that under Section 153(6)(i) of the Act, the Assessing Officer has one year limitation from today to pass the Assessment Order. Recording the said concession and direction, the present writ petition along with pending applications stands disposed of.

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