

(2021) 07 DEL CK 0065

In the Delhi High Court

Case No : Civil Writ Petition No. 6220 Of 2021, Civil Miscellaneous No. 19712-19713 Of 2021

International Management

APPELLANT

Vs

National Faceless Assessment Centre & Anr

RESPONDENT

Date of Decision : 08-07-2021

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 143(3A), 143(3B), 144B, 144B(xvi)(a), 144B(xvi)(b), 144B(9)

Citation : (2021) 07 DEL CK 0065

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

Bench : Division Bench

Advocate : Dr.Rakesh Gupta, Somil Agarwal, Monika Ghai, Tani Malik, Vibhooti Malhotra

Final Decision : Disposed Of

Judgement

Manmohan, J

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the assessment order dated 2nd April, 2021 passed by National Faceless Assessment Center, Delhi under Section 143(3) read with Sections 143(3A) and 143(3B) of the Income Tax Act, 1961 [for short "the Act"] for assessment year 2017-18.

Petitioner further prays for a stay on the demand arising out of the aforesaid order.

3. Learned counsel for the petitioner states that the action of respondent in passing the impugned assessment order and making additions to the income is untenable in law inasmuch as the basis of addition was not furnished to the petitioner. He emphasizes that no draft assessment order was issued

which is mandatorily required under the Faceless Scheme.

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. Ms. Vibhooti Malhotra, learned senior standing counsel for respondents/revenue accepts notice. Learned senior standing counsel appearing on behalf of respondents/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 respondents/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 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.â??

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 2nd April, 2021 issued under Section 143(3) read with Sections 143(3A) and 143(3B) of the

Act along with notice of demand arising therefrom are set aside. However, the respondents/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 respondents/revenue in accordance with law, in the event it 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.