

(2022) 04 DEL CK 0165

In the Delhi High Court

Case No : Civil Writ Petition No. 6349 Of 2022

Jindal Realty Limited

APPELLANT

Vs

National Faceless Assessment Centre, Delhi

RESPONDENT

Date of Decision : 21-04-2022

Acts Referred:

Income Tax Act, 1961 — Section 144, 144B, 144B(xvi)(b), 144B(1)(xvi)(b), 147, 156, 271(1)(c)

Citation : (2022) 04 DEL CK 0165

Hon'ble Judges : Manmohan, J;Dinesh Kumar Sharma, J

Bench : Division Bench

Advocate : Salil Kapoor, Sumit Lalchandani, Ananya Kapoor, S.K.Gambhir, Ajit Sharma

Final Decision : Disposed Of

Judgement

MANMOHAN, J

C.M.No.19193/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.6349/2022 & C.M.No.19192/2022

1. Present writ petition has been filed challenging the assessment order dated 23rd March, 2022 passed under Section 147 read with Sections 144/144B of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') as well as the demand notice and penalty notice both dated 23rd March, 2022 for the Assessment Year 2015-16. Petitioner further seeks a direction to restrain the respondent from giving effect to/proceed further pursuant to the impugned assessment order, the demand notice as well as penalty notice all dated 23rd March, 2022.

2. Learned counsel for the Petitioner states that the Respondent did not issue any draft assessment order and show cause notice under Section 144B(xvi)(b) of

the Act to the Petitioner prior to passing of the impugned assessment order dated 23rd March, 2022. He states that as a consequence, the Petitioner has been denied a reasonable opportunity of hearing.

3. Issue notice. Mr.Ajit Sharma, learned counsel accepts notice on behalf of the Respondent. He states that the present writ petition is not maintainable as the petitioner has an alternative effective remedy by filing an appeal.

5. Having heard learned counsel for the parties, this Court is of the view that once the assessment has been carried out by respondent No. 1-National Faceless Assessment Centre, Delhi, it has to be in accordance with statutory procedure prescribed for assessment by the said Authority and cannot be in accordance with the procedure prescribed under the earlier regime.

6. This Court is also of the view that Section 144B(1)(xvi)(b) mandatorily provides for issuance of a show cause notice and draft assessment order before issuing a final assessment order. The relevant portion of Section 144B(1)(xvi)(b) of the Act is reproduced hereinbelow:-

"144B. Faceless assessment –

(1) 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;..."

7. In the present case, as no prior show cause notice as well as draft assessment order had been issued, there is a violation of principle of natural justice as well as mandatory procedure prescribed under "Faceless Assessment Scheme" and as stipulated in Section 144B of the Act.

8. It is settled law that when there is a violation of principle of natural justice, the availability of an appellate remedy does not operate as a bar to the maintainability of the writ petition.

9. Keeping in view the aforesaid, the impugned assessment order issued under Section 147 read with Sections 144/144B, demand notice under Section 156 and penalty proceedings initiated under Section 271(1)(c) of the Act, all dated 23rd March, 2022, are set aside and the matter is remanded back to the Assessing Officer, who shall issue a show cause notice as well as draft assessment order to the petitioner and thereafter pass a reasoned order in accordance with law.

10. With the aforesaid directions, present writ petition along with pending

application stands disposed of. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open. titon and applications stand disposed of. The rights and contentions of all the parties are left open.