(2021) 09 DEL CK 0031

In the Delhi High Court

Case No : Civil Writ Petition No. 9429 Of 2021

Novelty Merchants Private Limited — APPELLANT

Vs

National Faceless Assessment Centre Delhi (Earlier National E- Assessment Centre, Delhi) & Ors — RESPONDENT

Date of Decision : 02-09-2021

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 144B(1)(xvi)(b), 144B(9), 156, 271AAC(1), 274

Citation : (2021) 09 DEL CK 0031

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

Bench : Division Bench

Advocate : Subash Agarwal, Aneesh Mittal, Ajit Sharma, Anant Ram Mishra

Final Decision : Disposed Of

Judgement

Manmohan, J

1. Present writ petition has been filed challenging the Assessment Order, Demand Notice and Notice for Penalty dated 23rd April 2021 passed by the respondents under Section 143(3) read with Section 144B, Section 156 and Section 274 read with Section 271AAC(1) of the Income Tax Act 1961 (hereinafter referred to as the 'Act') for the AY 2018-19.

2. Learned counsel for the Petitioner states that the impugned assessment order has been passed without issuing the mandatory show-cause notice and draft assessment order under Section 144B(1)(xvi)(b) of the Act. He states that the Respondent's action is violative of the principles of natural justice and Section 144B. He also states that in the absence of a show cause notice, the petitioner has been deprived of an opportunity to seek personal hearing.

3. Issue Notice. Mr. Ajit Sharma accepts notice on behalf of the Respondents.

4. Learned counsel for the respondent 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 done by the respondent No. 1-National Faceless Assessment Centre, Delhi, it has to be in accordance with the 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 the 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 xxx

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."

7. Since in the present case no prior show cause notice as well as draft assessment order have been issued, there is a violation of principles 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 a settled law that when there is a violation of principles 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, Demand Notice and Notice for Penalty dated 23rd April 2021 issued under Section 143(3), Section 156 and Section 274 read with Section 271AAC(1) of the Act 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 and thereafter pass a reasoned order in accordance with law.

10. With the aforesaid direction, the present writ petition along with pending applications stands disposed of.

