(2021) 08 DEL CK 0067

In the Delhi High Court

Case No : Civil Writ Petition No. 5185 Of 2021, Civil Miscellaneous Application No. 15916 Of 2021

Sams Facilities Management Private Limited — APPELLANT

Vs

National Faceless Assessment Centre & Anr. — RESPONDENT

Date of Decision : 13-08-2021

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)

Citation : (2021) 08 DEL CK 0067

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

Bench : Division Bench

Advocate : Manuj Sabharwal, Ruchir Bhatia

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 impugned assessment order dated 21st April 2021 passed by Respondent No. 1 under Section

143(3) read with 144B of the Income-tax Act, 1961 (for short â??the Actâ??).

3. Mr. Manuj Sabharwal, learned counsel for the Petitioner states that the impugned assessment order dated 21st April 2021 has been passed, without

adherence to the statutory provisions contained in clauses (xiv) to (xvi) of Section 144B (1), and 144B (9) of the Act.

4. It is the petitionerâ??s claim that the impugned assessment order was passed without issuing a draft assessment order and the variation made in

the declared income was carried out without issuance of a show cause notice. Thus the contention is that the impugned assessment order had been passed in violation of the aforesaid provisions of the Act and is non est in law.

5. Per contra, Mr. Ruchir Bhatia, learned counsel for the respondents submits that Section 144B of the Act does not apply as the assessment year in

issue is 2018-2019.

6. In rejoinder, learned counsel for the petitioner relies on the circular issued by the CBDT dated 31st March, 2021, which is appended at pages 103-

107 of the paper book to establish that the provisions of Section 144B of the Act would apply to even those proceedings, which were pending, on 1st

April 2021 and hence would be applicable to the Petitionerâ??s assessment as well.

7. Having heard learned counsel for the parties, this Court is of the opinion that in view of the Circular dated 31st March, 2021 issued by CBDT,

Section 144B of the Act would apply to even those assessment proceedings which related to assessment years prior to 2021 provided they were

pending disposal on 1st April, 2021.

8. This Court is also 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 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:-

â??144B. Faceless assessment â?

(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 toâ?

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.â??

9. Since in the present case no prior show cause notice as well as draft assessment order had been issued, there is a violation of principles of natural

justice as well as mandatory procedure prescribed under the â??Faceless Assessment Schemeâ??.

10. Keeping in view the aforesaid, the impugned assessment order dated 21st April 2021 is set aside and the matter is remanded back to the

Assessing Officer, who shall issue a show cause notice and draft assessment order and thereafter pass a reasoned order in accordance with law.

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

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