(2021) 07 DEL CK 0083

In the Delhi High Court

Case No : Civil Writ Petition No.6223 Of 2021, Civil Miscellaneous Application No. 19717 Of 2021

Toplight Corporate Management Private Limited APPELLANT

Vs

National Faceless Assessment Centre Delhi (Earlier National E-Assessment Centre Delhi) & Anr. RESPONDENT

Date of Decision : 08-07-2021

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 144B, 144B(xvi)(a), 144B(xvi)(b), 144B(9), 156, 270A, 270AAC(1)

Citation : (2021) 07 DEL CK 0083

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

Bench : Division Bench

Advocate : Kavita Jha, Vaibhav Kulkarni, Puneet Rai, Adeeba Mujahid

Final Decision : Disposed Of

Judgement

Manmohan, J

CM APPL 19718/2021

1. Allowed subject to all just exceptions.

2. Accordingly, the application stands disposed of.

W.P.(C) 6223/2021

3. The petition has been heard by way of video conferencing.

4. Present writ petition has been filed challenging the assessment order dated 11th June, 2021 passed by respondent no.1/National Faceless

Assessment Centre, Delhi under Section 143(3) read with Section 144B and the accompanying notice of demand issued under Section 156 as well as

notice for initiating penalty proceedings under Section 270A and 271AAC(1) of the Income Tax Act, 1961 [for short â??the Actâ??] for assessment year 2018-19.

5. Learned counsel for the petitioner states that the impugned assessment order was passed without issuing mandatory draft assessment order along

with show cause notice, as contemplated under Section 144B of the Act, resulting in denial of opportunity to the petitioner to submit a response, to

place documents on record in support thereof and to be heard before passing the final assessment order.

6. She 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.

7. Issue Notice. Mr. Puneet Rai, 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-cumdraft

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.

8. 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:-

â??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:â?".........

(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?

(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 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??

(emphasis supplied)

9. 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.

10. Consequently, the impugned assessment order dated 11th June, 2021 issued under Section 143(3) read with Section 144B of the Act along with

accompanying notice of demand issued under Section 156 of the Act as well as notice for initiating penalty proceedings issued under Section 270A

and 271AAC(I)of the Act 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.

11. Accordingly, the present writ petition along with pending application stands disposed of.

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