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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 06.08.2021

+ **W.P.(C) 7896/2021 & CM APPL. 24553-54/2021**

JAVIN CONSTRUCTION PRIVATE LIMITED Petitioner

Through: Mr.Ved Jain & Ms.Richa
Mishra, Advs.

versus

NATIONAL FACELESS ASSESSMENT CENTRE & ORS.

..... Respondents

Through: Mr.Udit Sharma, Adv. on
behalf of Ms.Vibhooti
Malhotra, Sr. Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

The petition has been heard by way of video conferencing.

1. Present writ petition has been filed challenging the impugned assessment order, notice of demand, show cause notice for imposition of penalty under Section 274 read with Section 271AAC(1) and penalty under Section 274 read with Section 270A of the Income Tax Act, 1961 [the Act] dated 22nd April 2021.

2. Learned counsel for the Petitioner states that the impugned assessment order has been passed without issuing a show-cause notice and draft assessment order which is mandated 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 the provisions of the Section 144B.

3. Issue Notice. Mr. Udit Sharma, Advocate appearing on behalf of Ms. Vibhooti Malhotra accepts notice for the respondents. He prays for an adjournment on the ground that Ms. Vibhooti Malhotra, Senior Standing Counsel, who is to appear in this case, is in some personal difficulty. However, since this Court has disposed of number of matters on the same issue, the request for adjournment is declined. However, the respondent is given liberty to seek variation/modification of the order in the event facts have been suppressed from this Court or misstated in the petition.

5. This Court is 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:-

“144B. Faceless assessment –

(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 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.”

6. 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”.

7. Keeping in view the aforesaid, the impugned assessment order, notice of demand, show cause notice for imposition of penalty under Section 274 read with Section 271AAC(1) and penalty under Section 274 read with Section 270A of the Act, dated 22nd April 2021, are set aside and the matter is remanded back to the Assessing Officer, who shall issue a draft assessment order and thereafter pass a reasoned order in accordance with law.

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

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

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 6, 2021/rv

