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

+ W.P.(C) 8719/2021 & CM APPL. 27164-27165/2021

BERRY DEVELOPERS AND INFRASTRUCTURE PVT LTD

..... Petitioner

Through: Ms. Rano Jain with
Mr. Venketesh Chaurasia, Advocates.

versus

NATIONAL E ASSESSMENT CENTRE Respondent

Through: Mr. Zoheb Hossain Sr. Standing
Counsel and Mr. Vipul Agrawal,
Advocate.

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Date of Decision: 23rd August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA
J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the assessment order dated 27th April, 2021 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') on the ground that it had been passed without giving Petitioner/assessee a meaningful opportunity of being heard.
3. Learned counsel for the Petitioner states that the Petitioner, vide the draft assessment order cum show cause notice dated 20th April 2021, was asked to file its response by 23rd April 2021. She emphasises that a

complete lockdown was imposed in Delhi from 19th April, 2021 and the due date for completion of Assessment was initially extended to 30th June, 2021 and further to 30th September, 2021. She also points out that the petitioner on 25th April 2021 had sought an adjournment as it couldn't prepare the response due to closure of its offices and complete lockdown in Delhi.

4. She emphasises that the Respondent without considering the factum of lockdown and the adjournment application of the Petitioner, passed the impugned assessment order under Section 143(3) dated 27th April 2021 wherein it was wrongfully stated that the Petitioner had not filed a reply and hence had agreed to the additions made by the revenue.

5. Issue Notice. Mr. Vipul Agrawal, Advocate accepts notice on behalf of Revenue.

6. He states that as the adjournment application had been filed after the last date for filing the response i.e., 23rd April, 2021, the said application was of no consequence. He also states that three earlier notices dated 10th February, 2020, 10th March, 2021 and 20th March, 2021 had been issued to the petitioner in the present instance and, therefore, the principle of natural justice had been adequately complied with.

7. Having perused the paper book, this Court finds that the notices dated 10th February, 2020, 10th March, 2021 and 20th March, 2021 had been issued under Section 142(1) of the Act and not under Section 144B of the Act. Consequently, the statutory mandate as enshrined in Section 144B of the Act has not been complied with in the present instance.

8. This Court also takes judicial notice of the fact that between 19th April, 2021 and 27th April, 2021 there was a complete lockdown in the city of Delhi. Accordingly, this Court is of the view that Petitioner has not been

given an adequate and meaningful opportunity to respond to the draft assessment order cum show cause notice dated 20th April, 2021 and there has been a violation of principles of natural justice.

9. Consequently, the impugned Assessment Order dated 27th April, 2021 passed under section 143(3) of the Act is set aside and the matter is remanded back to the Respondent for taking necessary steps in accordance with law. With the aforesaid directions, the present petition along with pending applications stands disposed of.

10. 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 23, 2021
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भारतमेव जयते