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

Date of Decision: 02.09.2021

+ W.P.(C) 9429/2021

NOVELTY MERCHANTS PRIVATE LIMITED

..... Petitioner

Through: Mr.Subash Agarwal &
Mr.Aneesh Mittal, Adv.

versus

NATIONAL FACELESS ASSESSMENT CENTRE DELHI
(EARLIER NATIONAL E- ASSESSMENT CENTRE, DELHI)
& ORS.

..... Respondents

Through: Mr.Ajit Sharma, Sr. Standing
Counsel with Mr.Anant Ram
Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

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

automated examination tool, whereupon it may decide to—

xxxx xxx xxx

(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.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 2, 2021/rv

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