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

+ **W.P.(C) 13553/2021 & CM APPL.42773/2021**

RMSI PRIVATE LIMITED

.....Petitioner

Through: Mr.Piyush Kaushik, Advocate.

versus

NATIONAL FACELESS ASSESSMENT
CENTRE, DELHI

..... Respondent

Through: Mr.Puneet Rai, Sr.Standing Counsel
for Revenue.

Date of Decision: 18th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed challenging the impugned final assessment order dated 8th September, 2021 issued under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (the Act) for the Assessment Year 2018-19.
2. On the first date of hearing, learned counsel for the petitioner had stated that the impugned assessment order had been passed without issuing a show cause notice and a draft assessment order which was mandated under Section 144B(1)(xvi)(b) of the Act. He had stated that the Respondent's action was violative of Section 144B of the Act.

3. He had also emphasised that the Respondent straightaway issued the impugned final assessment order without issuing any draft assessment order and show cause notice and assessed the Petitioner's income at Rs.25,85,92,670/- and vide notice of demand dated 8th September, 2021 had raised a demand of Rs.49,67,050/-.

4. As despite this Court passing a number of judgments setting aside similar assessment orders, the respondents were still passing similar orders, this Court had directed the Principal Commissioner, National Faceless Assessment Centre to appear before this Court by way of online video link.

5. Ms.Reena Sinha Puri, Principal Chief Commissioner, NaFAC had appeared on 02nd December, 2021 in the post-lunch session by way of online video link. She had assured this Court that the National Faceless Assessment Centre would introduce a system of alerts and checks to ensure that no final assessment order was passed without prior issuance of a show cause notice as well as draft assessment order and without considering the reply filed by the Assessee and a request, if any, of the Assessee for an opportunity of hearing. Further, this Court directed the Principal Chief Commissioner to examine as to whether the National Faceless Assessment Centre would withdraw a final assessment order passed in violation of principles of natural justice and/or without issuing show cause notice and draft assessment order as well as without considering the reply and/or assessee's request for a personal hearing.

6. On 23rd December, 2021, the Principal Chief Commissioner of Income Tax, NaFAC had filed an affidavit stating as under:-

"A. On the issue of alerts & checks:

In this respect it is respectfully submitted that a systemic intervention is being introduced in the form of alerts and checks in the Income Tax Business Application (ITBA) to ensure that wherever required under the law, final

assessment order is not passed without prior issuance of a show cause notice as well as draft assessment order or without considering reply of the assessee and a request, if any, of the assessee for an opportunity of hearing.

Alerts and checks will be introduced in the work-flow to ensure that adequate time is given to the assessee to respond to the notice where there is any variation prejudicial to the interest of the assessee. An alert will also caution the faceless assessment unit about pending hearing through VC, if any.

Additionally, a system of check will be provided at the level of the Unit Head to confirm, before approval of the final assessment order, that principles of natural justice have been complied with the system of alerts and checks is expected to be set up and be operational in five months.

B. On the issue of power of NaFAC to withdraw an assessment order passed-

As far as the query put to the Deponent by this Hon'ble Court as to whether the National Faceless Assessment Centre would withdraw a final assessment order, passed in violation of principles of natural justice and/or without issuing Show Cause Notice and draft assessment order as well as without considering the reply and/or assessee's request for a personal hearing is concerned, it is submitted that the Income Tax Act does not provide for such withdrawal of orders once passed. In fact, the Income Tax Act ensures various remedial and appellate channels in order to amend/rectify the mistakes that may occur during such assessment or other Income-tax proceedings and also to provide relief to the assessee in case of any unreasonable addition. Remedial measures like rectification provisions under section 154 of the Income Tax Act, reopening provisions under section 147 of the Act and revision proceedings under section 263/264 of the Act are available to the Department to correct the errors subsequently. In addition to the above, the assessee also has various appellate channels available to him in case there is any prejudice caused to his interest like provision for filing an appeal before the Commissioner of Income Tax (Appeals)/ITAT as well as invoking the writ jurisdiction before the jurisdictional High Court/Supreme Court.

However, there is no provision in the Act other than the ones discussed above to withdraw any assessment order after the same has been passed."

7. On 29th July, 2022, this Court directed the Respondent-Revenue to file an affidavit of the Principal Chief Commissioner, NaFAC stating that the system of alerts and checks had been made operational. In compliance with the direction of this Court, the Principal Chief Commissioner, Income Tax, NaFAC has filed an affidavit dated 12th August, 2022. The relevant portion of the said affidavit reads as under:-

“2. That in compliance to the directions of this Hon’ble Court, the Deponent submits as under:

- a. Adequate checks and alerts were introduced in the Income Tax Business Application (ITBA) to ensure that no assessment order is passed without –
 - i. Prior issuance of a show cause notice, where nay variation prejudicial to the assessee is proposed;*
 - ii. consideration of the response of the assessee;*
 - iii. grant of personal hearing to the assessee, where requested;*
 - iv. allowing adequate time to the assessee to response to the notice.**
- b. That it is also submitted that, following the amendment of Section 144B by the Finance Act, 2022, due care has been taken to align the modified standard operating procedures with the principles of natural justice.”*

8. After filing of the said affidavit, no complaint has been brought to the notice of this Court by the Petitioner.

9. Since in the present case, the impugned order has been passing without issuing a show cause notice / a draft assessment order which has been mandated under Section 144B(1)(xvi)(b) of the Act, the impugned assessment order dated 8th September, 2021 issued under Section 143(3) read with Section 144B of the Act is set aside and the Respondent is directed to issue a show cause notice within four weeks. The Respondent is at liberty to issue a draft assessment order / show cause notice to the petitioner and thereafter, the proceedings shall continue in accordance with law.

10. With the aforesaid direction, the present writ petition along with pending application is disposed of. This Court clarifies that it has not commented on the merit of the controversy. The rights and contentions of all the parties are left open.

MANMOHAN, J

NAVIN CHAWLA, J

NOVEMBER 18, 2022/KA