

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7662 of 2021

=====

GANDHI REALTY (INDIA) PRIVATE LIMITED

Versus

ASSISTANT/JOINT/DEPUTY/ASSITANT COMMISSIONER OF INCOME
TAX/INCOME TAX OFFICER

=====

Appearance:

MR B S SOPARKAR(6851) for the Petitioner(s) No. 1

MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

=====

CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**

and

HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Date : 05/10/2021

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner, by way of this petition under Article 226 of the Constitution of India, challenges order passed by the respondent under section 143(3) read with section 144B of the Income Tax Act (hereinafter shall be referred to as "the Act" for convenience), whereby the income of the petitioner is assessed for the A.Y. 2018-19 vide its order dated 20.04.2021 and made substantial addition.

2. Brief facts leading to the present petition are as followed.

2.1. The petitioner is a limited Company and is in the business of real estate business. For the A.Y. 1018-19 on 20.10.2018, it filed its return of income at loss of Rs.16.34 Crores (rounded off).

2.2. During the financial year, 2018, two companies namely M/s.Gandhi Reality India Pvt. Ltd. and M/s. Crystal

Organisers Pvt. Ltd. Were amalgamated with company named Ms/J.B. Realities Pvt. Ltd. by virtue of the order of the National Company Law Tribunal dated 22.10.2018. Then the name of the company was changed to the present petitioner named M/s.Gandhi Reality India Pvt. Ltd.

2.3. The case of the petitioner was selected for scrutiny. Notice u/s 143(2) of the Act was issued on 22.09.2019 to scrutinize the income from real estate business. Another notice u/s 142(1) of the Act was issued on 03.02.2021. On 07.10.2019, 07.01.2020, 03.03.2021 and 15.03.2021 the petitioner provided the basic information and requested for specific details to be supplied.

2.4. The respondent passed the assessment order without issuing any show cause notice to the petitioner on 20.04.2021 making addition of income on two issues totaling to Rs.21,78,90,087/-.

2.5. According to the petitioner, the impugned order u/s 144(3) r.w.s. 144B of the Act being illegal, deserves quashment.

2.6. The prayer sought for are as follows:

“7. The Petitioner, therefore, prays that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamours or a writ of certiorari or a writ in nature of certiorari or any other writ, direction or order and be pleased to:

(a) quash and set aside the impugned order at Annexure- 'A' to this Petition;

(b) pending the admission, hearing and final disposal of this petition, to stay implementation and operation of the order at Annexure- 'A' to this petition and stay recovery of tax for A.Y. 2018-19;

(c) any other and further relief deemed just and proper be granted in the interest of justice;"

3. On issuance of notice by this Court on 15.06.2021, the respondent appeared and Affidavit-in-reply has been filed by Joint Commissioner of Income-tax, Circle-I, Rajkot denying all the averments. According to the respondent, the petitioner has remedy of filing statutory appeal under section 253 of the Act before the CIT (Appeals) and thereafter under section 246 of the Act, it has recourse of approaching the Income Tax Appellate Tribunal. With this alternative efficacious remedy, the petition is not sustainable.

3.1. It is further contended that the order under section 144B is challenged on the ground that the procedure laid down under the said provision has not been followed while framing the assessment and thus, there is violation of provision of law and the same has been empathetically denied.

3.2. According to the respondent, chronology of dates and events given in the reply demonstrates that the due

procedure under section 144B has been followed as required under the law.

3.3. According to the respondent, the return of income has been filed by the assessee company claiming loss on 30.10.2018 and the return was selected for scrutiny and notice under section 143(2) of the Act was issued on 22.09.2019 where date of hearing was fixed on 07.10.2019.

3.4. In response to the notice dated 22.09.2019, the assessee responded on 07.10.2019 and provided details, the detailed note on ICDS compliance and adjustment with explanation and justification had been attached and it also requested for adjournment for 30 days for providing the details.

3.5. The assessee under communication dated 06.11.2019 requested for further adjournment of 30 days for preparation of compilation.

3.6. On 06.12.2019, the assessee again referred to the notice dated 22.09.2019 u/s.143(2) and requested for further time of 30 days for preparation.

3.7. Again on 07.01.2020, referring to the details supplied under its letter dated 07.10.2019, it inquired about further details to be supplied.

3.8. On 13.10.2020 the case of the assessee was transferred from A.O. to Regional E-Assessment Unit and on 15.10.2020 the assessee was informed about the transfer of

the proceedings to National Faceless Assessment Centre (“NFAC” for short).

3.9. On 04.01.2021, communication was issued under section 142(1) serving notice upon the assessee by Regional Re-Assessment Unit.

3.10. Notice was issued on 03.02.2021 under section 142(1) by NFAC.

3.11. The assessee responded to the notice on 03.02.2021 and also communicated that the details required are under preparation and hence requested for adjournment for 7 days.

3.12. Point-wise communication had been submitted on 05.03.2021 along with the documents where details in relation to the loan and advances of GSM Enterprise had been supplied.

3.13. Thereafter, on 10.03.2021 adjournment request for a period of 5 days was made by the petitioner to provide further details and on 17.03.2021, point-wise information and documents had been furnished.

3.14. On 08.04.2021 Draft Assessment Order was placed for approval. According to the respondent, the said order had been served upon the assessee under communication dated 12.04.2021. The Draft Assessment Order along with computation-sheet also was forwarded to the assessee and the assessment under section 143(3) read with section 144B

dated 20.04.2021 along with the Demand Notice has been served upon the petitioner.

3.15. It is claimed by the respondent that procedure contemplated under the provisions of section 144B has been duly complied with and from the date of issuance of notice under section 143(2) dated 22.09.2019 sufficient opportunities were granted to the assessee acceding to its request and hence, there is no question of any violation of principles of natural justice. The order of assessment raising demand of Rs.2.06 Crores (rounded off) was passed in terms of the provisions of the Act and with the remedy of appeal, this Court may not entertain the petition.

4. Affidavit-in-rejoinder has been filed by the Director of the petitioner where it has seriously questioned the contention of alternative remedy on the ground that the assessment order which is impugned in this proceeding, is statutory invalidated and the order has been passed without jurisdiction. According to the petitioner, the Commissioner of Income Tax (Appeals) has no power to set aside the order and remand back the matter to the A.O. to frame a fresh assessment.

4.1. It further contended that the Draft Order is never served upon the petitioner prior to the issuance of the final assessment order on 20.04.2021, as contended by the respondent. The Portal of the Income Tax Department also does not reflect any order dated 12.04.2021 to exist. According to the petitioner, the Income Tax Website has functionally to check date wise the notice, letters and orders

issued. Even using the functionality when checked by the petitioner, it is seen that no notice, letter or order is issued dated 12.04.2021. it is literately emphasized by the petitioner that such Draft Order has never been issued and communicated to the petitioner. To substantiate, seramshot from the Web Portal of the Income Tax Department reflecting datewise search for the notice, letter or order is annexed with the petition.

4.2. The related provisions of section 144B and Circular dated 14.08.2019 obligating the requirement that every communication by the Income Tax Department to the assessee would bare a unique Document Identification Number ("DIN" for short) without which the communication is deemed to not exist, is pressed into service. Hence it is urged that what has been mandated under section 144B of the Act has not been complied with.

5. We have extensively heard submissions of learned advocate Mr.B.S. Soparkar. He has taken us through the pleadings, law on the subject and the scheme of the Act. He has also relied on the following three decisions :

[1] *Radha Krishan Industries Versus State of Himachal Pradesh and others*, reported in 2021 SCC Online SC 334.

[2] *McKinsey & Co. Inc. Versus Union of India*, reported in [2010] 324 ITR 367 (Bombay) and

[3] *Engineering Professional Co.(P). Ltd. Versus Deputy Commissioner of Income Tax, Circle1(1)(1)*, reported in [2020]

424 ITR 253 (Gujarat).

5.1. Mr.Soparkar has empathetically urged that there has been a reiterative emphasise on the part of the petitioner that the Draft Assessment order which is mandatorily contemplated under the statute has not been supplied.

5.02. The respondent has never issued a show cause notice subsequent to receiving of the information and therefore framing of assessment without issuance of show cause notice as well as Draft Assessment Order is in clear violation of the statutory provisions and the principles of natural justice. The entire addition, according to him, is bad in law and therefore, he urged this Court to quash and set aside the order of Assessment.

6. Per contra, learned Senior Standing Counsel Ms.Mauna Bhatt for the revenue defending the action of the revenue has urged that the chronology of dates and events have been depicted in the reply of the Joint Commissioner of Income tax. And it is quite clear from the documents which have been furnished that the copy had been marked of the Draft Assessment Order dated 22.04.2021 along with the computation, to the assessee. She, however, fairly submitted that there is no document which she can pressed into service to show as to how the service has been effected to the assessee and therefore, she attempted to get instructions in this regard. She also, on query being made by the Court, has pertinently answered that every document which is signed and shared with the assessee, gets reflected in the portal of the Income-tax Department,

however, what is placed before the Court is the order dated 12.04.2021, which is a Draft Assessment Order, service of which is a serious challenge made by the petitioner.

7. Having heard both the sides and also having extensively examined the material on record, we specifically considered the challenge to the very maintainability of the petition under Article 226 of the Constitution of India. This Court is conscious that for correcting manifest failure of observance or non-observance of statutory provisions, this Court would have ample power to invoke jurisdiction and principles of natural justice, alternative remedy would not have a reason to delay its exercise. It is a self restraint by the Court where not only for redressing the questions of violation of principles of natural justice but also for the action in total disregarding to the statutory provisions or without jurisdiction the Court shall need to invoke the jurisdiction, of-course not in a mechanical or routine manner.

7.1 The Apex Court in the case of ***Whirlpool Corporation Versus Registrar of Trade Marks, Mumbai & Others, reported in*** reported in ***(1998)1 SCC 1*** has in detail considered the power to issue prerogative writ under Article 226 of the Constitution of India by holding that it is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, Mandamus, etc. for the enforcement of any of the fundamental rights contained in Part III of the Constitution but also for "any other purpose". The Apex Court held that

the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

7.2. This has been reiterated by the Apex Court in the case of **Radha Krishan Industries Versus State of Himachal Pradesh** reported in **21 SCC Online SC 334**. Relevant paragraph reads thus :

“27. Following the dictum of this Court in Whirlpool (supra), in Harbanslal Sahnia v. Indian Oil Corpn. Ltd., this court noted that:

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of

natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 11.] The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings." (emphasis supplied)

28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a

violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

7.3. In the matter on hand, the petitioner has approached this court with an emphasise on clear violation of principles

of natural justice and action in total disregard to the provisions of law which makes the end order *non-est* statutorily. Emphasizing the requirement of law on the statute after section 144B has been inserted. It is the case of the petitioner that the respondent is obligated to issue Draft Assessment Order before issuance of the final assessment order. In the instant case, in absence of service of any Draft Assessment Order as well as show cause notice, a complete violation of not only principle of natural justice but also of statutory requirement is pleaded.

7.04. Relevant would be to refer to section 144B, which reads thus:

“Section 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:

i) the National Faceless Assessment Centre shall serve assessee under sub-section (2) of section 143; a notice on the

ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (i), file his response to the National Faceless Assessment Centre;

(iii) where the assessee-

(a) has furnished his return of income under section 139 or in response to a notice issued under sub-section (1) of section 142 or under sub-section (1) of section 148, and a notice under sub-section (2) of section 143 has been issued by the Assessing Officer or the prescribed income-tax authority, as the case may be; or

(b) has not furnished his return of income in response to a notice issued under sub-section (1) of section 142 by the Assessing Officer; or

(c) has not furnished his return of income under sub-section (1) of section 148 and a notice under sub-section (1) of section 142 has been issued by the Assessing Officer, the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;

(iv) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(v) where a case is assigned to the assessment

unit, it may make a request to the National Faceless Assessment Centre for-

(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;

(b) conducting of certain enquiry or verification by verification unit; and

(c) seeking technical assistance from the technical unit;

(vi) where a request for obtaining further information, documents or evidence from the assessee or any other person has been made by the assessment unit, the National Faceless Assessment Centre shall issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or by the assessment unit;

(vii) the assessee or any other person, as the case may be, shall file his response to the notice referred to in clause (vi), within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre;

(viii) where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a

verification unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(ix) where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a technical unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(x) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, based on the request referred to in clause (viii) or clause (ix) to the concerned assessment

(xi) where the assessee fails to comply with the notice referred to in clause (vi) or notice issued under sub-section (1) of section 142 with a direction issued under sub-section (2A) of section 142, the National Faceless Assessment Centre shall serve upon such assessee a notice under section 144 giving him an opportunity to show-cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment;

(xii) the assessee shall, within the time specified in the notice referred to in clause (xi) or such time as may be extended on the basis of an application in this regard, file his response to t to the National Faceless Assessment Centre;

(xiii) where the assessee fails to file response to the notice referred to in clause (xi) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in a writing a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;

(xv) the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any

(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-

(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; or

(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;

(xvii) the review unit shall conduct review of the draft assessment order referred to it by the National Faceless Assessment Centre whereupon it may decide to

(a) concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or

(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in-

- (a) sub-clause (a) of clause (xvi); or*
- (b) sub-clause (b) of clause (xvi);*

(xix) the National Faceless Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;

(xx) the assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National Faceless Assessment Centre;

(xxi) the National Faceless Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in-

- (a) sub-clause (a) of clause (xvi); or*
- (b) sub-clause (b) of clause (xvi);*

(xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;

(xxiii) the National Faceless Assessment Centre shall-

(a) where no response to the show-cause notice is received as per clause (xxii),-

(A) in a case where the draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of said assessee, forward the draft assessment order or the final draft assessment order to such assessee; or

(B) in any other case, finalise the assessment as per the draft assessment order or the final draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in any other case, send the response received from the assessee to the assessment unit;

(xxiv) the assessment unit shall, after taking into account the response furnished by the assessee, make a revised draft assessment order and send it to the National Faceless Assessment Centre;

(xxv) the National Faceless Assessment Centre shall, upon receiving the revised draft assessment order,-

(a) in case the variations proposed in the revised

draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and-

(A) in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of the assessee proposed in draft assessment order or the final draft assessment order, forward the said revised draft assessment order to such assessee;

(B) in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee. alongwith the demand notice, specifying the sum payable by chor refund of any amount due to, the assessee on the basis of order are prejudicial to the interest of the assessee in comparison to the draft assessment order or such assessment;

(b) in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon himi to show cause as to why the proposed variation should not be made;

(xxvi) the procedure laid down in clauses (xxiii), (xxiv) and (xxv) shall apply mutatis mutandis to the notice

referred to in sub-clause (b) of Clause (xxv);

(xxvii) where the draft assessment order or final draft assessment order or revised draft assessment order is forwarded to the eligible assessee as per item (A) of sub-clause (a) of clause (xxiii) or item (A) of sub-clause (a) of clause (xxv), such assessee shall, within the period specified in sub-section (2) of section 144C, file his acceptance of the variations to the National Faceless Assessment Centre;

*(xxviii) the National Faceless Assessment Centre shall,
(a) upon receipt of acceptance as per clause (xxvii); or
(b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C,*

finalise the assessment within the time allowed under sub-section (4) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel, the National Faceless Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the concerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, prepare a draft assessment order in accordance with sub-section (13) of section 144C and send a copy of such order to the National Faceless Assessment Centre;

(xxxi) the National Faceless Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxxii) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

(3) The Board may, for the purposes of faceless assessment, set up the following Centres and units and

specify their respective jurisdiction, namely;

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make faceless assessment;

(ii) Regional Faceless Assessment Centres, as it may deem necessary, facilitate the conduct of faceless assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make faceless assessment;

(iii) assessment units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment;

(iv) verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of

account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification;

(v) technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this section; and

(vi) review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of variations proposed, if any, and such other functions as may be required for the purposes of review.

(4) The assessment unit, verification unit, technical unit

and the review unit shall have the following authorities, namely:

(a) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(b) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(c) such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

(5) All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;

(6) All communications between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres and various units shall be exchanged exclusively by electronic mode:

Provided that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances referred to in sub-clause of clause (xii) of sub-section (7);

(7) For the purposes of faceless assessment-

(i) an record shall be authenticated by

(a) the National Faceless Assessment Centre by affixing its digital signature;

(b) assessee or any other person, by affixing his digital signature if he is required to furnish his return of income under digital signature, and in any other case, by affixing his digital signature or under electronic verification code in the prescribed manner;

(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of-

(a) placing an authenticated copy thereof in the assessee's registered account; or

(b) sending an authenticated copy thereof to the registered address of the assessee or his authorised representative; or (c) uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert;

(iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;

(iv) the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;

(v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000);

(vi) a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before the income-tax authority at the National Faceless Assessment Centre or Regional Faceless Assessment Centre or any unit set up under this sub-section;

(vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment

should not be Y completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit;

(viii) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (vii) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (h) of clause (xii);

(ix) where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, such hearing shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board;

(x) subject to the proviso to sub-section (6), any examination or recording of the statement of the assessee or any other person (other than statement recorded in the course of survey under section 133A of the Act) shall be conducted by an income-tax authority in any unit, exclusively through video conferencing or

video telephony, including Smouse of any telecommunication application software which supports video conferencing or video telephony in accordance with the procedure laid down by the Board;

(xi) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;

(xii) the Principal Chief Commissioner or the Principal Director General in charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including format, mode procedure and processes in respect of the following, namely:

(a) service of the notice, order

(b) receipt of any information or documents from the person in or any other communication; response to the notice, order or any other

communication,

(c) issue of acknowledgement of the response furnished by the person;

(d) provision of 'e-proceeding facility including login account facility, tracking status of assessment, display of relevant details, and facility of download,

(e) accessing, verification and authentication of information and response including documents submitted during the assessment proceedings;

(f) receipt, storage and retrieval of information or documents in a centralised manner;

(g) circumstances in which proviso to sub-section (6) shall apply;

(h) circumstances in which personal hearing referred to clause (viii) shall be approved;

6) general administration and grievance redressal mechanism in the respective Centres and units.

(8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General in charge of National Faceless Assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.

(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.

"[(10) Notwithstanding anything contained in this section, the function of verification unit under this section may also be performed by a verification unit located in any other faceless center set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned by the National Faceless Assessment Centre to such verification unit.]

Explanation. In this section, unless the context otherwise requires-

(a) addressee shall have the same meaning as assigned to it in clause of sub-section (1) of section 2% of the Information Technology 2000 (21 of 2000);

(b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288;

(c) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of

resources;

(d) "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;

(e) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(f) "computer system" shall have the same meaning as assigned to it in clause (1) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(g) "computer resource of assessee" shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered e-mail address of the assessee with his email service provider,

(h) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(i) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General in charge of the National Faceless Assessment

Centre;

(j) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of section 144C;

(k) "faceless assessment means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;

(l) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(m) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of section 144C;

(n) "e-mail or electronic mail" and electronic mail message means a d message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message

(o) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);

(p) "Mobile app" shall mean the application software of the Income tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;

(q) "originator" shall have the same meaning as assigned to it in clause (za) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(r) "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;

(s) "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;

(t) "registered e-mail address" means the e-mail address at which an filing electronic communication may be delivered or transmitted to the addressee, including-

(i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or

(ii) the e-mail address available in the last income-

tax return furnished by the addressee; or

(iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or

(iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs;

(vi) any e-mail address made available by the addressee to the income tax authority or any person authorised by such authority;

(u) "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;

(v) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.]

7.05. It is pertinent to note that this introduction of faceless assessment under Section 144B has revolutionised the very regime of assessment in very many ways and at the same time, there are bound to be certain hiccups while implementing and creases also to be ironed out at the level of department. For the officials and assessee also, acceptance of change, its comprehension and implementation in true purport is a challenge as well.

7.06. Various issues arise in relation to the implementation of this provision, some due to limitation in comprehension, other for want of requisite training after its introduction and still others are begging the change of mindset.

7.07. This provision starts with *non-obstant* clause and it warrants service of notice to the assessee in case of scrutiny assessment under section 143(3) and 144(2) be replied to by the assessee in 15 days' time, after allocation through automated system to any Regional Faceless Centre.

7.08. For fulfilling the need of document etc. the request of an assessment unit from regional faceless centre also shall be through Faceless Assessment Centre.

7.8.1. Once there is a need to make reference to verification unit or technical unit, it is necessarily to be done through NFAC only and in absence of any response of assessee, the NFAC would serve a notice under section 144 of the I.T. Act as to why the best judgement assessment be not finalised and still if nor responsive, the concerned unit

which is allocated the assessment would need to prepare draft assessment order to be sent to NFAC and even when information called for, in clause (xii) have been received, the draft assessment order needs to be prepared with or without variations as ends also specifying penalty, if any.

7.09. The National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, if there is variation prejudicial to the interest of the assessee, it can finalise the assessment and serve copy of the order and notice to the assessee for initiating penalty proceedings, or for refund of any amount. However, when there is question of any variation, which may prove to be prejudicial to the interest of assessee, it is obligated to provide an opportunity to the assessee by serving a notice and calling upon him to show cause as to why proposed variation be not made or it has the third option of sending it back to the Regional Faceless Assessment Centre for conducting review of such order;

7.10. It is quite clear from the very provision that the assessee is required to be provided an opportunity once there is a possibility of any variation which may turn prejudicial to the interest of the assessee. What is expected of the NFAC is to serve a notice calling upon the assessee to show cause as to why the proposed variation be not made. This has to be done by furnishing Draft Assessment Order along with show cause notice.

It is in other words, statutory obligation of the NFAC

to serve upon the assessee the show cause notice along with the draft assessment order for the assessee to be availed the opportunity with regard to the variation proposed. It goes without saying that calling upon the assessee as provided under clause (v) or (vi) or (viii) and availing opportunity thereunder or its failure to utilise such opportunity or its failure to response would not permit NFAC or any authority to finalize the assessment once there is a variation proposed, prejudicial to the interest of the assessee.

7.11. With the advent of technology and with resorting to virtual mode, more meticulous conduct is expected from all concerned. Technology has made it extremely easy the aspect of service of notice, order, draft order etc. and here in Faceless Regime, placing in assessee's registered account, sending to the e-mail or uploading in mobile APP, is a due service which can never be missed and its trail is easily found, therefore, service or non-service also is no longer an issue and the time and place of dispatch and receipt of electronic record is detained in accordance with the provisions of section 13 of the Information Technology Act, 2000..

7.12. Sub-section (9) of section 144B clearly provides that the assessment would be *non-est* if the said provision is not followed procedurally on or after 01.04.2021. This depicts a clear legislative intent that every step and stage of procedural requirement of this provision is needed to be regarded with matching seriousness.

8. The Orissa High Court in the case of **Sribasta Kumar Versus Union of India and another** in WP © No.29279 of 2021, was examining the issue where principal ground on which the assessment order had been challenged that was, that the mandatory requirement under section 144B of the Act has not been complied with prior to issuance of the assessment order, wherein the Court held thus:

“5. It is obvious that in the present case the impugned assessment order was passed without communicating to the Petitioner any draft order of assessment under Section 144B of the IT Act.

6. In view of the clear legal position explained in the above judgments, on the above short ground this Court sets aside the impugned order of assessment dated 8th September, 2021 of the NFAC as well as all consequential notices/orders. The Court nevertheless grants liberty to the Department to pass a fresh assessment order for the AY 2017-18 after complying with the requirement of the law by giving the Petitioner a personal hearing at a date and time, which should be communicated to the Petitioner sufficiently in advance. It is needless to say that the Petitioner assessee will cooperate in the fresh assessment proceedings and furnish all the documents and information as are available with it relevant to the proceedings.”

9. The Delhi High Court in W.P.(C) 5849/2021 in the case of **Gurgaon Realtech Limited versus National Faceless Assessment Centre Delhi (Earlier national E-assessment Centre Delhi)**, delivered on 04.06.2021 was considering the identical issue where challenge to the assessment order was passed on the ground of the same having been passed without jurisdiction. Following are the findings and observations which deserve reproduction.

“9. We have considered the submissions made by the learned counsel for the parties.

9.1. To our minds, if the challenge to the assessment order is made on the ground that it was passed without jurisdiction, then, notwithstanding the fact that an appeal was filed, albeit, only to ensure that the limitation is not crossed, is not an impediment in proceeding ahead with the matter. In this particular case, the reason that we are proceeding ahead with the matter, is that, we are persuaded by the arguments advanced by Mr. Vohra that the impugned assessment order dated 15.04.2021 could not have been passed under Section 143(3A) and 143(3B) after March 31, 2021, having regard to the provisions of Section 143(3D) of the Act. For the sake of convenience. the said provisions are extracted below:

*"Section 143. Assessment
XXX*

XXX

(3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) so as to impart greater efficiency, transparency and accountability by

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation

(c) introducing a team-based assessment with dynamic jurisdiction.

(3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Provided that no direction shall be issued after the 31st day of March, 2021,

XXX

(3D) Nothing contained in sub-section (3A) and

sub-section (3B) shall

apply to the assessment made under sub-section (3) or under section 144, as the case may be, on or after the 1st day of April, 2021)

9.2. Besides this, Mr. Vohra is also right in his contention that the CBDT notification dated 31.03.2021, to which, we have made a reference. hereinabove, also says, in effect, the same thing, i.e., that after 01.04.2021, the assessment order could have only have been passed in consonance with the provisions of Section 144B of the Act.

10. In view of the foregoing reasons, we are inclined to set aside the impugned assessment order dated 15.04.2021 as also the notice of demand issued under Section 156 of the Act and the notice for initiating penalty) proceedings issued under Section 274 read with Section 270A of the Act.

10.1. That being said, the respondent/revenue will have liberty to proceed with the assessment process, albeit, under the provisions of Section 144B of the Act. Needless to add, if a show cause notice-cum-draft assessment order is served on the petitioner, an opportunity would be given to the petitioner to file its response/objections to the same. Furthermore, if there is a variation proposed in the income of the petitioner, an opportunity of

personal hearing will also be accorded. In sum, the procedure prescribed under Section 144B of the Act will be followed by the respondent/revenue.”

10. The **Delhi High Court** in the case of in W.P.(C) 6662/2021 in the case of **Rani Promoters Private Rotomoter Pvt. Ltd. Versus Additional Commissioner of Income Tax** on 19th July, 2021 also considered the same question. The court availing an opportunity of hearing be set aside the impugned order which was passed availing such opportunity. Relevant paragraphs of the aforesaid decisions read thus:

*“12. In any event, this issue is no longer res integra as a Coordinate Bench of this Court in **Gurgaon Realtech Limited v. National Faceless Assessment Centre Delhi**, W.P. (C) 5849/2021 has held that the Assessment Order could not have been passed under Section 143(3A) and 143(3B) of the Act by the Revenue after 31st March, 2021 having regard to Section 143(3D) of the Act.*

13. This Court also agrees with the submissions of the learned counsel of the Petitioner that there was failure on the part of the Respondents to comply with the mandatory obligation laid down in Section 144B (1) (xvi) of the Act inasmuch as there was non-service of prior notice and draft assessment order. The relevant portions of Section

144B xvi (a) and (b) as well as Section 144B(9) of the Act are reproduced hereinbelow:

"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: (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 -

(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; or assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such

order.

(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." (emphasis supplied)

14. Keeping in view the aforesaid, this Court is of the opinion that learned counsel for the petitioner is correct in submitting that Section 144B of the Act had been violated and the assessment proceeding had been completed in the present case in violation of the principles of natural justice.

15. Consequently, this Court sets aside the impugned assessment order dated 06th April, 2021 as also the notice of demand issued under Section 156 of the Act and the notice for initiating the penalty proceedings under Section 274 read with Section 270A of the Act.

11. Reverting to the facts of the case on hand, we could notice from the chronology of the events presented before us by the respondent authority that the return of the petitioner Company was selected for scrutiny and notice u/s 143(2) of the Act was issued on 22.09.2019. Date of hearing

was fixed on 07.10.2019. Various responses have been given by the petitioner. It also sought time and review was also filed. Opportunity for filing reply and furnishing the document was granted. The assessee was also informed on 15.10.2020 about transfer of proceedings to the NFAC and notice was also issued to the assessee by the Regional Reassessment Centre on 04.01.2021 u/s. 142(1) of the Act. Notice of NFAC to the petitioner was issued on 03.02.2021 under section 142(1) of the Act.

12. It appears from the assessment order which is claimed to have been placed for transfer on 08.04.2021 and averred to have been served upon the assessee under the communication dated 12.04.2021, is missing on the Web Portal of the Income Tax Department. Assessment order issued u/s 144B of the Act on 20.04.2021 along with the Demand Notice have been served upon the petitioner. Barring the Draft Assessment Order, rest of all the documents are already found on the web portal of the respondent department.

13. It would be apt to refer to sub-sections (5) and (6) of section 144B, which provide that all communications among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre and all communications between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other

person shall be exchanged exclusively by electronic mode; and all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres and various units shall be exchanged exclusively by electronic mode. The proviso would not be necessary to be discussed at this stage which concerns inquiry or verification conducted by the verification unit.

14. Sub-sections (7) of section 144B provides that for the purposes of faceless assessment an electronic record shall be authenticated by the National Faceless Assessment Centre by affixing its digital signature and by assessee or any other person, by affixing if required his digital signature if he is required under digital signature.

15. Sub-section (2) of section 114 (B) says that every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of placing an authenticated copy thereof in the assessee's registered account; or by sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or uploading an authenticated copy on the assessee's Mobile App. Thus, there is specific requirement for service by electronic mode and in absence of placing before this Court any proof of virtual exchange or authenticated copy of service to the assessee, there is no reason for this Court to accept the version of the respondent about the service.

16. We are in total disagreement with the revenue that on account of issuance of notice u/s. 143(2) dated

22.09.2019 and opportunities provided earlier to the assessee, acceding to his request would be a mitigating circumstance so far as non-service of the Draft Assessment Order is concerned. The opportunity of furnishing the documents and hearing which has been given time and again and requests acceded to by the authority to the assessee at that stage would not eventually culminate into furnishing of the final assessment order without service of prior notice along with draft assessment order, if any additions are made to the prejudice of the assessee.

17. It is a statutory requirement, as discussed hereinabove, more particularly when any assessment order is to be made which is likely to be prejudicial to the interest of the assessee. NFAC if would have served upon the assessee the draft assessment order, its presence on web portal would invariably there. In virtual regime, noticing of or presence or absence of trail of action is not a herculian task. Thus, in absence of any proof, the version of the respondent simply cannot be accepted. We could further notice from the documents which have been furnished by the petitioner that authenticated copy of notice/ order is not served to the petitioner when otherwise all other documents on the web portal of the income tax department are existing. We have sought assistance from the learned advocate of both the sides to point out to us due service of the draft assessment order, as has been claimed by the respondent, however, the said order dated 12.04.21 has been duly served to the petitioner, show cause notice which is claimed to have been issued along with the draft assessment order are surely missing. This being a simple case of statutory

non-compliance of the provision, the same would amount to breach of not only principles of natural justice, but also, of the action in complete disregard to the statutory provision. And therefore, the order of the respondent passed without following the mandate given by the statute under section 144B of the Act deserves to be interfered with by quashing and setting aside the same.

18. In view of the foregoing reasons, we quash the impugned assessment order 20.04.2021 so also the notice of demand issued by the respondent authority and any other proceedings initiated pursuant to the said .

19. However, we direct that the respondent/revenue will be at liberty to proceed with the assessment process under the provisions of Section 144B of the Act, as permissible under the law obviously after issuance of the prior notice-cum-draft assessment order and on availing an opportunity to the petitioner. The petitioner shall file response and the objection to the same. Opportunity of hearing if is sought for, the same shall be accorded including opportunity of personal hearing. Let the procedure under section 144B of the Act be followed by the revenue scrupulously.

20. The petition is allowed and disposed of in above terms.

(SONIA GOKANI, J)

(RAJENDRA M. SAREEN,J)

R.H. PARMAR