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

+ W.P.(C) 6304/2022

JINDAL REALTY LIMITED

..... Petitioner

Through: Mr.Salil Kapoor, Advocate with
Mr.Sumit Lalchandani, Ms.Ananya
Kapoor and Mr.S.K.Gambhir,
Advocates.

versus

NATIONAL FACELESS ASSESSMENT CENTRE, DELHI

..... Respondent

Through: Mr.Ajit Sharma, senior standing
counsel.

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Date of Decision: 20th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

C.M.No.18988/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.6304/2022 & C.M.No.18987/2022

1. Present writ petition has been filed challenging the assessment order dated 19th March, 2022 passed under Section 147 read with section 144B of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') as well as the demand notice and penalty notice both dated 19th March, 2022 for the Assessment Year 2016-17. Petitioner further seeks a direction to restrain the respondent from giving effect to/proceed further pursuant to the

impugned assessment order, the demand notice as well as penalty notice all dated 19th March, 2022.

2. Learned counsel for the Petitioner states that the Respondent did not issue any draft assessment order and show cause notice under Section 144B(xvi)(b) of the Act to the Petitioner prior to passing the impugned assessment order dated 19th March, 2022. He states that as a consequence, the Petitioner has been denied a reasonable opportunity of hearing.

3. Issue notice. Mr.Ajit Sharma, learned counsel accepts notice on behalf of the Respondent. He states that present writ petition is not maintainable as the petitioner has an alternative effective remedy by filing an appeal.

5. Having heard learned counsel for the parties, this Court is of the view that once the assessment has been carried out by respondent No. 1-National Faceless Assessment Centre, Delhi, it has to be in accordance with the statutory procedure prescribed for assessment by the said Authority and cannot be in accordance with the procedure prescribed under the earlier regime.

6. This Court is also of the view that Section 144B(1)(xvi)(b) mandatorily provides for issuance of a show cause notice and draft assessment order before issuing a final assessment order. The relevant portion of Section 144B(1)(xvi)(b) of the Act is reproduced hereinbelow:-

“144B. Faceless assessment –

*(1) 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 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;... ”

7. In the present case, as no prior show cause notice as well as draft assessment order had been issued, there is a violation of principle 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 issued under Section 147 read with Section 144B, demand notice under Section 156 and penalty proceedings initiated under Section 271(1)(c) of the Act, all dated 19th March, 2022 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 to the petitioner and thereafter pass a reasoned order in accordance with law.

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

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 20, 2022/KA