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

+ W.P.(C) 6183/2021 & CM APPL. 19582/2021

ASSOTECH REALTY PRIVATE LIMITED Petitioner
Through: Mr.Amol Sinha & Mr.Ashvini
Kumar, Advs.

versus

NATIONAL E-ASSESSMENT CENTRE DELHI & ANR.
..... Respondents
Through: Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Adv

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Date of Decision: 21st February, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVING CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the impugned assessment order dated 22nd April, 2021 passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 for the assessment year 2018-19.
2. Learned counsel for the Petitioner states that the impugned assessment order has been passed without considering the reply furnished by the Petitioner on 09th March, 2021 and without affording an opportunity of 'Personal Hearing' through virtual mode to the Petitioner, even though the Petitioner had requested for a virtual hearing in its reply dated 09th March,



2021. He states that the impugned order is in gross violation of the faceless scheme enshrined in Section 144B of the Act as well as the principles of natural justice, rendering the assessment to be non-est in terms of section 144B (9) of the Act.

3. He states that Respondent No.1 without granting an opportunity of personal hearing contrary to the provisions of section 144B(7)(vii) of the Act chose to pass the impugned assessment order dated 22nd April, 2021 under Sections 143(3) and 144B of the Act by making an addition of Rs. 4,95,52,897/- against the returned income of Rs. 6,82,06,650/- resulting into total assessed income of Rs. 11,77,59,547/- and the consequential notice of demand, and the Respondents further issued a notice for initiating penalty proceedings.

4. Learned counsel for the respondents states that as the petitioner had been given an opportunity to file a reply as well as documents, there was no need to give a personal hearing.

5. Having heard learned counsel for the parties, this Court is of the view that the issue involved in the present writ petition is no longer res integra. This Court in the case of *Bharat Aluminium Company Ltd. vs. Union of India & Ors., W.P.(C) No.14528/2021* dated 14th January, 2022, has held that the use of the expression “may” in Section 144B(7)(viii) is not decisive. Where a discretion is conferred upon a quasi judicial authority whose decision has civil consequences, the word “may” which denotes discretion should be construed to mean a command. Consequently, the requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory. It was further held that the classification made by the Respondent between the matters involving disputed questions of fact and



law by way of the Circular dated 23rd November, 2020 is not legally sustainable.

6. Accordingly, the impugned assessment order dated 22nd April, 2021 passed under Sections 143(3) and 144B of the Income Tax Act, 1961 as well as notices for demand and penalty for the assessment year 2018-19 are quashed and the matter is remanded back to the Respondent No. 2 for a fresh decision after giving an opportunity of hearing, in accordance with law.

7. With the aforesaid directions, the present writ petition and application stand disposed of. The rights and contentions of all the parties are left open.

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 21, 2022/rv

