

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7613 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

DHVANIL HEMENDRA RESHAMWALA
 Versus
 INCOME TAX OFFICER, WARD 1(3)(1)

Appearance:

DARSHAN R PATEL(8486) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) with MR DEV D PATEL for the Respondent(s)
 No. 1,2

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 14/12/2023

ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE NISHA M. THAKORE)

1. Noticing the short issue involved, let Rule be issued making it returnable forthwith. Mr. Varun Patel, learned advocate waives

service of Rule on behalf of the respondents.

2. The writ applicant is an individual assessee, who has invoked extraordinary writ jurisdiction of this court under Article 226 and 227 of the Constitution of India and has mainly prayed for following reliefs:

“(A) Issue a writ of certiorari and / or a writ of mandamus and/or any other writ direction or order to quash and set aside the impugned Assessment order under Section 147 read with Section 144B of the Income Tax Act, 1961 and the Demand Notice under Section 156 dated 30/03/2022, annexed hereto at Annexure - ‘H colly.’”

“(B) Pending admission, hearing and disposal of this petition, ad-interim relief be granted and the Respondent be ordered to restrain from enforcing compliance of the impugned Assessment order under Section 147 read with Section 144B of the Income Tax Act, 18961 and the Demand Notice under Section 156 dated 30.03.2022, annexed hereto at Annexure - ‘H colly.’”

3. Brief facts in nutshell are reproduced as under:

3.1 The writ applicant claims to be paying regular income tax return and is subjected to such assessment of income by the

Income Tax Office at Ahmedabad. According to the writ applicant, the return of income for the A.Y. 2016-17 was filed on 22.07.2016, however, on 30.03.2021, the writ applicant had received a notice under Section 148 of the Income Tax Act. On 06.07.2021, the writ applicant was served with a copy of reasons recorded, thereby pointing out the significant transactions noticed by the Income Tax Department entered into by the assessee. It was further mentioned that on perusal of the details available on record, the assessee had undertaken financial transactions much beyond the taxable limits. The reference was made to the search action undertaken by the Department under Section 132 of the Act on 11.04.2017 in the case of Navratna Group. During the course of search, an excel file was unearthed containing various details of KBG such as Unit No., area of Unit, selling price of land, construction cost, amount received from purchaser etc.

3.2 The writ applicant had submitted his objections against the aforesaid reasons recorded. Such objections were tendered before the Department on 20.07.2021. The competent authority rejected the aforesaid objections, while responding to the issue of lack of jurisdiction of the Assessing Officer in issuing notice under Section

148 of the Act. Reliance was placed on the entry in the name of the writ applicant reflected in the list of various issues / purchasers, who had entered into the transaction with M/s. Navratna Group. It was held that since the assessee case was not selected in regular scrutiny for A.Y. 2016-17 and since the Department intends to verify the genuineness of information collected and to arrive the income escaped, it was further directed to furnish the documents and other evidence in support of the transactions entered into by him during the course of assessment proceedings. Thus, the notice under Section 142(1) of the Act was issued upon the writ applicant on 10.03.2022 requesting him to furnish the relevant documents or account on or before 16.03.2022.

3.3 In response to the aforesaid notice dated 10.03.2022, the assessee had further explained by submitting its reply on 15.03.2022. Along with the said communication, the assessee had furnished the relevant documents as desired by the Department, which mainly includes the details of computation, statement under various heads for A.Y. 2016-17, copy of purchase deed, copy of bank statement for A.Y. 2015-16 highlighting the payment made with regard to the transactions entered with Navratna Group

between the period from 08.08.2015 to 25.08.2015, the ledger account maintained by the applicant reflecting funds transferred, confirmation receipt issued by Navratna Group.

3.4 The writ applicant was surprised to receive the final assessment order under Section 147 read with Section 144B of the Income Tax Act, whereby the demand notice of Rs.28,09,842/- under Section 156 of the Act was issued on 30.03.2022 by the respondent authorities. In such circumstances, the writ applicant had directly approached this Court in writ jurisdiction praying for quashing and setting aside the aforesaid final order as well as demand notice dated 30.03.2022 raised by the respondent Department.

4. Considering the averments made in the writ petition, this Court by order dated 19.04.2022, had issued Notice upon the respondent authorities and by ad interim order had restricted the respondent authorities from enforcing the compliance of the impugned assessment order under Section 147 read with Section 144B of the Act and the demand notice dated 30.03.20922 under Section 156 of the Act.

5. We have heard Mr. Darshan Patel, learned advocate, who has appeared on behalf of the writ applicant and Mr. Varun Patel, learned advocate on panel of the respondent Department.

6. Learned advocate for the writ applicant at the outset, has invited attention of this Court to the aforesaid facts of the case and has submitted that the respondent authorities have failed to comply with the mandatory procedure laid down under Section 144B of the Act. By referring to the aforesaid provisions, the learned advocate has submitted that the final assessment order under Section 147 read with Section 144B of the Act, has been passed without providing a copy of draft assessment order as required under Section 144B(xxi). According to the learned advocate for the writ applicant, as per Section 144B(xvi), upon receipt of the income or loss determination proposal, the National Faceless Assessment Centre may on the basis of guidelines issued by the Board, convey to the assessment unit to prepare draft order in accordance with the income and loss determination proposal after which the assessment unit shall prepare a draft assessment order. According to the learned advocate, as per Section 144B(xix), the assessment

unit shall thereafter, accept or reject some or all modifications proposed therein. The same shall be followed with the reasons assigned. As per Section 144B(xx), the assessment unit shall thereafter send the draft order prepared under Sub-clause (a) of Clause (xvi) or under Clause (xix) to the National Faceless Assessment Centre. As per Section 144B(xxi), where there is proposal to make any variation which is prejudicial to the interest of such assessee, the National Faceless Assessment Centre shall serve the draft order referred to Clause (xx) on the assessee. He, therefore, submitted that in the present case, the writ applicant was never served upon the draft order and was straightway served with final assessment order followed by the demand of Rs.28,09,842/- for the A.Y. 2016-17. Learned advocate has further tried to demonstrate the prejudice caused to the writ applicant in absence of service of draft order and submitted that the opportunity to raise objection against the draft assessment order was curtailed, which has resulted in raising of huge demand of Rs.28,09,842/-. The attention of this Court was invited to the screenshot taken by the writ applicant from the portal to indicate the draft assessment order was never even uploaded on the site.

7. Learned advocate for the writ applicant has relied upon the order passed by the Coordinate Bench in the case of ***Kottex Industries (P) Ltd. Vs. National Faceless Assessment Centre, Government of India*** (order dated 02.08.2022 passed in Special Civil Application No.16415 of 2021) and ***Sardar Co-op. Credit Society Ltd. Vs. Additional / Joint / Deputy / Assistant Commissioner of Income Tax*** (order dated 10.01.2022 passed in Special Civil Application No.7541 of 2021).

8. Learned advocate Mr. Varun Patel for the respondent authorities has referred to the affidavit in reply filed by Mr. Manish H. Dafda, Income Tax Officer – Ward 1(3)(1), Ahmedabad to submit that from the perusal of the order-sheet of ITBA, it appears that the assessment order was passed without serving draft order upon the writ applicant. He, therefore, urged this Court to pass the appropriate order.

9. Having heard the learned advocates appearing for the respective parties and having perused the record, indisputably, the aspect of non-service of draft assessment order, which was otherwise required to be sent along with show cause notice as per

the procedure prescribed under Section 144B(1), clause (xvi)(b) of the Income Tax Act has been confirmed. The compliance of mandatory procedure as envisaged in the aforesaid provision ie. of issuance of show cause notice, the draft assessment order, the final assessment order and the consequential demand notice is no more *res integra*. The plain reading of the provisions of Section 144B of the Act, which provides for Faceless Assessment for determination to be carried out under Sections 143(3) and 144 envisages the procedure to be followed by the Authority. The plain reading of Sub-section (9) of Section 144B further provides that notwithstanding anything contained in any order provision of the Act, assessment made under Section 144(3) or Section 144 of the Act, shall be treated non-est, if such assessment is not made in accordance with the procedure laid down under Section 144B of the Act. The strict adherence of the aforesaid provision has been examined by this Court in the case of Sardar Co.Op. Credit Society Ltd. (Supra), which reads as under:

“8. At this stage, it would be apt to reproduce Section 144B of the Income Tax Act, which reads as under:

“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 a notice on the assessee under sub-section (2) of section 143;

(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 under or 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 evidence requisitioned 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 unit;

(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 or 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 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 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 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, or refund of any amount due to, the assessee on the basis of 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 the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him 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, to 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 the 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 accounts, 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 (g) of clause (xii) of sub-section (7).

(7) For the purposes of faceless assessment—

(i) an electronic 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 email 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 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 use 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 or any other communication;

(b) receipt of any information or documents from the person in 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;

(i) 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.

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

(a) “addressee” shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 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 (l) 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 e-mail 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 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 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 e-mail at his registered e-mail 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 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; or

(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.”

8. In light of aforesaid provision, we note that the Faceless Scheme, 2019 was modified by Notification No.60/2020 dated 13.08.2020 wherein it had prescribed procedure for making Faceless Assessment. In fact, the intention of Legislation as regards principle of natural justice is embodied in section itself.

Thus, after 1st April, 2021, mandatory procedure in the form of aforesaid provision has to be strictly adhered while doing assessment. The whole object of Legislation to introduce Faceless Assessment Scheme is to imparting greater efficiency, transparency and accountability and at the same time duty is cast upon Assessing Officer to comply with mandatory provision to pass objective, fair and just orders.

9. It is clear from bare reading of Section 144B of the act that the assessee is required to be given an opportunity, in case variation is proposed in the draft assessment order upon its examination by NFAC and is prejudicial to the interest of assessee. The obligation is on the assessing officer to serve a show cause notice calling upon him to show cause as to why the proposed variation should not be made, failing which would make the assessment nonest. This Court agrees with the submission of the learned advocate for writ applicant that the issue on hand is no more res integra. We get support from the decision of this Court in the case of Gandhi Reality (India) (p.)(ltd.) Vs. Assistant, reported in (2021) 133 taxmann.com 83 (Gujarat), wherein it is held that breach of mandatory statutory provision itself is fatal to the assessment order.

10. In the facts of the present case, nothing has been brought on record by the respondent to suggest that the show cause

notice along with draft assessment order was served upon the writ applicant. We find from the impugned assessment order that there are variations from the return filed by the writ applicant as regards disallowance. The final assessment order is not made in accordance with the procedure envisaged under section 144 (xvi) (b) of the act as inspite of the variation being prejudicial to the assessee, no opportunity has been given to the assessee by serving show cause notice along with draft assessment order calling upon him to show cause as to why the proposed variation should not be made. Thus, we have no doubt in holding that the impugned order of assessment dated 07.04.2021 is invalid and nonest, passed in gross violation of principles of natural justice as well as mandatory provision in the form of section 144B of the act. In such circumstances referred to above, we are left with no other option but to quash the assessment order and remit the matter to the Assessing Officer.”

10. In light of the aforesaid settled legal position and in the facts and circumstances of the case, the impugned final assessment order dated 30.03.2022 issued by the respondent authorities is hereby declared as non-est and is quashed and set aside. Consequently, the demand notice dated 30.03.2022 issued by the

respondent authorities under Section 144 of the Act against the writ applicant is also quashed and set aside. The matter is remanded back to the Assessing Officer from the stage of issuance of draft assessment order along with show cause notice. The Assessing Officer is expected to pass a draft assessment order and thereafter send the same to the assessee in accordance with the provisions of Section 144B of the Act.

11. In view of the aforesaid reasons, the writ petition stands allowed and is disposed of accordingly. Rule is made absolute.

(BIREN VAISHNAV, J)

(NISHA M. THAKORE, J)

Y.N. VYAS

