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

***Date of Decision: 14.07.2021***

\+ **W.P.(C) 6482/2021 & CM APPL. 20366/2021**

RMSI PRIVATE LIMITED ..... Petitioner
Through Mr.Piyush Kaushik, Adv.

versus

NATIONAL E-ASSESSMENT CENTRE, DELHI
..... Respondent
Through Mr.Puneet Rai, Sr. Standing Counsel with Ms.Adeeba Mujahid, Adv. Jr. Standing Counsel.

**CORAM:**
**HON'BLE MR. JUSTICE MANMOHAN**
**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

The petition has been heard by way of video conferencing.

1. This petition has been filed by the petitioner challenging the Assessment Order dated 31.03.2021 passed under Section 143(3) read with Sections 143(3A) and 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') against the petitioner under the E-Assessment Scheme, 2019 for the Assessment Year 2017-18.

2. The learned counsel for the petitioner submits that the Impugned Assessment Order is liable to be set aside inasmuch as it is

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not preceded by the issuance of a 'Draft Assessment Order' followed by a 'Revised Draft Assessment Order'.

3. Issue notice. Notice is accepted by Mr. Puneet Rai, learned counsel for the respondent. He raises a preliminary objection on the maintainability of the present petition, contending that the petitioner has already challenged the impugned assessment order by way of an appeal. He further submits that in absence of a provision akin to Section 144B (9) of the Act, issuance of a Draft Assessment Order cannot be held to be mandatory and failure to issue such order cannot be treated as fatal.

4. As far as the maintainability of the present petition is concerned, the learned counsel for the petitioner submits that the said appeal was filed only to ensure that the period of limitation is not crossed. He submits that as the impugned order has been passed without jurisdiction, the remedy of a writ petition would be available to the petitioner. In support of his submission, he places reliance on the judgment dated 04.06.2021 passed by the predecessor Bench of this Court in ***Gurgaon Realtech Limited vs. National Faceless Assessment Centre Delhi (earlier National E-Assessment Centre Delhi)*** – W.P.(C) No. 5849/2021.

5. He further submits that absence of a provision akin to Section 144B (9) of the Act from the Scheme would not be of much relevance in as much as the Scheme has been framed under Section 143(3A) of the Act and is mandatory to be followed by the Authorities.

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6. We have considered the submissions made by the learned counsels for the parties.

7. It is not denied by the learned counsel for the respondent that the Impugned Assessment Order was not preceded by the Draft Assessment Order.

8. Clause 5 (1) (viii) and (x) of the E-Assessment Scheme, 2019 are reproduced hereinunder:

> *"**5. Procedure for assessment.-** (1) The assessment under this Scheme shall be made as per the following procedure, namely:-*
>
> *xxxxxx*
>
> *(viii) the assessment unit shall, after taking into account all the relevant material available on the record, make in writing, a draft assessment order either accepting the returned income of the assessee or modifying the returned income of the assesse, as the case may be, and send a copy of such order to the National e-assessment Centre;*
>
> *xxxxxx*
>
> *(x) the National e-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-*

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*(a) finalise the assessment as per the 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; or*

*(b) provide an opportunity to the assessee, in case a modification is proposed, by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the draft assessment order; or*

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

*(Emphasis supplied)*

9. A reading of the above provision would clearly show that it is mandatory for the National E-Assessment Centre to provide an opportunity to the assessee, by serving a notice calling upon him to show cause as to why the variation proposed in the Draft Assessment Order, which is prejudicial to the interest of the assessee, be not made.

10. Absence of such notice would clearly be a violation of the principles of natural justice leading to the Assessment Order passed being declared void.

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11. Absence of a provision akin to Section 144B (9) in the E-Assessment Scheme, 2019 would not make any difference to such legal outcome in as much as violation of principles of natural justice renders such decision void. Even otherwise, the Income Tax authorities have to remain bound by the Statutory Scheme of assessment.

12. As far as the objection on the maintainability of the present petition on account of the petitioner having already availed of the remedy of the appeal, the same is also liable to be rejected. In ***Gurgaon Realtech Limited*** (supra), this Court had negatived a similar objection observing as under:

> *"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….*
> *xxxx "*

13. In the present case as well, the impugned Assessment Order having been passed without complying with the procedure laid down in the Scheme and in violation of principles of natural justice, the writ petition would be maintainable.

14. Consequently, the Impugned Assessment Order dated 31.03.2021 passed under Section 143(3) read with Sections 143(3A) and 143(3B) of the Act is set aside. However, the respondent/Revenue

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is given liberty to pass a fresh Assessment Order in accordance with law. The petitioner shall also have liberty to challenge any action of the respondent/Revenue in accordance with law, in the event that it is aggrieved by the same.

15. Accordingly, the present Writ Petition and the pending application stand disposed of.

16. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

**NAVIN CHAWLA, J**

**MANMOHAN, J**

**JULY 14, 2021**
**RN/U.**

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