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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1936 OF 2023
(Arising out of SLP (C) No. 4906/2022)

NATIONAL FACELESS ASSESSMENT CENTRE (FORMERLY
KNOWN AS NATIONAL E-ASSESSMENT CENTRE) & ORS.

Appellant(s)

VERSUS

MANTRA INDUSTRIES LIMITED

Respondent(s)

O R D E R

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition No. 1625/2021, the present Special Leave Petition has been preferred by the Revenue, insofar as to expunge the observations made in para 9.

3. Shri Balbir Singh, learned ASG, appearing on behalf of the Revenue has also tried to make the submission on merits of the impugned judgment and order passed by the High Court by which the High Court has set aside the Assessment Order relying upon sub-section (9) of Section 144B of the Income Tax Act, 1961 (for short "the Act"). However, learned counsel appearing on behalf of the respondent-assessee has pointed out that the present Special Leave Petition has been preferred only for the purpose of expunging the remarks made by the High Court in para 9.

4. Shri Balbir Singh, learned ASG, appearing on behalf of the Revenue has pointed out that subsequently sub-section (9) of

Section 144B of the Act has been omitted w.e.f 01.04.2021 and therefore, the impugned judgment and order passed by the High Court quashing and setting aside the Assessment Order relying up on sub-section (9) of Section 144B of the Act is unsustainable and the aforesaid being pure question of law either the same may be permitted to be agitated before this Court or the Revenue may be permitted to file a review application before the High Court.

5. Having heard learned counsel appearing on behalf of the respective parties and considering the question of law proposed in the present Special Leave Petition and the grounds stated in the appeal memo, it appears that the present Special Leave Petition has been preferred only against the observations made in para 9 of the impugned judgment and order. However, as sub-section (9) of Section 144B of the Act has been omitted subsequently and which was not before the High Court, we permit the Revenue to file a review application before the High Court and to point out the subsequent development and omission of sub-section (9) of Section 144B of the Act and as and when such a review application is filed within a period of six weeks from today, the High Court to consider the same in accordance with law and on its own merits and without raising the issue with respect to limitation, however, subject to giving an opportunity to the assessee. So far as the observations made in para 9 of the impugned judgment and order passed by the High Court are concerned, we are of the opinion that the observations made in para 9 are unwarranted and not required. Accordingly, the observations made in para 9 of the impugned order are ordered to be expunged.

With this, the present Appeal stands disposed of accordingly,
in terms of the above.

Pending applications, if any, also stand disposed of.

.....J
(M.R. SHAH)

.....J
(C.T. RAVIKUMAR)

New Delhi;
March 21, 2023

1.1

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1937 OF 2023
(Arising out of SLP (C) No. 20008/2022)

THE NATIONAL FACELESS ASSESSMENT CENTRE & ORS.

Appellant(s)

VERSUS

CHANDER ARJANDAS MANWANI

Respondent(s)

O R D E R

1. Leave granted.

2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No. 3195/2021, by which the High Court has allowed the said writ petition and has quashed the Assessment Order, the Revenue has preferred the present appeal.

3. From the impugned judgment and order passed by the High Court, it appears that while quashing and setting aside the Assessment Order, the High Court has heavily relied upon the CBDT Circular dated 13.08.2020 issued under Section 119 of the Income Tax Act, 1961 (for short "the Act"), more particularly, para 3 of the said CBDT Circular which reads as under:-

"3. Any assessment order which is not in conformity with Para-2 above, shall be treated as non-est and shall be deemed to have never been passed."

4. Shri Balbir Singh, learned ASG, appearing for the Revenue has submitted that para 3 of the CBDT Circular is similar to/*pari materia* to sub-section (9) of Section 144B of the Act, which was

earlier brought into statute with effect from 01.04.2021. However, the very *pari materia* provision has been omitted subsequently w.e.f. 01.04.2021. It is submitted that omission of Section 144B (9) of the Act would have a direct bearing on the merits of the impugned judgment and order passed by the High Court.

5. Learned counsel appearing on behalf of the assessee disputes the above and has submitted that even Section 144B(9) of the Act was brought into statute w.e.f. 01.04.2021 and, in the present case, the Assessment Order was passed prior to 01.04.2021 and even the CBDT Circular was issued prior to 01.04.2021.

6. Having heard learned counsel appearing for the respective parties and in view of the subsequent development of omitting Section 144B (9) of the Act, which is *pari materia* to para 3 of the CBDT Circular dated 13.08.2020, which has been relied upon by the High Court, we deem it appropriate to set aside the impugned judgment and order passed by the High Court and remand the matter to the High Court to consider the effect of omission of Section 144B (9) of the Act, which has been omitted w.e.f 01.04.2021 on para 3 of the CBDT Circular dated 13.08.2020.

7. In view of the above and for the reasons stated above and without further expressing anything on merits in favour of either parties on the omission of Section 144B(9) of the Act w.e.f. 01.04.2021, the impugned judgment and order passed by the High Court is set aside. The matter is remitted back to the High Court to consider the same afresh in accordance with law and on merits and the High Court to consider the effect of the omission of Section 144B(9) of the Act, which has been omitted w.e.f.

01.04.2021 and the effect of such omission on para 3 of the CBDT Circular dated 13.08.2020 which, as such, *prima facie* seems to be *pari materia* to Section 144B(9) of the Act.

All the contentions/defences which are available to the respective parties are kept open to be considered by the High Court in accordance with law and on its own merits.

The present Appeal stands disposed of.

Pending applications, if any, also stand disposed of.

.....J
(M.R. SHAH)

.....J
(C.T. RAVIKUMAR)

New Delhi;
March 21, 2023

1.5

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1829 OF 2023
(Arising out of SLP (C) No. 1857/2023)

THE NATIONAL FACELESS ASSESSMENT CENTRE & ORS. Appellant(s)

VERSUS

AUTOMOTIVE MANUFACTURERS PRIVATE LIMITED Respondent(s)

O R D E R

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay in Writ Petition (L) No. 16281/2021, by which the High Court in exercise of powers under Article 226 of the Constitution of India has set aside the Assessment Order declaring it as *non est* as the mandatory requirement under Section 144B of the Income Tax Act, 1961 (for short "the Act"), namely, the show cause notice with a draft Assessment Order was not issued and served upon the assessee.

3. Shri Balbir Singh, learned ASG, appearing for the Revenue has submitted that, as such, the High Court ought not to have entertained the writ Petition under Article 226 of the Constitution of India challenging the order of assessment. It is submitted that, even otherwise, if the Hon'ble Court was of the opinion that the assessment proceedings were in breach of principles of natural justice inasmuch as the show cause notice with draft Assessment Order was not served in that case, the matter ought to have

remanded to the Assessing Officer and with liberty in favour of the Assessing Officer to pass a fresh order in accordance with law and after following due procedure as required under Section 144B of the Act.

4. Having heard Shri Balbir Singh, learned ASG, appearing of the Revenue and Shri Dharan Gandhi, learned counsel appearing for the respondent-assessee and having gone through the impugned judgment and order passed by the High Court and considering the fact that the Assessment Order was passed without issuing a show cause notice with a draft Assessment Order, as was mandatorily required, under Section 144B of the Act, as such, it cannot be said that the High Court has committed any error. However, at the same time, considering the fact that the Faceless Assessment Scheme has been introduced recently and therefore, the Revenue ought to have been given some leverage to correct themselves and take corrective measures and therefore the High Court ought to have remanded the matter to the Assessment Officer to pass a fresh order in accordance with law, after following the due procedure, as required under the law, namely, more particularly, under Section 144B of the Act.

5. In view of the above for the reasons stated above, we modify the impugned judgment and order passed by the High Court and remand the matter to the Assessment Officer to pass a fresh Assessment Order, after following due procedure, in accordance with law under Section 144B of the Act.

All the contentions/defences which are available to the assessee on merits are kept open to be considered by the Assessing Officer in accordance with law and on its own merits.

With this, the present Appeal stands disposed of.

.....J
(M.R. SHAH)

.....J
(C.T. RAVIKUMAR)

New Delhi;
March 21, 2023

1.6

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1830 OF 2023
(Arising out of SLP (C) No. 4033/2023)

DEPUTY COMMISSIONER OF INCOME TAX & ORS.

Appellant(s)

VERSUS

ABACUS REAL ESTATE PRIVATE LTD.

Respondent(s)

O R D E R

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.10.2021 passed by the High Court of Judicature at Bombay in Writ Petition No. 1221/2021, by which the Division Bench of the High Court in exercise of powers under Article 226 of the Constitution of India has set aside the Assessment Order declaring it as *non est* as the mandatory requirement under Section 144B of the Income Tax Act, 1961 (for short "the Act"), namely, the show cause notice with a draft Assessment Order was not issued and served upon the assessee, the Revenue has preferred the present Appeal.

3. Shri Balbir Singh, learned ASG, appearing for the Revenue has submitted that, as such, the High Court ought not to have entertained the writ Petition under Article 226 of the Constitution of India challenging the order of assessment. It is submitted that even otherwise if the Hon'ble Court was of the opinion that the assessment proceedings were in breach of principles of natural

justice inasmuch as the show cause notice with draft Assessment Order was not served, in that case the matter ought to have remanded to the Assessing Officer and with a liberty in favour of the Assessing Officer to pass a fresh order in accordance with law and after following due procedure as required under Section 144B of the Act.

4. Having heard Shri Balbir Singh, learned ASG, appearing of the Revenue and Shri Alok Yadav, learned counsel appearing for the respondent-assessee and having gone through the impugned judgment and order passed by the High Court and considering the fact that the Assessment Order was passed without issuing a show cause notice with a draft Assessment Order as was mandatorily required under Section 144B of the Act, as such, it cannot be said that the High Court has committed any error. However, at the same time, considering the fact that the Faceless Assessment Scheme has been introduced recently and therefore, the Revenue ought to have been given some leverage to correct themselves and take the corrective measures and therefore the High Court ought to have remanded the matter to the Assessment Officer to pass a fresh order in accordance with law, after following the due procedure as required under the law, namely, more particularly, under Section 144B of the Act.

5. In view of the above for the reasons stated above, we modify the impugned judgment and order passed by the High Court and remand the matter to the Assessment Officer to pass a fresh Assessment Order, after following due procedure in accordance with law under Section 144B of the Act.

All the contentions/defences which are available to the assessee on merits are kept open to be considered by the Assessing Officer in accordance with law and on its own merits.

With this, the present Appeal stands disposed of.

.....J
(M.R. SHAH)

.....J
(C.T. RAVIKUMAR)

New Delhi;
March 21, 2023

1.7

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1831 OF 2023
(Arising out of SLP (C) No. 4607/2023)

ADDITIONAL JOINT DEPUTY ASSISTANT COMMISSIONER
OF INCOME TAX OFFICER & ORS.

Appellant(s)

VERSUS

MULTIPLIER BRAND SOLUTIONS PVT. LTD.

Respondent(s)

O R D E R

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.10.2021 passed by the High Court of Judicature at Bombay in Writ Petition No. 1378/2021, by which the Division Bench of the High Court in exercise of powers under Article 226 of the Constitution of India has set aside the Assessment Order declaring it as *non est* as the mandatory requirement under Section 144B of the Income Tax Act, 1961 (for short "the Act"), namely, the show cause notice with a draft Assessment Order was not issued and served upon the assessee, the Revenue has preferred the present Appeal.

3. Shri Balbir Singh, learned ASG, appearing for the Revenue has submitted that, as such, the High Court ought not to have entertained the writ Petition under Article 226 of the Constitution of India challenging the order of assessment. It is submitted that even otherwise if the Hon'ble Court was of the opinion that the assessment proceedings were in breach of principles of natural

justice inasmuch as the show cause notice with draft Assessment Order was not served in that case the matter ought to have remanded to the Assessing Officer and with a liberty in favour of the Assessing Officer to pass a fresh order in accordance with law and after following due procedure as required under Section 144B of the Act.

4. Having heard Shri Balbir Singh, learned ASG, appearing of the Revenue and Shri Ambhoj Kumar Sinha, learned counsel appearing for the respondent-assessee and having gone through the impugned judgment and order passed by the High Court and considering the fact that the Assessment Order was passed without issuing a show cause notice with a draft Assessment Order as was mandatorily required under Section 144B of the Act, as such, it cannot be said that the High Court has committed any error. However, at the same time, considering the fact that the Faceless Assessment Scheme has been introduced recently and therefore, the Revenue ought to have been given some leverage to correct themselves and take the corrective measures and therefore the High Court ought to have remanded the matter to the Assessment Officer to pass a fresh order in accordance with law, after following the due procedure as required under the law, namely, more particularly, under Section 144B of the Act.

5. In view of the above for the reasons stated above, we modify the impugned judgment and order passed by the High Court and remand the matter to the Assessment Officer to pass a fresh Assessment Order, after following due procedure in accordance with law under Section 144B of the Act.

All the contentions/defences which are available to the assessee on merits are kept open to be considered by the Assessing Officer in accordance with law and on its own merits.

With this, the present Appeal stands disposed of.

.....J
(M.R. SHAH)

.....J
(C.T. RAVIKUMAR)

New Delhi;
March 21, 2023

ITEM NO.1

COURT NO.4

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 4906/2022

(Arising out of impugned final judgment and order dated 11-10-2021 in WP No. 1625/2021 passed by the High Court Of Judicature At Bombay)

**NATIONAL FACELESS ASSESSMENT CENTRE (FORMERLY
KNOWN AS NATIONAL E-ASSESSMENT CENTRE) & ORS.**

Petitioner(s)

VERSUS

MANTRA INDUSTRIES LIMITED

Respondent(s)

([Top of the Board]

**IA No. 152251/2022 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES**

WITH

SLP(C) No. 20008/2022 (IX)

**IA No. 143774/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT**

SLP(C) No. 19865/2022 (IX)

**IA No. 137725/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT**

SLP(C) No. 21158/2022 (IX)

SLP(C) No. 20642/2022 (IX)

**IA No. 161251/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT**

SLP (C) No. 1857/2023 (III)

**(FOR ADMISSION and I.R. and IA No.3915/2023-CONDONATION OF DELAY IN
FILING and IA No.3919/2023-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT)**

SLP (C) No. 4033/2023 (III)

**(IA No.29677/2023-CONDONATION OF DELAY IN FILING and IA
No.29692/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)**

SLP (C) No. 4607/2023 (III)

**(FOR ADMISSION and I.R. and IA No.19368/2023-CONDONATION OF DELAY
IN FILING and IA No.19369/2023-EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT)**

Date : 21-03-2023 These matters were called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMAR**

For Petitioner(s) Mr. Balbir Singh, A.S.G.
Mrs. Gargi Khanna, Adv.
Mrs. Praveena Gautam, Adv.
Mr. Prashant Singh, Adv.
Mr. Shyam Gopal, Adv.
Chinmayee Chandra, Adv.
Mr. Prasenjeet Mohapatra, Adv.
Mr. Raj Bahadur Yadav, AOR

For Respondent(s) Mr. Devendra H. Jain, Adv.
Mr. Dharan Gandhi, Adv.
Mr. Rajat Mittal, AOR

Mr. Sameer Parekh, Adv.
Mr. Ishan Nagr, Adv.
Mr. Prateek Khandelwal, Adv.
M/s. Parekh & Co., AOR

Mr. Percy J. Pardiwala, Sr. Adv.
Mr. Vishal Kalra, Adv.
Mr. Anil Kumar Gautam, AOR

Mr. Alok Yadav, Adv.
Mr. Sunil Mittal, Adv.

Mr. Ambhoj Kumar Sinha, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

SLP(C) No. 4906/2022:

Leave granted.

The Appeal stands disposed of in terms of the signed order.

SLP(C) No. 20008/2022:

Leave granted.

The Appeal stands disposed of in terms of the signed order.

SLP(C) No. 19865/2022:

Today, when the present Special Leave Petition is taken for further hearing, learned counsel appearing on behalf of the respondent-assessee has pointed out that, during the pendency of

the present Special Leave Petition and pursuant to the liberty reserved by the High Court in the impugned judgment and order, fresh proceedings have been initiated against the assessee and therefore, according to the learned counsel for the assessee, the impugned judgment and order passed by the High Court has been implemented by the Department.

Shri Balbir Singh, learned ASG, appearing on behalf of the petitioner is, as such, not in a position to dispute the above, however, has requested that if this Court is inclined to dispose of the Special Leave Petition, in that case, liberty be reserved in favour of the Revenue to revive the present Special Leave Petition, in case of the difficulty and necessity so arises.

In view of the above fact situation and without further entering into the merits of the case and/or legality and validity of the impugned order passed by the High Court, we dispose of the present Special Leave Petition, in view of the subsequent development. However, liberty is reserved in favour of the Revenue to revive the Special Leave Petition in case of difficulty and/or necessity so arises.

With this, the Present Special Leave Petition stands disposed of.

Pending applications, if any, also stand disposed of.

SLP(C) No. 21158/2022:

Application for amendment of cause title is allowed.

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay in Writ Petition No. 1083/2021, by which the High Court has set aside the

Assessment Order on the ground that the procedure as required under Section 144B, namely, to furnish the draft Assessment Order upon the assessee has not been complied with, the Revenue has preferred the present Special Leave Petition.

Shri Balbir Singh, learned ASG, has submitted that, in that case, the High Court ought to have remanded the matter to the Assessing Officer for a fresh order.

However, it is required to be noted that, in para 16(b), the High Court itself has reserved the liberty in favour of the Revenue to take such *de novo* proceedings as required in accordance with law, even if the matter is not remanded to the Assessing Officer, it will always be open for the Department to initiate fresh assessment proceedings in accordance with law and setting aside the Assessment Orders shall not come in the way of the Revenue.

With this clarification and observation, the Special Leave Petition stands disposed of.

Pending applications, if any, also stand disposed of.

SLP(C) No. 20642/2022:

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition (L) No. 13138/2021 by which the High has set aside the Assessment Order in view of sub-section (9) of Section 144B of the Income Tax Act, 1961 (for short "the Act") by observing that the Assessment Order is *non est*, in view of sub-section (9) of Section 144B of the Act, the Revenue has preferred the present Special Leave Petition.

As per the office report, the respondent-assessee could not be

served with the remarks "Addressee left-without instructions".

Shri Balbir Singh, learned ASG, has drawn our attention that subsequently Section 144B(9) of the Act has been omitted w.e.f. 01.04.2021 and therefore, the basis on which the High Court has passed the impugned order has gone. There might be some substance in what Shri Balbir Singh, learned ASG, is submitting. However, as the respondent-assessee is not before the Court and the omission of Section 144B(9) of the Act w.e.f. 01.04.2021 was not before the High Court, we deem it appropriate to allow the Revenue to file a review application before the High Court to press into service the omission of sub-section (9) of the Section 144B of the Act which has been omitted w.e.f. 01.04.2021 and its effect of omission on the impugned judgment and order passed by the High Court. If such a review application is filed within a period of 6 weeks from today, the High Court to consider the same in accordance with law and on merits and, more particularly, the effect of omission of sub-section (9) of Section 144B of the Act, which has been omitted w.e.f. 01.04.2021 for which, as such, this Court has not expressed anything on merits in favour of either parties and it is ultimately for the High Court to take a call on the aforesaid in accordance with law and on its own merits and after hearing both the parties.

With this, the present Special Leave Petition stands disposed of. Pending applications, if any, also stand disposed of.

SLP (C) No. 1857/2023:

Leave granted.

The Appeal stands disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

SLP (C) No. 4033/2023:

Leave granted.

The Appeal stands disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

SLP (C) No. 4607/2023:

Mr. Ambhoj Kumar Sinha, learned AOR, has stated at the Bar that he has instructions to appear appearing on behalf of the respondent and he shall file his vakalatnama. He is permitted to file vakalatnama within a period of two weeks from today.

Leave granted.

The Appeal stands disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR\

(Signed orders are placed on the file)