HIGH COURT FOR THE STATE OF TELANGANA

MAIN CASE No: W.P.No. 38716 of 2022

PROCEEDING SHEET

S. No	DATE	ORDER	OFFICE NOTE
1.	**20.10.2022**	**HCJ & CVBR, J** **W.P.No.38716 of 2022** Heard Mr. S.Ravi, learned Senior Counsel for the petitioner. Challenge made in this writ petition is to the assessment order dated 29.09.2022 passed by respondent No.2 under Section 143(3) of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) read with Section 144B of the aforesaid Act for the assessment year 2020-21. Petitioner is an assessee under the Act having the status of company. For the assessment year 2020-21, petitioner filed e-return of income declaring total income of Rs.58,48,02,550.00. Case was selected for scrutiny through CASS. In the scrutiny proceeding, procedure laid down under Section 144B of the Act was followed. When the draft assessment order was furnished to the petitioner, petitioner submitted objection. The controversy basically centers around proper valuation of the shares of the petitioner under Section 56 of the Act. However, following objections of the petitioner, respondent No.2 has passed the impugned assessment order by applying the DCF method of valuation of shares on the basis of which	

there was variation from the figures furnished by the petitioner.

Learned Senior Counsel for the petitioner submits that in the process, respondent No.2 has deviated from the procedure prescribed under clause XXV(b) of Section 144B of the Act which says that in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparision to the draft assessment order or a final draft assessment order, the National Faceless Assessment Center shall 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.

According to learned Senior Counsel, instead of adopting the aforesaid statutory procedure, respondent No.2 straight away framed the impugned order of assessment, which is impermissible.

In support of his contention, learned Senior Counsel has placed reliance on a decidsion of the Bombay High Court in **Piramal Enterprises Limited v. Income Tax Officer**[1].

However, Mr. J.V.Prasad, learned Standing Counsel, Income Tax Department submits that impugned order of assessment is an appealable one and all points urged by the petitioner can be raised in appeal.

In reply, learned Senior Counsel for the petitioner

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[1] **Manu/MH/1894/2021**

submits that deviation from the statutory procedure would render the impugned assessment order a nullity. Therefore, it is a jurisdictional error.

Issue notice.

Mr. B.Mukherjee, learned counsel waives notice for respondent No.1.

Mr. J.V.Prasad, learned Standing Counsel, Income Tax Department waives notice for respondent No.2.

Respondent No.2 to file counter-affidavit by the next date.

Till the next date, there shall be stay of the assessment order dated 29.09.2022 passed by respondent No.2.

List this matter on 20.12.2022.

HC J

CVBR, J

LUR