

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI

सुश्री पदमावती यस, लेखक सदस्य एवं श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष  
BEFORE MS. PADMAVATHY.S, ACCOUNTANT MEMBER AND  
SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2088/Chny/2025  
निर्धारण वर्ष /Assessment Year: 2017-18

M/s. HL Mando Anand India Pvt. Ltd.,  
S1A & S5, Vengadu Village,  
Pillaiakkam Post, Sriperumbudur,  
Kancheepuram District,  
Tamil Nadu – 600 025.  
PAN: AAECM 8625J

The Dy. Commissioner of Income  
Tax,  
Corporate Circle-4(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr. Vikram Vijayaraghavan, Advocate  
: Ms. R. Anitha, Addl. CIT

सुनवाई की तारीख/Date of Hearing  
घोषणा की तारीख /Date of Pronouncement

: 03.03.2026  
: 11.03.2026

**आदेश / ORDER**

**PER PADMAVATHY.S, A.M**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi, (in short "CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (in short "the Act") dated 17.03.2025 for Assessment Year (AY) 2017-18.

2. The assessee is a company and engaged in the business of manufacturing automotive components. The assessee filed the return of income for A.Y 2017-18 on 29.11.2017 declaring total income of

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Rs.42,80,70,726/- under normal provisions and a book profit of Rs.100,79,28,892/- u/s. 115JB of the Act. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The A.O (NeAC) completed the assessment determining the income of the assessee at Rs.46,97,97,014/- under normal provisions and deemed total income at Rs.116,56,52,421/- under 115JB of the Act. Aggrieved, the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee raised a legal contention that NeAC did not file a draft assessment order prior to passing the final assessment order u/s. 143(3) of the Act. The assessee also raised grounds on merits with regard to disallowance of deduction claimed u/s. 35(2AB) of the Act. With regard to the legal contention the CIT(A) held that:

*“7.3.4 From a perusal of the above, it is clear that as per Sec.144B(1)(xvi)(a), the draft assessment order issued by the assessment unit will be finalised in case there is no variation proposed which is prejudicial in the interest of the assessee. In case of any variation prejudicial to the interests of the assessee, show cause notice shall be served as per Section 1448(1)(xvi)(b). The draft assessment order may also be assigned to the Review Unit as per Section 144B(1)(xvi)(c). In the present appeal, the draft assessment order and draft computation sheet were forwarded on 30-04-2021 and thereafter assigned to the Review Unit. Show Cause Notice was issued on 10-05-2021 as an annexure to notice u/s 142(1), to which the appellant filed response on 24-05-2021. As per Section 144B(1)(xix), upon receiving suggestions from the Review Unit, the case will be assigned to another assessment unit which shall after considering variations suggested by the Review Unit, send final draft assessment order to NeAC. Subsequently, there is no requirement to serve any draft assessment order to the appellant before finalising the assessment when it is not an eligible assessee. Thus, it is clear that due procedure has been followed by the National Faceless Assessment Centre. The case law relied on by the appellant in Prakash Chand Jain supra is rendered on different facts and circumstances. In that case, the issue was that Show Cause Notice contemplated u/s 144B(1)(xi) was not issued prior to the draft assessment order u/s 1448(1)(xvi). However, in the present appeal, the issue is the procedure to be followed after issue of the draft assessment order u/s 144B(1)(xvi) and subsequent review by the review unit. On the basis of these discussions, Ground No.2 is dismissed as there is no procedural lapse in the issue of draft assessment order, show cause*

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*notice after review by the Review Unit and subsequent passing of the final assessment order.”*

3. The CIT(A) also dismissed the contentions of the assessee on merits. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The Ld. Authorized Representative (AR) of the assessee at the outset submitted that contention with regard to non issue of draft assessment order prior to final assessment order need to be examined. The Ld. AR in this regard drew our attention to the relevant provisions of section 144B of the Act:

*“(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*

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*(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):”*

5. The Ld. AR further drew our attention to the notice u/s. 142(1) of the Act issued by the A.O on 10.05.2021 calling for the assessee to submit relevant documentary evidence in relation to section 35(2AB) of the Act. The Ld. AR also submitted that the A.O in the same notice has also asked the assessee to show cause as to why the deduction claimed under section 35(2AB) of the Act cannot be disallowed. The Ld. AR argued that first of all the notice u/s. 142(1) of the Act cannot be considered as show cause notice which is a mandate as per sub clause (xvi) and therefore, the A.O has not followed the procedure as laid down. The Ld. AR further argued that even assuming that the said notice is to be considered as a show cause notice the A.O ought to have passed a draft assessment order along with the show cause notice. The Ld. AR in this regard drew our attention to the decision of the

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Hon'ble Delhi High Court in the case of Anju Jalij Vatra vs. NeAC (2021) 128 taxmann.com 165 (Del.), where it has been held that:

*“5. Issue Notice. Mr. Sanjay Kumar, learned counsel for respondent/revenue accepts notice. Learned counsel appearing on behalf of respondent/revenue states that the record presently placed before the Court would show that though no show cause notice-cum-draft assessment order was issued, yet several opportunities had been granted by the respondents/revenue to the petitioner, before the said date, to explain its case.*

*6. This argument of the respondent/revenue is contrary to the statutory scheme, as provided in section 144B of the Act. The relevant portions of section 144B xvi (a) and (b) as well as Section 144B(9) of the Act are reproduced hereinbelow:-*

*"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:-*

*(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.....*

*(9) Notwithstanding anything contained in any other provision of this Page 55 of 89nder 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, eshall b non est if such assessment is not made in accordance with the procedure laid down under this section." sub-*

*(emphasis supplied)*

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7. *In our opinion, learned counsel for the petitioner is correct in submitting that section 144B of the Act has been violated and the assessment proceeding has been completed in the present case in violation of the principles of natural justice.*

8. *Consequently, the impugned assessment order dated 22nd April, 2021 issued under section 144 read with section 144B of the Act for the assessment year 2018-2019 as well as demand notice issued under section 156 of the Act and notice for initiating penalty proceedings issued under section 270A and 271AAC(I) of the Act are set aside. However, the respondent/revenue is given liberty to pass a fresh assessment order in accordance with law. The petitioner is also given liberty to challenge any action of the respondent/revenue in accordance with law, in the event she is aggrieved by the same.*

9. *Accordingly, the present writ petition along with pending applications stands disposed of.”*

6. The Ld. AR also drew our attention to the decision of the Hon'ble Gujarat High Court in the case of Gandhi Realty India Pvt. Ltd. vs. ACIT [2021] 132 taxmann.com 83 (Guj.), where it has been held that:

*“7.5 It is pertinent to note that this introduction of faceless assessment under section 144B has revolutionised the very regime of assessment in very many ways and at the same time, there are bound to be certain hiccups while implementing and creases also to be ironed out at the level of department. For the officials and assessee also, acceptance of change, its comprehension and implementation in true purport is a challenge as well.*

*7.6 Various issues arise in relation to the implementation of this provision, some due to limitation in comprehension, other for want of requisite training after its introduction and still others are begging the change of mindset.*

*7.7 This provision starts with non-obstant clause and it warrants service of notice to the assessee in case of scrutiny assessment under section 143(3) and 144(2) be replied to by the assessee in 15 days' time, after allocation through automated system to any Regional Faceless Centre.*

*7.8 For fulfilling the need of document etc. the request of an assessment unit from regional faceless centre also shall be through Faceless Assessment Centre.*

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*7.8.1 Once there is a need to make reference to verification unit or technical unit, it is necessarily to be done through NFAC only and in absence of any response of assessee, the NFAC would serve a notice under section 144 of the I.T. Act as to why the best judgement assessment be not finalised and still if nor responsive, the concerned unit which is allocated the assessment would need to prepare draft assessment order to be sent to NFAC and even when information called for, in clause (xii) have been received, the draft assessment order needs to be prepared with or without variations as ends also specifying penalty, if any.*

*7.9 The National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, if there is variation prejudicial to the interest of the assessee, it can finalise the assessment and serve copy of the order and notice to the assessee for initiating penalty proceedings, or for refund of any amount. However, when there is question of any variation, which may prove to be prejudicial to the interest of assessee, it is obligated to provide an opportunity to the assessee by serving a notice and calling upon him to show cause as to why proposed variation be not made or it has the third option of sending it back to the Regional Faceless Assessment Centre for conducting review of such order,*

*7.10 It is quite clear from the very provision that the assessee is required to be provided an opportunity once there is a possibility of any variation which may turn prejudicial to the interest of the assessee. What is expected of the NFAC is to serve a notice calling upon the assessee to show cause as to why the proposed variation be not made. **This has to be done by furnishing Draft Assessment Order along with show cause notice.***

7. The Ld. AR submitted that as per the provisions of Section 144B of the Act, the procedure to be followed is that the assessee in case of variation should be issued a show cause notice and the courts in the above case have held that a draft assessment order should be issued along with the show cause notice providing the opportunity to the assessee to contend the proposed disallowance/addition. The Ld. AR further submitted that non issue of draft notice cannot be considered as a venial breach since the assessee is denied the opportunity to justify the claim whereby there is a violation of natural justice. The Ld. AR also fairly submitted that the Hon'ble Jurisdictional High Court in the case of Samuel vs. ACIT [WP No.25303 of 2021 dated 05.09.2023] has

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considered an identical issue where the Hon'ble High Court has set aside and remitted back the matter back to the assessment unit to pass a draft assessment order. The Ld. AR also submitted that though Jurisdictional High Court has remitted the matter back to the A.O, the Hon'ble Gujarat and Delhi High Court Division Bench has taken a view that the assessment order passed without draft assessment order is liable to be quashed.

8. The Ld. Departmental Representative (DR), on the other hand, submitted that the plain language of section 144B of the Act provides only for issue of show cause notice and there is no requirement to pass a draft assessment order. The Ld. DR further submitted that in assessee's case the A.O has issued a show cause notice calling on the assessee to justify the deduction claimed u/s. 35(2AB) of the Act and that the assessee has responded to the said notice. The Ld. D.R therefore argued that there is no prejudice caused to the assessee and that passing of draft assessment order which is not mandated by the Act cannot invalidate the assessment itself. The Ld. D.R also submitted that the Hon'ble Jurisdictional High Court has correctly taken a view that non issue of draft assessment order is only a procedural miss and has remitted the matter back to the A.O for issue of draft assessment order.

9. We have heard the parties, and perused the material available on record. The assessee's claim toward deduction u/s.35(2AB) has been disallowed by the AO and the CIT(A) has confirmed the same. The assessee raised a legal contention before the CIT(A) stating that the AO did not issue a show cause notice / draft assessment order before making the disallowance. The said legal contention is also rejected by the CIT(A) stating that the

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procedure as required u/s.144B has been correctly followed. From the perusal of records we notice that the AO has issued a notice u/s.142(1) and in the said notice has called on the assessee to show cause as to why a disallowance u/s.35(2AB) cannot be made in assessee's case. The argument of the assessee is that the Hon'ble Delhi High Court and Hon'ble Gujarat High Court have held that the show cause notice should be accompanied by draft assessment order failing which the assessment is to be set aside. In this regard we notice that the Hon'ble Delhi High Court while setting aside the assessment order has given liberty to the AO to pass fresh assessment order in accordance with law. Further from the perusal of the observations of the Hon'ble High Courts we notice that the ratio laid down is that the assessee should be given an opportunity in case any variation is proposed and that not providing such an opportunity by non-issue of show cause notice / draft assessment order as per the procedure laid down under section 144B is against the principles of natural justice which renders the assessment invalid. However the Hon'ble Madras High Court while considering an identical issue has held that:

*“7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.*

*8. The procedure under Section 144B of the IT Act is structured. It contemplates different stages of assessment and eventualities where, returns are filed or where returns are not filed and replies filed or not filed. At each stage, the matter has to go to the Assessment Unit and the Draft Assessment Order has to be passed.*

*9. In this case, the Department has combined the Show Cause Notice as is contemplated under Section 144B(11) with the procedure under Section 144(1)(xiv) of the IT Act.*

*10. The proceedings cannot be short circuited particularly when the provisions are categorical notwithstanding the fact that the petitioner may have failed to reply to some of the notices that were issued under Section 142(1) of the IT Act or there was a failure on the part of the*

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*petitioner to file the returns immediately after a notice under Section 148 of the IT Act issued on 23.03.2020.*

*11. Be that as it may, the matter is that the impugned Assessment Order has been passed directly without issuance of a Draft Assessment Order. Combining of the Draft Assessment Order and the Show Cause Notice is not permissible under the provisions of the IT Act.*

*12. Considering the above, the impugned Assessment Order is set aside and the case is remitted back to the respondents to refer the matter to the Assessment Unit to pass a Draft Assessment Order within a period of three months from the date of receipt of a copy of this order.”*

10. Considering the binding precedence of the jurisdictional High Court, we remit the present case back to the AO to pass the draft assessment order within a period of three months giving opportunity to the assessee contend the impugned issue in the interest of natural justice and fair play. It is ordered accordingly.

11. In result the appeal of the assessee is allowed for statistical purposes.

*Order pronounced on 11<sup>th</sup> day of March, 2026 at Chennai.*

**Sd/-**  
**(मनु कुमार गिरि)**  
**(Manu Kumar Giri)**

**न्यायिक सदस्य / Judicial Member**

**Sd/-**  
**(पद्मवती एस)**  
**(Padmavathy.S)**

**लेखा सदस्य /Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 11<sup>th</sup> March, 2026.  
EDN, Sr. P.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF