IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5064 OF 2022

Kellogg India Private Limited ….Petitioner

V/s.

National Faceless Assessment
Centre, Delhi and Ors. …Respondents

Mr. J.D. Mistri, Senior Advocte a/w Mr. Madhur Agrawal i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 5th MAY, 2022

P.C. :

1. In this case an assessment order dated 28th June, 2021 was passed under Section 143(3) read with Section 144C(3) read with Section 144B of the Income Tax Act, 1961 (the Act) for A.Y. 2017-18 making certain additions to petitioner's income. Against that order petitioner has filed appeal under Section 246A of the Act which is pending. Mr. Mistri submitted that by virtue of provisions of Section 275 of the Act, any order imposing penalty under Section 270A of the Act could be passed only when there is no appeal filed under Section 246A of the Act.

2. The petition was listed on 25th April, 2022 and was stood over today to enable the counsel for respondent to take instructions. Today Mr.Suresh Kumar is requesting for some time to file reply. In our view, there

is no requirement to grant any further time because Section 275 of the Act is very clear, it shows no order imposing a penalty under this Chapter shall be passed in a case where the relevant assessment order or other order is the subject matter of appeal to the Commissioner (Appeals) under Section 246A of the Act. Therefore, when there is such appeal pending, the order under Section 270A of the Act shall not be passed.

3. To the petition annexed is an e-mail from Delhi Samadhan Faceless appeal – samadhan.faceless.appeal@incometax.gov.in issued at 3.41 p.m. on 12th November, 2021 where NFAC has confirmed that there has been problem in the NFAC e-filing portal, that they have received appeal in Form No.35 and the same has been sent for appropriate action to the concerned officer. Therefore, it is quite clear that petitioner has filed an appeal. In such circumstances, the impugned penalty order dated 15th March, 2022 under Section 270A of the Act could not have been passed. Therefore, the said order is hereby quashed and set aside.

4. The concerned officer may take further steps in accordance with law after the appeal is disposed by CIT (A) as far as it relates to penalty provisions under Section 270A of the Act.

5. Mr. Mistri states copy of the appeal will also be handed over to Mr.Suresh Kumar by tomorrow.

6. We clarify that we have not made any observations on the merits of the case.

7. Petition disposed.

(N. R. BORKAR, J.) **(K.R. SHRIRAM, J.)**