IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5555 OF 2022

Skoda Auto Volkswagen India Private Ltd. ....**Petitioner.**

V/s.

National Faceless Assessment Centre, Delhi and Ors. ...**Respondents**

Mr.Jitendra Jain i/b Mr. Atul K. Jasani, for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 6th MAY, 2022

P.C. :

1. In this case an assessment order dated 19th April, 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. Jain 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 2nd May, 2022 and was stood over to today. 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 provides that 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 is annexed an extract of e-proceedings response acknowledgment dated 23rd February 2022 that shows various documents attached, one of which is Form No.35-Appeal and annexures to the appeal. The fact that such appeal is filed is also acknowledged in the impugned order under Section 270-A but the Faceless Assessing Officer (FAO) strangely states, appeal has been filed and Form no.35 is furnished and request from Assessee to keep the proceedings in abeyance has been received but because Form no.35 was not available in the database of the department and proceedings being time barring in nature, the proceedings are not kept in abeyance. This in our view is an absurd reason for issuing the order impugned. In the circumstances, the impugned penalty order dated 23rd March, 2022 under Section 270A of the Act could not have been passed. Therefore, the said order is hereby quashed and set aside.

4. Despite acknowledging that an appeal has been filed and provisions of Section 275 requiring the penalty proceeding have to be kept in abeyance,

the FAO has passed the impugned order for reasons that could only be stated to be baseless, thereby petitioner being put to harassment and costs and precious judicial time being spent. Even the Government had to incur legal costs to defend the impugned order. Therefore, the concerned FAO shall pay a sum of Rs.10,000/- from his personal account to 'PM Cares Fund' and file an affidavit in compliance within six weeks to which, copy of the bank statement of the FAO showing debit shall be annexed. The account details are as under :

Name of the Account	: PM CARES
Account Number	: 60355358964
IFSC	: MAHB0001160
Branch	: UPSC – New Delhi.

5. 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.

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.)**