**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1660 OF 2024**

Joseph Parokaran Ouseph ….Petitioner

V/s.

Additional/Joint/Deputy/Assistant Commissioner of Income/Income Tax Officer, National Faceless Assessment Center, Delhi & Ors. ….Respondents

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Mr. Ajay V. Anand a/w. Ms. Rajashri Karande, Mr. Mayur Sarode and Ms. Vaidehi Godse for petitioner.
Mr. Suresh Kumar for respondents-Revenue.
Mr. Brahm Dev Gautam, Income Tax Officer 42(2)(3), Mumbai office present.

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**CORAM : K.R. SHRIRAM &**
**DR. NEELA GOKHALE, JJ.**
**DATED : 12th APRIL 2024**

**P.C. :**

1 This petition pertains to Assessment Year 2012-2013. Prayer clause – (a) in the petition reads as under :

> (a) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ under Article 226 of the Constitution of India, Calling for records pertaining to the alleged *exparte* assessment order under section 144 r.w.s. 147 dated 17.12.2019 passed by respondent no.2, impugned order of penalty under section 271F dated 24.07.2021 and order of penalty under section 271(l)(c) dated 08.09.2021 for the AY 2012-13 by respondent no.1 and quash and set aside the same.

2 It is petitioner's case that on 3rd September 2021 petitioner received by registered post at his residential address at Kerala five notices

of various dates issued by respondent no.1 and respondent no.2. Two of the notices dated 17th December 2019 and 8th January 2021 were under Section 274 read with Section 271(1)(c) of the Income Tax Act, 1961 (the Act), third was a show cause notice dated 6th March 2021 for penalty under Section 271(1)(c) of the Act, fourth was a reminder letter dated 18th August 2021 and lastly an insight notice dated 31st August 2021 for non compliance against notices received from NFAC.

3 Petitioner, therefore, through his Chartered Accountant opened the Income Tax Portal and found two orders dated 24th July 2021 and 8th September 2021 imposing penalty under Section 271F and Section 271(1)(c) of the Act. Petitioner states these orders have been passed without issuing any notice and without giving an opportunity of being heard. Petitioner also states, having considered the order passed under Section 271(1)(c) of the Act, it appears that an assessment order had been passed against petitioner invoking the provisions of Section 147 read with Section 144 of the Act. It is petitioner's case that no such order has been served on petitioner at all in any manner whatsoever.

4 Later when petitioner re-examined the Income Tax Portal, he came to know that respondent no.4 has merely uploaded a notice dated 30th March 2019 under Section 148 of the Act and respondent no.2 uploaded a show cause notice dated 25th November 2019, a show cause notice dated 11th December 2019 and an intimation letter dated

4th February 2020 for order under Section 144 read with Section 147 of the Act. A demand notice dated 4th February 2020 for recovery of alleged outstanding demand of Rs.29,94,610/- was also found. It is petitioner's case that once again petitioner was never served any notice.

5 Petitioner responded by filing a reply dated 20th September 2021 in the Income Tax Portal and also requested for issuance of the ex-parte assessment order. Reminders were sent and grievance was also filed in the insight portal. There was no response. Hence, this petition came to be filed.

6 On 28th March 2024 respondents were represented and Income Tax Officer one Mr. Brahm Dev Gautam was also present. It was informed to the Court that the physical file is not traceable as the PAN has been transferred to either Thrissur or Kochi in Kerala. Mr. Gautam, who is present in Court today, informs the Court that he spoke to the concerned Assessing Officer in Thrissur and Kochi who has informed him that there is no evidence of any notice having been served on assessee.

7 Therefore, the impugned assessment order dated 17th December 2019 and the orders imposing penalties cannot be sustained. The same are hereby quashed and set aside. Consequential orders under Section 271F of the Act and Section 271(1)(c) of the Act and demand notices are also hereby quashed and set aside.

8 Petition disposed accordingly.

**(DR. NEELA GOKHALE, J.)** **(K.R. SHRIRAM, J.)**