BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.08.2024**

CORAM:

THE HONOURABLE MR JUSTICE MOHAMMED

SHAFFIQ

W.P(MD)Nos.25421 to 25424 and 11574 of 2022
and
W.M.P(MD)Nos.19507, 19509, 19511, 19515, 19513, 19516,
8181, 8182, 19514, 19517 of 2022

M/s.Eskay Auto
Represented by its Partner,
Mr.S.Nafeezkhader Ibrahim
No.6, Bye Pass Road,
Subramaniyapuram
Trichy 620 020
Tamil Nadu. ...Petitioner in all W.Ps

Vs.

1.The Income Tax Officer,
National Faceless Assessment Centre
Delhi.

2.The Assessment Officer,
Circle 1(1) Trichy,
Trichy Main Building,
Williams Road,
Cantonment,
Trichy 620 015. ... Respondents in all W.Ps

Prayer in W.P(MD)No.25421 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call for the records pertaining to the impugned order dated 20.09.2022 bearing DIN ITBA/PNL/F/27IF/2022-23/1045736888(1) issued by the 2nd respondent and quash the same.

Prayer in W.P(MD)No.25422 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call for the records pertaining to the impugned order dated 20.09.2022 bearing DIN ITBA/PNL/S/156/2022-23/1045729652(1) issued by the 2nd respondent and quash the same.

Prayer in W.P(MD)No.25423 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call for the records pertaining to the impugned order dated 23.09.2022 bearing DIN ITBA/PNL/F/271AAC(1)/2022-23/1045870602(1) issued by the 2nd respondent and quash the same.

Prayer in W.P(MD)No.11574 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call for the records pertaining to the impugned Assessment Order dated 27.03.2022 passed by the 1st respondent in respect of the Assessment Year 2017-18 and quash the same.

Prayer in W.P(MD)No.25424 of 2022: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, call for the records pertaining to the impugned order dated 23.09.2022 bearing DIN ITBA/PNL/S/156/2022-23/1045870545(1) issued by the 2nd respondent and quash the same.

For Petitioner : Mr.Hari Radhakrishnan
For Respondents : Mr.N.Dilipkumar
Standing Counsel
(in all cases)

COMMON ORDER

The Writ Petitions are filed seeking the following relief:

(i) W.P.(MD).No.11574 of 2022 is filed challenging the impugned order of assessment dated 27.03.2022 relating to the assessment year 2017-2018.

(ii) W.P.(MD).No.25421 of 2022 is filed challenging the consequential order of penalty dated 20.09.2022 under Section 271F of the Income Tax Act for the assessment year 2017-2018.

(iii) W.P.(MD).No.25422 of 2022 is filed challenging the consequential demand notice dated 20.09.2022 under Section 156 of Income Tax Act for the assessment year 2017-2018 .

(iv) W.P.(MD).No.25423 of 2022 is filed challenging the order of penalty dated 23.09.2022 under Section 271AAC(1) of the Income Tax Act for the assessment year 2017-2018.

(v) W.P.(MD).No.25424 of 2022 is filed challenging the impugned demand notice dated 23.09.2022 under Section 156 of the Income Tax Act for the assessment year 2017-2018.

2. It was submitted by the learned counsel for the petitioner that vide notice dated 27.12.2021, the respondents stated that the petitioner had not replied to the notice issued by the National Faceless Assessment Centre. In response, the petitioner sent a reply stating that they had wound up their business in the year 2013 and that no transactions were made thereafter. The petitioner also confirmed that they could not trace any notices issued earlier and also informed that they have updated their email in the online portal so that future notices could be sent to the said

email id. It was also informed that they have asked M/s.Axis Bank to issue a bank statement so that appropriate reply could be submitted. It was further submitted that the petitioner did not receive any subsequent notice in the registered email id or in the declared address and therefore, did not submit any further reply to the notices.

3. It was further submitted that the correspondences pertaining to the impugned proceedings have been sent to sanvenca@sify.com, which do not relate/belong to the petitioner. Though the petitioner has specifically stated in their letter dated 05.01.2022 that the communication details have been updated in the portal, the notices were sent to sanvenca@sify.com, which do not relate/belong to the petitioner. The petitioner was surprised to receive a SMS from the Income Tax Department on 25.03.2022 stating that a notice has been issued under Section 147 of the Act. Thereafter, the petitioner received another SMS on 28.03.2022 stating that an order has been issued on 27.03.2022. Thereafter, the

petitioner logged into the Income Tax Portal and was surprised to see that an assessment order dated 27.03.2022 has been issued without hearing the petitioner. The said assessment order relates to the assessment year 2017-18 and as per the said order, the petitioner's income was assessed at Rs.2,43,07,000/-, in addition, penalty proceedings were proposed to be initiated against the petitioner. On receipt of the said order dated 27.03.2022, the petitioner found that the second respondent issued a notice under Section 148 of the Income Tax Act, as early as on 26.03.2021. However, copy of the said notice was not served on the petitioner as required under the Act, therefore, the entire proceedings culminating in the assessment order dated 27.03.2022 has been passed without jurisdiction.

4. The impugned order of assessment, consequential demand notices and orders imposing penalty are challenged on the premise that show cause notice was issued to the petitioner on 24.03.2022, directing him to submit his response before

25.03.2022, while directing the petitioner to furnish the information regarding the cash deposit of Rs.2,43,07,000/- in the petitioner's Bank account during the financial year 2016-17 and to disclose source of deposit.

5. It was submitted by the learned counsel for the petitioner that opportunity granted vide show cause notice, dated 24.03.2022 was not real but illusory inasmuch as the details sought for are baseless and thus, the impugned order of assessment, which was made on 27.03.2022, suffers from violation of principles of natural justice.

6. To the contrary, the learned Standing Counsel for the respondents would submit that the impugned order of assessment has been passed after the petitioner has been put on notice and therefore, the complaint of violation of principles of natural justice, is not justified.

7. I have considered the submissions made on either side.

8. In response to the notice dated 27.12.2021, the petitioner has, vide its reply dated 05.01.2022, indicated that they had updated their email id in the web portal and that they would respond to the notices hereafter. The relevant portion is extracted hereunder:

> "*We have updated our email id and we will hereafter take note of your notices regularly.*"

It is submitted that the updated email id is,

nafees_khader@yahoo.com

soilmachines@gmail.com

However, the respondents continued to issue notices and the impugned order to the following mail id,

sanvenca@sify.com,

which, it is submitted, does not belong to the petitioner. It was further submitted that issuance of the notice to a wrong mail id has resulted in denying the petitioner an opportunity to put forth their case.

9. At this juncture, it was submitted by the learned Standing Counsel for the respondents that the petitioner may furnish a reply within a period of two weeks from the date of receipt of a copy of this order.

10. In view thereof, the impugned order of assessment dated 27.03.2022 is set aside. The consequential orders of penalty dated 20.09.2022 and 23.09.2022 and demand notices dated 20.09.2022 and 23.09.2022 are set aside. The impugned order of assessment shall be treated as a show cause notice and the petitioner shall submit its objections within a period of two (2) weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents shall consider the same and pass fresh orders, after providing a reasonable opportunity of hearing to the petitioner.

11. Accordingly, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

13.08.2024

NCC:Yes/No
Index : Yes / No
Internet : Yes / No
To

1.The Income Tax Officer,
National Faceless Assessment Centre
Delhi.

2.The Assessment Officer,
Circle 1(1) Trichy,
Trichy Main Building,
Williams Road,
Cantonment,
Trichy 620 015.

MOHAMMED SHAFFIQ, J.

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