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**IN THE HIGH COURT OF DELHI AT NEW DELHI****W.P.(C) 3197/2025 & CM APPL. 14928/2025****ST ENGINEERING AEROSPACE ENGINES PTE LTD**

.....Petitioner

Through: Mr. Ajay Vohra, Sr.Adv. with  
Mr.Rohit Garg, Adv.

versus

**THE ASSISTANT COMMISSIONER OF INCOME  
TAX & ANR.**

.....Respondents

Through: Mr.Sunil Agarwal, SSC with  
Mr.Shivansh B Pandya, JSC,  
Mr.Viplav Acharya, JSC, Ms.Priya  
Sarkar, JSC, Mr.Utkarsh Tiwari,  
Adv.

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***Date of Decision: 12<sup>th</sup> March, 2025*****CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGEMENT****TUSHAR RAO GEDELA, J : (ORAL)**

1. Present petition has been filed, *inter alia*, seeking the following prayers:-

*"a) Writ of Certiorari or Mandamus or an appropriate writ, order or direction setting aside Impugned Notice dated 03.05.2023 issued by the Respondent No.1 under Section 148 of the Act for the AY 2019-20 and the Impugned Order dated 03.05.2023 passed by the Respondent under Section 148A(d) of the Act;*

*b) A Writ, Order or Direction in the nature of Mandamus or an order prohibiting / desist the Respondent No.1 from taking any further steps pursuant to the Impugned Notice and Impugned Order issued / passed by the Respondent No.1 for AY 2019-20;*

*c) A Writ, Order or Direction in the nature of Mandamus or an order prohibiting the Respondent No.1 from framing assessment for AY 2019-20 against the Petitioner under Section 147 of the Act;*



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*d) Ad-interim stay in respect of the above prayers at (a) to (c);*

*e) Pass any other relief which this Hon'ble Court may deem fit and proper in favour of the appellant in the facts and circumstances of the case."*

2. The notice under section 148A(b) of the Income Tax Act, 1961 (hereinafter referred as "*the Act*") dated 31.03.2023 was issued by the Respondent (hereinafter referred as "*Revenue*") alleging that the information available suggests that income chargeable to tax for the Assessment Year (AY) 2019-20 has escaped assessment within the meaning of section 147 of the Act. The relevant information was enclosed as Annexure-A to the said notice. The information which was flagged by the risk management strategy (High Risk Transaction) formulated by the board in accordance with explanation 1(i) to section 148 of the Act reads thus:

*"Annexure-A*

*In the instant case, the following information has been flagged by the risk management strategy (High Risk Transactions) formulated by the Board in accordance with Explanation 1(i) to Section 148 of the Act with respect to the transactions of the assessee for AY 2019-20.*

*2. During the year under consideration, the assessee i.e. ST Aerospace Engines Pte Ltd. had received a sum of Rs. 40,14,48,223/- on account of FTS/FIS from M/s Spicejet Ltd. on which TDS was not deducted by the Indian payer even though the consideration, received by the non-resident assessee, is income that is chargeable to tax in India. Thus, the aforementioned income received by the assessee has not been offered to tax, and no justification has been provided for the same.*

*3. The assessee did not file any ITR for the given AY. Thus, the income of Rs.40,14,48,223/-, being income sourced in India and chargeable to tax therein, has not been offered for taxation. Therefore, the aforesaid information suggests that income chargeable to tax in the case of the assessee for the given AY 2019-*



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*20 has escaped assessment.*

*4. Therefore, you are required to show-cause as to why the income received during the year should not be treated as income for the year as per the provisions of Income Tax Act and a notice u/s 148 should not be issued on the basis of above information which suggest that income chargeable to tax has escaped assessment.*

*5. Please note that in case if no reply, it would be presumed that you have no explanation to provide for the above mentioned information and necessary action would be taken under the provisions of the Act as per information available on record.”*

3. Subsequently, the Assessing Officer (hereinafter referred as “AO”) passed an order under section 148A(d) of the Act dated 03.05.2023 observing, *inter alia*, that during the year under consideration the assessee had received a sum of Rs. 40,14,48,223/- on account of FTS/FIS from M/s Spicejet limited on which TDS was not deducted by the Indian Payer even though the consideration, received by the non-resident assessee, is income which is chargeable to tax in India. It was observed that the assessee had not filed any ITR for the relevant AY suggesting income chargeable to tax for the relevant AY has escaped assessment. The order proceeded on the premise that despite service of notice under section 148A(b) of the Act dated 31.03.2023, no response till such date was submitted by the assessee. Predicated thereon, it was held that assessee had no explanation to offer and necessarily a show cause notice under section 148 of the Act was required to be issued. Palpably, notice under section 148 was also issued by the revenue.

4. Following the aforesaid, a notice under section 142(1) of the Act was issued on 25.10.2024. In a challenge before the Bombay High Court in ***Writ Petition (L) No.32238 of 2024*** titled “***St. Engineering Aerospace***



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***Engines Pte. Ltd. vs. Assistant Commissioner of Income Tax Int. Tax Circle***, vide order 18.11.2024, the re-assessment proceedings were restrained. Subsequently, the revenue issued a reminder notice under section 142(1) of the Act on 17.02.2025 calling upon the assessee to furnish a response by 25.02.2025.

5. The assessee claims to have received the said notice at its registered address in Singapore claiming that this was the first communication received by it for AY 2019-20. The assessee states to have filed a response furnishing its official email address requesting sharing of the previous notice and order under section 148A(b) and 148A(d) respectively; and notice under section 148 of the Act, which it stoutly claimed to not have received. As per the assessee, the revenue sent an email dated 28.02.2025 enclosing copies of all the relevant documents sought for by it.

6. It was contended on behalf of the assessee that it is an entity which is registered in Singapore and has no Permanent Account Number, nor any credentials in the IT Portal apart from not having received any communication whatsoever at Singapore. It is also claimed that only the notice dated 17.02.2025 under section 142(1) of the Act was served upon the assessee at Singapore. Apart from alleging violation of Principles of Natural Justice inhering in taxing statutes, even on merits it was urged that the revenue has proceeded with the assessment proceedings without having the benefit of the agreement executed between the assessee and M/s Spicejet Limited. That apart, it is claimed that the Maintenance, Repair and Overhaul services (hereinafter referred as “*MRO services*”) carried out outside India during the FY 2018-19 and the remittances received thereon, cannot become subject matter of income suggestive of having escaped assessment.



7. It was also vociferously contented that as per Article 12(4) of the Indo-Singapore Double Taxation Avoidance Agreement (hereinafter referred as “DTAA”), the consideration received in respect of MRO services rendered in FY 2017-18 against which remittances were made in 2018-19, would not be taxable as FTS. Thus, on this short point too, learned senior counsel forcefully contended that the impugned notice under section 148A(b); impugned order under section 148A(d) and impugned notice under section 148 of the Act ought to be quashed.

8. Mr. Aggarwal, learned Senior Standing Counsel for the revenue on the other hand counters the argument of the assessee and submits that despite service of impugned notice under section 148A(b); impugned order under section 148A(d) and impugned notice under section 148 of the Act, the assessee failed to file an appropriate response and did not offer any explanation as to why the said income should not be treated as FTS/FIS nor did the assessee file any ITR for the given AY and therefore, the assessment proceedings initiated consequent upon notice under section 148 of the Act ought not to be interfered with or interdicted by this Court. He also submits that the assessee would have his remedies post passing of the Final Assessment Order (in short “FAO”) by taking recourse to the appropriate appellate proceedings under the Act. Learned SSC states that the burden to discharge the onus that the remittances received by the assessee are not FTS/FIS was upon the assessee which it should have discharged at the relevant time. Having not complied with the provisions of the Act, he contends that the assessee cannot seek intervention by way of a petition under Article 226 of the Constitution of India, on the grounds of violation of Principles of Natural Justice.

9. Having heard learned counsel for the parties we find that the revenue



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has not been able to demonstrate that the impugned notice under section 148A(b); impugned order under section 148A(d) and impugned notice under section 148 of the Act were ever served upon the assessee at its registered office at Singapore. The fact that the assessee has no Permanent Account Number nor any credentials in the IT Portal has neither been contradicted nor controverted by the revenue. Undisputedly, the assessee is a foreign company which is a resident of Singapore and appears to be covered under the provisions of DTAA.

10. Since the facts and incidental issues raised by the assessee has neither been placed before the concerned AO nor considered in the absence thereof, we deem it apposite not to enter into the examination of whether MRO services rendered outside India during FY 2017-18 and remittances received in FY 2018-19 would constitute FTS/FIS and as also as to whether such remittances are or are not covered under the provisions of DTAA, inasmuch as the notice under section 148A(b) of the Act requiring the assessee to provide relevant information and satisfactory explanation appears to have not been received by the assessee.

11. During the course of the hearing and after consideration of the above facts, as we are inclined to remit the matter to the stage of consideration of notice under section 148A(b) of the Act. The learned SSC fairly concedes to the same. Learned Senior Counsel, on instructions, submits the assessee would have no grievance in case such a course of action is directed to be undertaken.

12. In view of the above, and considering the facts and circumstances of the present case, we quash the impugned order under section 148A(d) dated 03.05.2023 as also the impugned notice under section 148 of the Act dated 03.05.2023 and remit the matter back to the stage of consideration notices



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under section 148A(b) of the Act.

13. We provide time of three weeks to the assessee to file its substantive reply alongwith all the relevant materials/documents in support of its response with the concerned AO. The AO shall, thereafter, proceed in accordance with law upon receipt of such response.

14. Accordingly, the present writ petition alongwith pending application stands disposed of.

**TUSHAR RAO GEDELA, J**

**DEVENDRA KUMAR UPADHYAYA, CJ**

**MARCH 12, 2025/rl**