IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7th DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

W.P. NO.9596/2022(TAX-IT)

BETWEEN:

M/S ZOOMCAR INDIA PRIVATE LIMITED
A COMPANY DULY REGISTERED UNDER
THE COMPANIES ACT, 1956 AND HAVING
ITS OFFICE AT ANJANEYA TECHNO PARK,
NO.147, I FLLOR, HAL OLD AIRPORT ROAD,
ISRO COLONY, KODIHALLI,
BENGALURU-562119.

REPRESENTED BY ITS-DIRECTOR FINANCE
SRI. ABHIJIT BANERJEE,
AGED 57 YEARS
S/O LATE P.K.BANERJEE

... PETITIONER

(BY SRI.PRAKASH SHA & SRI.MIHIR MEHTA
AND MOHAN MAIYA G.L., ADVOCATE)

AND:

1. THE UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NORTH BLOCK,
NEW DELHI-110001.

2. THE PRINCIPAL COMMISSIONER
OF INCOME TAX, BANGALORE-2,
BMTC BUILDING, 80 FT ROAD,

6TH BLOCK, NEAR KGB GAMES VILLAGE,
KORAMANGALA, BENGALURU-560095,
KARNATAKA.

3. THE ASSISTANT COMMISSIONER OF
INCOME TA, CIRCLE 7(1)(1), BANGALORE,
BMTC BUILDING, 80 FT ROAD,
6TH BLOCK, NEAR KGB GAMES VILLAGE,
KORAMANGALA, BENGALURU-560095,
KARNATAKA.

... RESPONDENTS

(BY E.I.SANMATHI, ASG)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH AND SET ASDIE (i) THE IMPUGNED NOTICE NO.ITBA/AST/F/17/2021-22/1040760885(1) DATED 15.03.2022 ISSUED UNDER SECTION 148(A) OF THE ACT VIDE ANNEXURE-A, (ii) IMPUGNED NOTICE NO.ITBA/AST/F/17/2021-22/1041327656(1) DATED 23 03.2022 ISSUED UNDER SECTION 148(A) OF THE ACT VIDE ANNEXURE-A, (iii) IMPUGNED NOTICE NO.ITBA/AST/S/148_1/2022-23/1042611645(1) DATED 07.04.2022 PURPORTED TO BE UNDER SECTION 148A(D) OF THE ACT VIDE ANNEXURE-C AND (I) CONSEQUENTIAL IMPUGNED ORDER NO; ITBA/AST/F/148A/2022-23/1042608198 (1) DATED 07.04.2022 ISSUED UNDER SECTION 148OF THE ACT VIDE ANNEXURE-D AND ETC

THIS WRIT PETITION COMING ON FOR *ORDERS,* THIS DAY THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of providing cars to customers on a self drive basis on receipt of consideration for a fixed duration of time as chosen by customers. Respondent No.3 for the purpose of re-assessing the returns filed by the petitioner issued notice under Section 148A(a) of the Income Tax Act, 1961 dated 15.03.2022 bearing No. ITBA/AST/F/17/2021-22/1040760885(1) vide Annexure – A to the writ petition. Subsequently, notice under clause (b) of Section 148A of the Income Tax Act, was issued on 23.03.2022, which is produced at Annexure – B. Thereafter, on 07.04.2022 order was passed under clause (d) of Section 148A of Income Tax Act, 1961 bearing No.ITBA/AST/F/148a/2022-23/1042608198(1) dated 07.04.2022 vide Annexure – D to the writ petition and the respondent No.3 has come to the conclusion that under the given facts and circumstances, the case of the petitioner herein is a fit case for issuance of notice under Section 148 of the Act for the assessment year 2018-2019. Aggrieved by the same, the instant writ petition is filed.

2. Apart from other things, it is contended by the petitioner that it was not given an opportunity of hearing as contemplated under Section 148A(b) of the

Income Tax Act before passing the impugned order under clause (d) of Section 148A of the Income Tax Act.

3. Though the impugned order at Annexure – D records that an opportunity of being heard as per provision of Section 148A(b) of Income Tax Act was provided to the assessee with a prior approval by the competitive authority, the advocate appearing for the respondents is not in a position to state whether the said opportunity was granted or not and there is no material on record to show as to an opportunity of being heard is granted to the petitioner, which is mandatory as per Section 148A(b) of the Act before passing of the impugned order under Section 148A(d) of the Income Tax Act, 1961.

4. Under the circumstances, this is a matter which deserves to be remanded on the short question of petitioner not being given an opportunity of being heard.

5. Hence, the following:

ORDER

i. Order dated 07.04.2022 bearing No.ITBA/AST/F/148A/2022-23/1042608198(1) vide Annexure – D to the writ petition is hereby set aside.

ii. Notice under Section 148 of Income Tax Act, dated 07.04.2022 bearing No. ITBA/AST/S/148_1/2022-23/1042611645 vide Annexure – C to the writ petition is also set aside, which is pursuant to order at Annexure – D.

iii. The matter is remanded to respondent No.3 to consider the case of the petitioner afresh after giving an opportunity of hearing to the petitioner in accordance with law and thereafter take appropriate decision.

iv. The petitioner is directed to appear before respondent No.3 on 23.06.2022 without further notice.

The writ petition is ***disposed of*** accordingly.

Sd/-
JUDGE

AG