IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2279 OF 2023

Flyjac Logistics Private Limited … Petitioner

V/s.

Deputy Commissioner of Income-Tax
Transfer Pricing-2(1)(1), Mumbai and Ors. … Respondents

Mr. Madhur Agrawal i/b. Atul K. Jasani for the Petitioner
Mr. Suresh Kumar a/w. Smita Thakur for the Respondents

CORAM : B.P. COLABAWALLA AND FARHAN P. DUBASH, JJ.

DATE : 25th AUGUST 2026

P.C. :

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and the Petition is heard finally.

2. This Petition has been filed by the Petitioner to challenge the order dated 20th March 2023 passed by the Transfer Pricing Officer (Respondent No. 1) under Section 92CA(3) of the Income Tax Act, 1961 (**"the Act"**) for the Assessment Year 2020-21. The main challenge in the petition is that the impugned order has been passed by Respondent No. 1 contrary to the principles of natural

justice as the mandatory Show Cause Notice required to be issued under Section 92CA(3) read with Section 92C(3) of the Act was not served on the Petitioner before passing the impugned order, and therefore, the Petitioner was not given an opportunity of being heard.

3. The facts relevant to the present petition are that the Petitioner's case for the relevant Assessment Year was selected for scrutiny assessment. During the course of the scrutiny assessment proceedings, the Assessing Officer (Respondent No. 2) referred the case of the Petitioner to Respondent No. 1 (Transfer Pricing Officer) under Section 92CA(1) of the Act for determination of the Arm's Length Price of international transactions entered into by the Petitioner with its Associated Enterprises (**"AEs"**).

4. Accordingly, Respondent No. 1 issued notices under Section 92CA(2) of the Act from time to time asking for various information from the Petitioner. The Petitioner filed replies to the said notices. Respondent No.1, thereafter, passed the impugned order dated 20th March 2023 under Section 92CA(3) of the Act. In the said order, Respondent No. 1 proposed an adjustment of Rs. 20,16,01,089/- to the Arm's Length Price of various international transactions entered into by the Petitioner. Respondent No. 1 held that a Show Cause

Notice dated 28th February 2023 was issued by Respondent No. 1 to the Petitioner, however, the Petitioner did not respond to the said Show Cause Notice. However, considering that during the last 12 months various statutory notices were issued by Respondent No. 1, no further opportunity is required to be given to the Petitioner in case of non-compliance with the Show Cause Notice. Further, one of the reasons given in the impugned order for making the transfer pricing adjustment was that the Petitioner has failed to provide adequate documentary evidence to support its claim of the Arm's Length Price for the international transactions entered into by it.

5. In this factual backdrop, Mr. Agrawal, learned counsel appearing on behalf of the Petitioner, submitted that the Show Cause Notice issued by Respondent No. 1 under Section 92C(3) of the Act is a statutory notice which is required to be issued to an Assessee before passing the order under Section 92CA(3) of the Act. He submitted that the Show Cause Notice was neither served on the Petitioner nor was the said Show Cause Notice uploaded in the Income-tax Portal of the Petitioner. The Petitioner came to know that a Show Cause Notice dated 28th February 2023 under Section 92C(3) of the Act was issued only because the same was referred to in the impugned order passed under Section 92CA(3) of the Act by the Transfer Pricing Officer (Respondent

No.1). He submitted that the initial notices which were issued to the Petitioner in response to which the Petitioner filed its replies were all notices issued under Section 92CA(2) of the Act calling for information from the Petitioner, whereas the notice dated 28th February 2023 was a Show Cause Notice issued under Section 92C(3) of the Act. He submitted that the Show Cause Notice issued under Section 92C(3) of the Act cannot be compared to notices issued under Section 92CA(2) of the Act and merely because the notices under Section 92CA(2) of the Act have been served on the Petitioner, it cannot be said that principles of natural justice are complied with unless the notice issued under Section 92C(3) of the Act is also served on the Petitioner. He submitted that since the said statutory notice under Section 92C(3) of the Act was not served on the Petitioner, the Impugned Order has been passed clearly in breach of the principles of natural justice and, hence, liable to be quashed and set aside.

6. Mr. Agrawal further submitted that in the Affidavit-in-reply at paragraph 15, the Respondents have admitted that the said Show Cause Notice was not served on the email of the Petitioner as the said email had bounced. He further submitted that in paragraph 18 of the Affidavit-in-reply, there is a reference to the response received from 'efilingwebmanager' wherein it is

noted that due to an unknown technical issue in the ITBA system of the Department, the said Show Cause Notice was not visible on the e-filing portal of the Petitioner. Further the SMS was also not generated because of the aforesaid unknown technical issue. Accordingly, there is no doubt that the Show Cause Notice was not served on the Petitioner before passing of the impugned order, was the submission.

7. Per contra, Mr. Suresh Kumar, learned counsel appearing on behalf of the Revenue, fairly admitted that the Show Cause Notice dated 28th February 2023 was not served on the Petitioner though he submitted that earlier notices were served on the Petitioner and the Petitioner had filed replies to the said notices.

8. We have heard both parties at length and also perused the documents, proceedings and affidavits filed by the parties in the present petition.

9. Section 92C of the Act provides the mechanism for computation of the Arm's Length Price. Sub-section (1) provides that the Arm's Length Price in relation to an international transaction or a specified domestic transaction shall be

determined by following one of the specified methods, which, having regard to the various relevant factors, is the most appropriate method. Sub-section (2) provides that the most appropriate method shall be applied for determining the Arm's Length Price. As per sub-section (3), the Assessing Officer may proceed to determine the Arm's Length Price of the international transaction or a specified domestic transaction in accordance with sub-sections (1) and (2) under certain specified circumstances. The proviso to sub-section (3) stipulates that an opportunity of being heard is required to be given to an Assessee, in the form of a Show Cause Notice, based on information / material in possession of the Assessing Officer before passing an order under sub-section (3). The said proviso reads as under :-

> *"Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be determined on the basis of material or information or document in the possession of the Assessing Officer."*

10. Sub-section (1) of Section 92CA of the Act provides that the Assessing Officer may refer the matter of computation of the Arm's Length Price in relation to an international transaction or a specified domestic transaction to the Transfer Pricing Officer, when he considers it necessary or expedient to do so. Sub-section (2) of Section 92CA provides that the Transfer Pricing

Officer shall serve a notice on an Assessee requiring him to produce evidence which the Assessee may rely in support of the computation made by him of the Arm's Length Price. Sub-section (3) of Section 92CA of the Act provides that the Transfer Pricing Officer shall, by an order in writing, determine the Arm's Length Price in relation to an international transaction or a specified domestic transaction in accordance with the provision of Section 92C(3) of the Act and send a copy of his order to the Assessing Officer and to the Assessee.

11. Having considered the above provisions, we are of the view that the Transfer Pricing Officer in determining the Arm's Length Price of an international transaction or a specified domestic transaction, is required to follow the procedure as prescribed in Section 92C(3) of the Act. Therefore, the proviso to Section 92C(3) of the Act, which embodies a statutory requirement of issuing a Show Cause Notice before determining the Arm's Length Price of an international transaction or a specified domestic transaction, will also be applicable to the Transfer Pricing Officer before he passes an order under Section 92CA(3) of the Act.

12. We find that in the present case admittedly, the said statutory Show Cause Notice dated 28th February 2023 was never served on the Petitioner as has been accepted in the Affidavit-in-reply filed by Respondent No.1 (Transfer Pricing Officer). Therefore, the Petitioner had no occasion to file a reply to said Show Cause Notice. Further the notice issued by the Transfer Pricing Officer under Section 92CA(2) of the Act seeking information from an Assessee cannot be said to be a Show Cause Notice issued as per the proviso to Section 92C(3) of the Act. On the facts of the present case, only the notice dated 28th February, 2023 was a Show Cause Notice issued under Section 92C(3) of the Act, asking the Petitioner as to why the Arm's Length Price should not be determined based on material or information or documents in possession of Respondent No. 1. As the said Show Cause Notice is statutorily required to be issued in terms of Section 92CA(3) read with Section 92C(3) of the Act, the impugned order dated 20th March, 2023, which has been passed without serving the said Show Cause Notice on the Petitioner, is therefore, bad in law and liable be set aside. We accordingly pass the following order :-

(a) The impugned order dated 20th March 2023 is set aside.

(b) The matter is remanded back to the file of the Transfer Pricing Officer at the stage of issuance of the Show Cause Notice dated 28th February 2023.

(c) The Petitioner will file a reply to the said Show Cause Notice within two weeks from the uploading of this order on the High Court Website.

(d) The Transfer Pricing Officer will pass an order under Section 92CA(3) of the Act as expeditiously as possible and preferably within a period of 12 weeks from the date of the uploading of this order after affording a personal hearing to the Petitioner.

13. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the present case, there shall be no order as to costs.

14. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(FARHAN P. DUBASH, J.) **(B. P. COLABAWALLA, J.)**

Jyoti Pawar

JYOTI PRAKASH PAWAR
Digitally signed by JYOTI PRAKASH PAWAR
Date: 2026.08.28 17:56:48 +0530