

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

WRIT PETITION NO. 2105 OF 2022

Digitally
signed by
SHRADDHA
KAMLESH
TALEKAR
Date:
2023.06.27
18:33:10
+0530

Bennett Coleman and Company Ltd.]
a company incorporated under the]
Indian Companies Act, 1913, and]
having its Registered office at]
Times of India Building,]
Dr.D.N. Road, Mumbai 400 001.]... Petitioner

Versus

1. The Union of India,]
through the Secretary,]
Ministry of Finance, Department of Revenue,]
North Block, New Delhi-110 001.]

2. The Principal Commissioner of Income Tax,]
Circle 1, Mumbai, having his office at]
5th Floor, Aayakar Bhavan, M. K. Road,]
Mumbai 400 020.]

3. The Additional Commissioner of Income-tax,]
Circle-1(1), Mumbai having his office at]
5th Floor, Aayakar Bhavan,]
M. K. Road, Mumbai 400 020.]...Respondents

4. The Deputy Commissioner of Income-tax,]
Circle-1(1)(1), Mumbai having his office at]
Room No. 533, 5th Floor, Aayakar Bhavan,]
M. K. Road, Mumbai 400 020.]

* * * * *

Mr.Jas Sanghavi with Ms.Revati S. Nansi i/b PDS Legal, Advocate
for petitioner.

Mr.Suresh Kumar, Advocate for respondents.

**CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, J.J.**

**Reserved on : 3rd MAY, 2023.
Pronounced on : 27th JUNE, 2023.**

J U D G M E N T

PER DHIRAJ SINGH THAKUR, J. :

1. The petitioner challenges the notice, dated 31st March 2021 issued under section 148 of the Income Tax Act, 1961 ('the Act') relevant to the assessment year 2016-17 primarily on the ground that the same was issued in the name of Times Infotainment Media Ltd. which is a non-existent entity.

2. Briefly stated the material facts are as under :

The case set up by the petitioner is that Times Infotainment Media Ltd. ("TIML") was a wholly owned subsidiary of the petitioner, i.e., Bennett Coleman and Company Ltd., which was engaged *inter-alia* in the business of Private FM Radio Broadcasting investment and intellectual property rights (IPR) activities.

It is stated that with a view to consolidate the business of operations of the group companies and on account of various

commercial reasons, a scheme of amalgamation and arrangement was formulated for merger of the TIML with the petitioner. It is further stated that Bombay High Court was pleased to sanction the scheme of amalgamation vide its order dated 3rd July 2015 with appointed date as 1st April 2013.

3. It is stated that the factum of amalgamation was brought to the notice of the Assessing Officer vide communication dated 11th May 2016 which fact was acknowledged by the Deputy Commissioner of Income-tax, 1(3)(2), Mumbai vide its communication dated 23rd February 2017. It is further stated that the Ministry of Corporate Affairs, vide its communication dated 28th May 2016, had approved the change in the status of TIML as having been amalgamated with the petitioner. The further case of the petitioner is that pursuant to the orders passed by this Court, the petitioner had revised its income tax returns for the assessment year 2014-15 and included the income and expenditure of TIML for the period 1st April 2012 and 31st March 2014 and submitted the same to the then Assessing Officer vide letter dated 17th November 2016, pursuant to which, an order of assessment under section 143(2) of the Act had been passed based on the modified return filed by the petitioner on 17th November 2016 for the assessment

year 2014-15.

4. It is stated that the notice impugned dated 31st March 2021 came to be issued under section 148 of the Act in the name of Times Infotainment Media Ltd. proposing to reassess the income of the said entity on the ground that the income has escaped assessment within the meaning of section 147 of the Act.

In response to the said notice, the petitioner is stated to have filed its objections as also brought to the notice of the Assessing officer regarding the factum of amalgamation of TIML with the petitioner-company despite which the Assessing Officer continued with the proceedings and issued notice under section 142(1) of the Act directing the petitioner to furnish the accounts, documents and information mentioned in the said notices.

5. It is in the backdrop of the aforementioned facts that learned counsel for the petitioner urged that the issuance of notice the impugned under section 148 against a non-existent entity was *non-est* and *void ab-initio* in the light of the ratio of the judgment of the Apex Court in the case of ***Principal Commissioner of Income-tax Vs. Maruti Corporation Ltd.***¹. Reliance was also placed upon a

¹ (2019) 416 ITR 613

judgment of this Court in the case of *CLSA India Private Limited Vs. The Deputy Commissioner of Income Tax & 3 Ors.*².

6. Objections have not been filed to the writ petition despite ample opportunities given to the respondents in that regard. However, learned counsel for the parties agree to the final disposal of the present petition at the stage of admission itself.

7. We have heard learned counsel for the parties.

8. It is not denied that the notice issued under section 148 of the Act was issued in the name of a non-existent entity, i.e., Times Infotainment Media Ltd. which had ceased to exist pursuant to the Scheme of Amalgamation and arrangement having been approved vide order dated 3rd July 2015 with effect from 3rd July 2015 passed by this Court with effect from 1st April 2013. It is also not denied, as can also be seen from the material on record, that the factum of amalgamation of TIML was very much within the knowledge of the respondents. If that be so, then issuance of the impugned notice under section 148 in the name of a non-existent entity would render it void.

2 Writ Petition NO.2462 of 2022 dt. 10-02-2023

9. A similar view has been taken by us in the case of CLSA India Private Limited (Supra) following the ratio of the judgment of the Apex Court in the case of *Saraswati Industrial Syndicate Ltd. vs. Commissioner of Income Tax* ³ as also in the case of *Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.* ⁴ which held as under:

“33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in *Spice Entertainment* on 2 November 2017. The decision in *Spice Entertainment* has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in *Spice Entertainment*.

10. In view of the ratio of the judgments (Supra) which were followed by us in the case of *CLSA India Private Limited* (Supra), we hold that the impugned notice issued under section 148 of the Act, dated 31st March 2021 is unsustainable in law and is accordingly

3 186 ITR 278 (SC)

4 [2019] 107 taxmann.com 375 (SC)

set aside.

11. The Writ Petition is accordingly allowed. No costs.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]