

OD-45

W.P.O. No.968 of 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

TRANSWAY WINE PVT. LTD. AND ANOTHER
Versus
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA AND ANOTHER

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 5th October, 2021.

APPEARANCE:
Mr.Pranit Bag, Adv.
Mr.Subhash Agarwal, Adv.
Mr.Anuj Kr. Mishra, Adv.
Mr.Brijesh Singh, Adv.
...for petitioners
Mr.Y.J.Dastoor, ASG
Mr.Prabir Bhowmik, Adv.
Mr.Madhu Jana, Adv.
For respondents

The Court: Heard the learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned notice dated 20th April, 2021 relating to assessment year 2015-16 under Section 148 of the income Tax Act, 1961 which is a transferee company on the ground that the impugned notice has been issued in the name of the company which has already been amalgamated on 15th October, 2019 with retrospective effect from 1st April, 2017 and the department has been intimated about this amalgamation which is matters of record and such notice in the name of a non-existing company is not tenable in the eye of law since information of such amalgamation was already given to the respondent on 20th February, 2020.

In support of his contention Mr. Bag, learned advocate appearing for the petitioners has relied on a decision of the Hon'ble Gujarat High Court in the case of **Takshashila Realities Pvt. Ltd. Versus Dy. Commissioner of Income Tax** reported in 2016 SCC OnLine Guj 6462 and specifically relies on Paragraph

10 of the said judgment and also my own order dated 2nd August, 2021 in **WPA 1791 of 2020 (Brubeck Resources Pvt. Ltd. & Anr. Vs. Union of India & Ors.)**.

Considering the submission of the parties, I am of the view that the impugned notice dated 20th April, 2021 (Annexure P-4 to the writ petition) is not tenable in the eye of law and all further steps pursuant to the said impugned notice also are not tenable in the eye of law and the same are quashed. This writ petition is allowed and the impugned notice is quashed solely on the ground that the impugned notice was issued in the name of non-existing company in spite of revenue having notice and knowledge of non-existence of such Company. Quashing of this notice will not prevent the respondents from issuing fresh notice in accordance with law.

Since no affidavits have been called for, allegations made in the writ petition are deemed to have been denied by the respondents.

Accordingly, WPO No.968 of 2021 is disposed of.

(MD. NIZAMUDDIN, J.)

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