

18-04-2022
Item No.23
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.5769 of 2022
Shiv Niketan Limited
-vs-
Union of India & Ors.

Mr. Avra Mazumder
Sk. Md. Bilwal Hossain ...for the petitioner

Ms. Smita Das De ...for the respondents

Heard learned advocates appearing for the respective parties.

In this writ petition, petitioner has challenged the impugned notice dated June 23, 2021 relating to assessment year 2015-16 under section 148 of the Income Tax Act, 1961 which is a transferor company on the grounds that the impugned notice has been issued in the name of the company which has already been amalgamated in 2015 and that 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.

In support of his contention, learned advocate for the petitioner has relied on a decision of the Gujarat High Court in the case of **Takshashila Realities Pvt. Ltd. v. Deputy Commissioner of Income Tax reported in 2016 SCC OnLine Guj 6462** and specifically relies on paragraph 10 of the said judgement which is hereinbelow:-

“10. Heard the learned Counsels appearing on behalf of the respective parties at length. At the outset, it is required to be noted and it is not in dispute that the

impugned notices under section 148 of the Income Tax Act have been issued against the original assessee on 21.01.2011 to reopen the assessment for the Assessment year 2009-10. It is also not in dispute that the respective petitioners-original assessee are ordered to be amalgamated with one Takshasila Gruh Nirman (Subsequently named as Takshashila Realities Pvt. Ltd). The scheme of amalgamation has been sanctioned by this Court, by which the respective petitioners are ordered to be amalgamated into Takshashila Gruh Nirman (Subsequently named as Takshashila Realities Pvt. Ltd.) with effect from 01.04.2010. Under the circumstances, when the impugned notices are issued against the original assessee-amalgamating Company on 21.01.2011, it can be said that the same has been issued against the non-existent Company. It cannot be disputed that once the scheme for amalgamation has been sanctioned by the Court with effect from 01.04.2010, from that date amalgamating Company would not be in existence. Under the circumstances, the impugned notices, which are issued against the non-existent Company, cannot be sustained and the same deserves to be quashed and set aside. Identical question came to be considered by the Division Bench of this Court in the case of Khurana Engineering Ltd. (supra). It was the case where the original assessee Company was ordered to be amalgamated with effect from 01.04.2009. Notice under section 148 of the Income Tax Act was issued against and the transferor Company-amalgamating Company on 20.06.2012. The Division Bench of this Court in a writ petition filed by the transferor Company has observed and held that on and from the appointed date, as per the scheme of amalgamation sanctioned by the Court, the transferor Company shall not be in existence, and therefore, the impugned notices against the transferor

Company (non-existent Company) shall not be permissible. The Division Bench has observed that in such a situation the assessment can always be made and is supposed to be made on the transferee Company taking into account the income of both the transferor and transferee Company and also the more advisable course from the point of view of the revenue would be to make one assessment on the transferee Company and to make separate protective assessments on both the transferor and transferee Companies separately ultimately, the Division Bench has held that the transferor Company would no longer be amenable to the assessment proceedings for the Assessment Year 2010-11, and therefore, notice for producing documents for such assessment would therefore be invalid.”

Learned advocate for the respondents in all her fairness has submitted that she has got no case and could not distinguish the aforesaid judgement of the Hon’ble Gujarat High Court on the facts and law.

Considering the submission of the parties, I am of the view that the impugned notice dated June 23, 2021 (Annexure P2 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. 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.

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

Accordingly, **WPA No.5769 of 2022 is disposed of.**

This writ petition is allowed subject to payment of costs of Rs.5,000/- to the High Court Legal Services Committee, since the impugned notice under section 148 of the Income Tax Act, 1961 has been issued on June 23, 2021 as appears from record and this writ petition has been filed in March 2022, that is, almost after eight months from receipt of the impugned notice, without any explanation for such delay in filing this writ petition. Such costs has to be paid by the petitioner to the High Court Legal Services Committee within seven days from date and such costs is to be utilised by it for the welfare of street children. Receipt of payment is to be produced before this court.

List this writ petition under the heading “To Be Mentioned” on April 28, 2022 for compliance.

[Md. Nizamuddin, J]

