WPA 15383 OF 2022

18.07.2022
Sl no. 17
Ct no. 2
P.M.

Pranesh Dealmark Private Limited
- Vs -
Union of India & Ors.

Mr. Avra Mazumder,
Mr. Binayak Gupta
... for the petitioner

Mr. Vipul Kundalia,
Mr. Anurag Roy
.... For Income Tax authority

Heard learned advocates appearing for the parties.

By this writ petition petitioner has challenged the impugned notice dated 22nd April, 2021 under Section 148 of the Income Tax Act, 1961 relating to Assessment year 2013-14 on the ground that the noticee is a non-existing entity and it has already been amalgamated by the order dated 29th June, 2020 and this fact of amalgamation of the noticee was already brought to the notice of the respondent Income Tax authority on 26th September, 2020 as appears at page 74 being annexure P/3 to the writ petition and petitioner submits that in spite of prior notice and knowledge that the noticee has already amalgamated on 29th June, 2020, it has issued the impugned notice dated 22nd April, 2021.

Mr. Kundalia, learned advocate appearing for the respondent could not deny or dispute the communication of the petitioner dated 26th September, 2020 but he submits that the present petitioner itself in response to the notice under Section 148A(b) of the Income Tax Act dated 26th May, 2022 has filed a reply seeking fifteen days time to enable it to submit the reply. Iin the said response, it also appears that the petitioner has already contended that the noticee has already got merged and as such the said impugned notice is bad in law.

Mr. Mazumdar, learned advocate appearing for the petitioner in support of his contention that the issuance of notice under Section 148A(b) of the Income Tax Act, 1961 against an entity which is not in existence is bad in law, has relied on several unreported decisions of this Court namely order dated 18th April, 2022 in WPA 5769 of 2022 (Shiv Niketan Limited – vs – Union of India & Ors.) and order dated 5th October, 2021 in WPO 968 of 2021 (Transway Wine Pvt. Ltd. & Anr. – Vs – Principal Commissioner of Income Tax-1, Kolkata & Anr.).

Considering the submissions of the parties this writ petition being WPA 15383 of 2022 is disposed of by directing the respondent Assessing Officer concerned to consider and dispose of the aforesaid representation of the petitioner dated 15th June, 2022 at page 83 being annexure P/8 to the writ petition in accordance with law and after taking into consideration the aforesaid orders of this Court and pass a reasoned and speaking order within four weeks from the date of communication of this order and till passing of the final order on the aforesaid representation, respondent assessing officer concerned will not proceed with the impugned assessment proceeding.

(Md. Nizamuddin, J.)