

OD – 59

ORDER SHEET
WPO/1895/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S SHREE SHYAM VYAPAR PVT LTD
VS
Union of India AND ORS

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 5TH APRIL, 2022.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Brijesh Kumar Singh, Adv.
..for the petitioner

Mr. Soumen Bhattacharya, Adv.
..for the respondents

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

In this writ petition, petitioner has challenged the impugned notice dated 31st March, 2021 relating to assessment year 2017-2018 under Section 148 of the Income Tax Act, 1961 in the name of transferor company on the ground that the noticee has already been amalgamated on 9th January, 2020 with retrospective effect from 1st April, 2019 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of such amalgamation has already given to the respondent on 18th February, 2021 yet the Respondent concerned has not withdrawn the impugned notice.

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 Realties Pvt. Ltd. Versus Dy Commissioner of Income Tax*** reported in 2016 SCC OnLine Guj 6462 and specifically relies on Paragraph 10 of the said judgement 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 notices dated 31st March, 2021 (Annexure P-3 to the writ petition) is not tenable in the eye of law and all further steps pursuant to the said impugned notices also are not tenable in the eye of law and the same are quashed. The writ petition is allowed and the impugned notices are quashed solely on the ground that the impugned notice was issued in the name of non-existing company. However, 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. 1895 of 2022 is disposed of.

(MD. NIZAMUDDIN, J.)