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ORDER SHEET
WPO/2447/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

USHA PROPERTIES DEVELOPMENT PRIVATE LIMITED
VS
UNION OF INDIA AND ORS

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date: 6th September, 2022.

Appearance:
Mr. Pranit Bag, Adv.
Mr. Brijesh Kumar Singh, Adv.
...For the Petitioner

Mr. Smarajit Roy Chowdhury, Adv.
...For the Respondents

The Court : Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned notice dated 30th March, 2019 relating to assessment year 2013-14 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 13th December, 2018 with retrospective effect from 1st April, 2018 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respondent on 23rd May, 2019 received by the respondent office on 28th May, 2019 yet the Respondent concerned has not withdrawn the impugned notice.

In support of his contention Mr. Bag, learned advocate appearing for the petitioner 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 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 submissions of the parties, I am of the view that the impugned notice dated 30^{th} March, 2019 (annexure P-3) and order under Section 148A(d) and notice under Section 148 both dated 29^{th} June, 2022 (annexure P-7) to the writ petition are not tenable in the eye of law and all further steps pursuant to the said impugned notices/order also are not tenable in the eye of law and the same are quashed. The writ petition is allowed and the impugned notices/order are quashed solely on the ground that the impugned notices were issued in the name of non-existing company. However, quashing of the notices 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 not deemed to have been denied by the respondents.

Accordingly, WPO 2447 of 2022 is disposed of.

(MD. NIZAMUDDIN, J.)

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