

WPO 2511 of 2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BIMAL KUMAR BIJAY KUMAR PVT LTD
VERSUS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble Justice MD. NIZAMUDDIN
Date : 7th September, 2022.

APPEARANCE:
Mr. Subrata Mukherjee, Adv.
...for the petitioner.

Mr. Om Narayan Rai, Adv.
...for Union of India.

The Court:- Heard learned Advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned notices dated 16th April, 2021 and 31st May, 2022 relating to assessment year 2013-14, order dated 28th July, 2022 under Section 148A of the Income Tax Act, 1961 and notice dated 24th July, 2022 under Section 148 of the Act on the ground that the noticee company is no more in existence and it has already been amalgamated with effect from 1st April, 2018 by the order of the NCLT dated 13th December, 2021 and the respondent department was intimated on the amalgamation of the noticee company on 19th February, 2021. It is the grievance of the petitioner that in spite of intimation of the fact that the assessee is not existing, still respondent is proceeding with the impugned reassessment proceeding and submits that the whole proceeding and the impugned notice are bad and not sustainable in law against the non-existing company.

In support of the contention Mr. Jhunjhunwala, learned advocate appearing for the petitioner has relied on a decision of the Hon'ble Gujarat High Court in the case of **Takshashila Realities Pvt. Ltd. Vs. Dy. Commissioner of Income Tax** reported in 2016 SCC Online Guj 6462 and specifically relies on paragraph 10 of the said judgment 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 Takshashila 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, 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 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 appearing for the respondent is not in a position to contradict the admitted facts as appear from records.

Considering the submissions of the parties, I am of the view that the impugned notices dated 16th April, 2021, 31st May, 2022 and 24th July, 2022, order dated 28th July, 2022 (Annexure P-3 to P-5 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, WPO 2511 of 2022 is disposed of.

(MD. NIZAMUDDIN, J.)