

ORDER SHEET
WPO/3101/2022
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

NISHTHA INVESTMENT AND CONSULTANCY SERVICES
PRIVATE LIMITED
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 5th December, 2022.

Appearance:

Mr. Arvind Agarwal, Adv.

Mr. Farhan Ghaffar, Adv.

...For the Petitioner

Mr. Aryak Dutt, Adv.

...For the Respondent.

The Court : Heard learned advocates appearing for the parties.

In this writ petition, petitioner has challenged the impugned notice dated 31st March, 2022 relating to assessment year 2018-19, under Section 148A of the Income Tax Act, 1961, on the ground that the noticee company is no more in existence and it has already been amalgamated with effect from 1st April, 2019 by the order of the NCLT dated 15th November, 2019 and the respondent department was intimated on the amalgamation of the noticee company on 28th August, 2019. 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 his contention Mr. Arvind Agarwal, 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 28th July, 2022 to reopen the assessment for the Assessment year 2016-17. It is also not in dispute that the respective petitioners-original assessee (Wheat Corn Agro Private Ltd.) are ordered to be amalgamated with one Nishtha Investments and Consultancy Services (P) Ltd. The scheme of amalgamation has been sanctioned by this Court, by which the respective petitioners are ordered to be amalgamated into Nishtha Investments and Consultancy Services (P) Ltd. with effect from 1st April, 2019. Under the circumstances, when the impugned notices are issued against the original assessee-amalgamating Company on 28th July, 2022, 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 1st April, 2019 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 the transferor Company-amalgamating Company on 20.6.2012. 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 2016-17, 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 notice dated 31st March, 2022 (Annexure 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 3101 of 2022 is disposed of.

(MD. NIZAMUDDIN, J.)

