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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6917/2022 & C.M.Nos.21091-21092/2022

JINDAL DYECHEM INDUSTRIES PVT. LTD. (SUCCESSOR TO
LUMAX CAPLEASE PRIVATE LIMITED) Petitioner

Through: Mr.Ved Kumar Jain, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13(1) &
ORS. Respondents

Through: Mr.Ajit Sharma, senior standing
counsel for the Revenue.

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Date of Decision: 02nd May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the reassessment notice dated 28th March, 2021 issued under Section 148 of the Income Tax Act, 1961 [‘the Act’] for the assessment year 2015-16. The petitioner also seeks to challenge the assessment order dated 30th March, 2022 passed under Section 147 read with Section 143(3) of the Act.

2. Learned counsel for the Petitioner states that the impugned notice as well as the order are *void ab initio* as they have been issued in the name of ‘M/s Lumax Caplease Pvt. Ltd.’, a non-existing entity, which had merged with the Petitioner company with effect from 01st April, 2013 vide order dated 6th August, 2014 passed by this Court under Section 394 of the

Companies Act, 1956. He relies on the decision of the Supreme Court in ***Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited, (2019) 416 ITR 613 (SC)*** wherein it has been held that the issuance of a notice to the non-existing company is a substantive illegality and not a procedural violation.

3. Learned counsel for the Petitioner states that the income alleged to have escaped assessment has been offered to tax in the hands of the amalgamated entity and an assessment order dated 16th December, 2017 has been passed accepting the same.

4. Learned counsel for the Petitioner further states that the impugned assessment order has been issued in violation of the principles of natural justice as the Petitioner was not given an opportunity of being heard. He also points out that show cause notice dated 28th March, 2022 was signed on 14:52 hours on 29th March, 2022 requiring the Petitioner to comply with the same by 12 PM on 29th March, 2022 i.e. the compliance date was set prior to the issuance of the notice.

5. Issue Notice

6. Mr.Ajit Sharma, senior standing counsel accepts notice on behalf of the Respondents. He states that in the present case, the impugned assessment order has been passed in the name of 'Jindal Dyechem Industries Pvt. Ltd. (successor to Lumax Caplease Private Limited)' i.e., the amalgamated entity. He also states that the issue as to whether income has escaped assessment or not is a question of fact which the petitioner can agitate in appeal proceedings.

7. Having heard learned counsel for the parties, this Court is of the view

that even if the submission of learned counsel for the Respondents is accepted, then also the impugned assessment order is liable to be set aside as the Petitioner had no opportunity to deal with or respond to the show cause notice dated 28th March, 2022 as it had been issued after the date and time of compliance had expired.

8. Consequently, the impugned assessment order is set aside on the short ground of being violative of principle of natural justice and the matter is remanded back to the Assessing Officer for fresh adjudication.

9. The Petitioner shall file its response to the show cause notice dated 28th March, 2022 within two weeks. The Assessing Officer is directed to fix the date of hearing after four weeks and decide the same by way of a reasoned order in accordance with law after giving an opportunity of hearing to the petitioner.

10. In view of the above, the present writ petition and applications stand disposed of. The rights and contentions of all the parties are left open.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MAY 02, 2022
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