25.09.2023
PB
Sl. No.4.

WPA 17032 of 2023

Nishdin Distributors Pvt. Ltd. (formerly
Known as Subhvani Real Estate Pvt. Ltd.
Vs
Income Tax Officer, Ward 5(1) & Ors.

Mr. Avra Mazumder,
Mr. Soumitra Chowdhury,
Mr. Kausheyo Roy,
Mr. Samrat Das,
Mr. Suman Bhowmik.
... For the Petitioner.

Mr. T. M. Siddiqui,
Mr. T. Chakraborty,
.......for the State.

Mr. Om Narayan Rai.
.......for the Income Tax authority.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned order dated 29th July, 2022, under Section 147A(d) and subsequent assessment order under Section 147 of the Income Tax Act, 1961, dated 16th May, 2023, relating to the assessment year 2016-17, on the ground that one of its objection filed on 20th July, 2022 being Annexure P-4 at page 90 of the writ petition was not considered at all though the same was received by the income tax department concerned on

20th July, 2022 as appears from seal/stamp of the department though it does not contain any signature.

Mr. Rai, learned advocate appearing for the respondent income tax authorities in opposing this writ petition submitted, on instruction, that the aforesaid document/objection filed by the petitioner was not received by the department though it contains the seal/stamp of the department showing receipt of the same. Allegation of Mr. Rai is serious that though the aforesaid objection of the petitioner dated 20th July, 2022 which bears the seal/stamp of receipt but there is no recording of such receipt in the register maintained by the department and he could not explain the reason of absence of signature by the receiving person of the department. Considering such serious allegation about the genuineness of the aforesaid document, this Court directed the Officer-in-Charge of the concerned police station to enquire about the actual state of affairs and finally report has been submitted and on perusal of which it appears that the aforesaid seal/stamp of the department showing receipt of the objection of the petitioner dated 20th July, 2022, is genuine which is based on examination by the department concerned of the CID, West Bengal. It is strange that how such documents dated 20th July, 2022, on which the seal/stamp of the department showing receipt neither bears the signature nor was recorded in any register maintained by the department. The Principal Chief CIT, Kolkata, West Bengal and Sikkim shall hold an enquiry in this affair and shall fix the liability and take action for whose lapse and fault the assessee/petitioner had to suffer this harassment and unnecessary involvement of the police was made which was not required and such enquiry shall be completed and action shall be taken within two months from the date of communication of this order.

So far as the merit of the aforesaid impugned order under Section 148A(d) and the final assessment under Section 147 of the Act are concerned, I find that the same is not sustainable in law and is liable to be quashed for the reason that before issuance of notice under Section 148A(b) of the Act dated 31st May, 2022, the noticee had already been amalgamated on 11th May, 2022, and this fact of amalgamation was brought to the notice of the department in writing, before passing the impugned orders under Section 148A(d) and Section 147 of the Act. It is well settled principle of law that no proceeding can be initiated against any non-existent entity and considering the aforesaid factual and legal position, the aforesaid impugned order under Section 148A(d) and 147 of the Act are quashed. However, quashing of the aforesaid impugned orders shall not be a bar on the part of the income tax authority to initiate any appropriate proceeding in future if permissible under the law.

Mr. Rai, learned advocate for the respondent income tax authority shall communicate this order to the The Principal Chief CIT, Kolkata, West Bengal and Sikkim.

It is observed that so far as investigation in question on the part of the police authority is concerned, the same should be treated as finally concluded and no further proceeding is required to be continued.

Report filed by the police authorities be kept with the record.

With this observation and direction, this writ petition being WPA 17032 of 2023 is disposed off.

(Md. Nizamuddin, J.)