IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7998 OF 2023

Skoda Auto Volkswagen India Pvt Ltd. ..Petitioner
Vs.
Assistant Commissioner of Income Tax
Circle-8, Pune & Ors. ..Respondents

Mr. Madhur Agrawal i/b Mr. Atul Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K. R. SHRIRAM &
NEELA GOKHALE, JJ.
DATED : 23rd OCTOBER 2023

P.C. :

1 Petitioner is impugning an order passed under Section 148A(d) of the Income Tax Act 1961, read with notice issued under Section 148 of the Act, both dated 27th April 2023, seeking to reopen the assessment for A.Y.2016-2017.

2 The primary ground of challenge is that the order has been passed and notice has been issued to a non existing entity. It is petitioner's case that assessee was amalgamated with Volkswagen India Pvt Ltd., w.e.f. 1st April 2019. The scheme of amalgamation was sanctioned by NCLT on 5th September 2019. Petitioner's case is that the scheme of amalgamation was filed with the Registrar of Companies as also with the Income Tax authorities. Mr. Agrawal brought to our notice copies of letters addressed to the Income Tax Authorities, copies whereof are annexed to the petition.

3 This was brought to the notice of the assessing officer on receipt of the notice under Section 148A(b) of the Act. Despite bringing to notice of the assessing officer, the assessing officer has not even referred to the communication received from petitioner in this regard. In fact, in the impugned order, the assessing officer has only referred to a request for adjournment made by petitioner but has not referred to a letter dated 21st April 2023, that petitioner sent, where petitioner, after dealing with the merits of the case, at paragraph 11 stated as under:

> *11. Further, the Assessee would like to mention that post the merger of Skoda Auto India Pvt Ltd. with SKODA AUTO Volkswagen India Private Limited w.e.f. April 1, 2019 vide order of National Company Law Tribunal ('NCLT'), Mumbai Bench dated September 5, 2019, Skoda Auto India ceases to exist.*

4 There is an affidavit in reply filed through one Prashant B. Gandhale, Deputy Commissioner of Income Tax, affirmed on 3rd August 2023, in which, the stand taken is rather strange. According to the assessing officer, no response was received from assessee through e-filing portal as mandatory as per the faceless assessment scheme.

5 Mr. Agrawal states that reply was being filed through Skoda Auto Volkswagen India Pvt Ltd., which is the new name of amalgamated entity Volkswagen India Pvt Ltd, and that entity cannot file a reply in the portal in the name of non existing Skoda Auto Volkswagen India Pvt Ltd. Hence the reply was sent via email.

6 Having considered the petition, the matter is squarely covered by the

judgment of the Apex Court in ***Principal Commissioner of Income Tax Vs. Maruti Suzuki India Ltd.***[1], wherein the Apex Court reiterated the settled position that the basis on which the jurisdiction is invoked, is under Section 148 of the Act and when such jurisdiction was invoked on the basis of something which was fundamentally at odds with the legal principle that the amalgamating entity ceased to exist upon the approved scheme of amalgamation, the notice is bad in law. This was followed by this court in ***Alok Knit Exports Ltd. Vs. Deputy Commissioner of Income tax, Circle6(1) (1) Mumbai***[2] , wherein paragraph 6 reads as under:

> *"6 The Apex Court in its recent judgment on this subject in Principal Commissioner of Income Tax V/s. Maruti Suzuki India Ltd. considered the judgment of Sky Ligh Hospitality (supra) of the Apex Court and said that the Apex Court has expressly mentioned that in the peculiar facts of that case wrong name given in the notice was merely a clerical error. The Apex Court in Maruti Suzuki India Ltd. (supra) has also observed that what weighed in the dismissal of the Special Leave Petition were the peculiar facts of that case. The Apex Court has reiterated the settled position that the basis on which jurisdiction is invoked is under Section 148 of the Act and when such jurisdiction was invoked on the basis of something which was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation, the notice is bad in law. The Apex Court has held as under :*
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> > *"In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co- ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2 November 2017. The decision in Spice Enfotainment has been followed in the case of the*

1 (2019) 416 ITR 613 (SC)

2 (2021) 130 taxmann.com 457 (Bombay)

> *respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment."*

7 Petitioner had already brought it to the notice of the Income Tax Authorities about the amalgamation. Mr. Agrawal submits that during the hearing of the scheme petition before the NCLT, the Central Government Advocate had appeared. Mr. Agrawal also states that this was brought to the notice of respondent no.1 on receipt of the reopening notice under Section 148A(d) of the Act. Therefore, the impugned order as well as the notice issued under Section 148 of the Act have to be quashed and set aside.

8 Though, Mr. Suresh Kumar made a valiant attempt to persuade the court to think otherwise, we are not so persuaded. *Alok Knit Exports Ltd.* (Supra) and *Maruti Suzuki* (Supra) hold the field. Therefore, we have no hesitation in quashing and setting aside the impugned order and the notice both dated 27th April 2023.

9 Petition disposed.

(NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**