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W.P.No.913 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2023

CORAM:

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.913 of 2023

and

W.M.P.Nos.890 and 891 of 2023

M/s.Shapoorji Pallonji Samalpatti Operator Services
Private Limited
(Merged with Shapoorji Pallonji Infrastructure Capital
Company Pvt. Ltd.)

Represented by its Power of Attorney Holder
Mr.Ritesh Jayantilal Dedhia, Age 45 years
S/o.Shri Jayantilal, having office at
70, Nagindas Master Road
Fort Mumbai – 400 023.

... Petitioner

-Vs-

1.The Assistant Commissioner of Income Tax
Corporate Circle 3(1) Chennai
Room No.411, Fourth Floor
Chennai, Wanaparthi Block
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

2.The Income Tax Officer
Income Tax Department
National Faceless Assessment Centre
Income Tax Department



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Ministry of Finance
Room No.401, 2nd Floor, E-Ramp
Jawaharlal Nehru Stadium
Delhi – 110 003.

... Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records in DIN No.ITBA/AST/S/147/2021-22/1040488011(1) dated 09.03.2022 issued under Section 147 r.w.s 144 of the Income Tax Act, 1961 on the file of the second respondent for the Assessment Year 2013-14 and quash the same.

For Petitioner : Ms.Gayatri T

For Respondents : Ms.S.Premalatha, Jr.Standing Counsel,
for Mr.R.S.Balaji, Sr. Standing Counsel.

ORDER

This Writ Petition has been filed challenging the impugned assessment order dated 09.03.2022 passed by the second respondent under Section 147 r/w Section 144 of the Income Tax Act, 1961 for the Assessment Year 2013-14.



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2.Ms.Gayatri.T, learned counsel appearing on behalf of the petitioner [Transferor Company], would submit that the impugned assessment order came to be passed mainly on the ground that the petitioner company had failed to disclose its investment in the Mutual Funds to the extent of Rs.3.10 Crores. In the impugned Assessment Order, it has been stated that a series of show cause notices [first notice was dated 15.11.2021] were sent to the assessee [petitioner herein] and since no response were received on behalf of the assessee, the impugned Assessment Order dated 09.03.2022 has been passed under Section 144 r/w Section 147 r/w Section 144B of the Income Tax Act, 1961.

3.The main contention of the petitioner is that the petitioner Company/Transferor Company viz., M/s.Shapoorji Pallonji Samalpatti Operator Services Private Limited got merged with the Transferee Company viz., Shapoorji Pallonji Infrastructure Capital Company Private Limited by virtue of an order dated 14.10.2011 passed by Hon'ble Bombay High Court in Company Scheme Petition No.511 of 2011. While so, the show cause notice was issued on 15.11.2021 for the Assessment Year



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2013-14 [Financial Year 2012-13]. On the date of the show cause notice, the petitioner Company/Transferor Company had already got merged with the Transferee Company and the Transferor Company was dissolved even on the date of the order passed by the Hon'ble Bombay High Court viz., 14.10.2011 and therefore, the petitioner Company/Transferor Company was not in existence on the date of issuance of the show cause notice. Hence, the learned counsel for the petitioner prays for setting aside the impugned Assessment Order.

4. On the other hand, Ms.S.Premalatha, Junior Standing Counsel representing on behalf of Mr.R.S.Balaji, Senior Standing Counsel for the respondent department would submit that though the petitioner Company/Transferor Company viz., M/s.Shapoorji Pallonji Samalpatti Operator Services Private Limited got merged with the Transferee Company viz., Shapoorji Pallonji Infrastructure Capital Company Private Limited by virtue of an order dated 14.10.2011 passed by Hon'ble Bombay High Court, the PAN of the petitioner Company was in existence and therefore, after issuance of show cause notices as mandated under the provisions of the Income Tax Act, 1961 the impugned Assessment Order



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came to be passed by best judgement assessment. Had the department been duly informed about the merger of the petitioner Company/Transferor Company with the Transferee Company, certainly the department would not have proceeded with the reassessment. The learned standing counsel would further contend that there is an appeal provision available to the petitioner to challenge the impugned Assessment Order and the petitioner may be directed to exhaust the same by approaching the appellate authority. Thus, learned counsel for the respondents prayed for dismissal of the Writ Petition.

5.I have duly considered the submissions made by the learned counsel appearing on behalf of the petitioner and the learned standing counsel appearing on behalf of the respondent/department.

6.Upon perusal of the documents, it is crystal clear that the petitioner Company/Transferor Company viz., M/s.Shapoorji Pallonji Samalpatti Operator Services Private Limited got merged with the Transferee Company viz., Shapoorji Pallonji Infrastructure Capital Company Private Limited by virtue of an order dated 14.10.2011 passed by Hon'ble Bombay



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High Court in Company Scheme Petition No.511 of 2011. On the very same day viz., 14.10.2011, the petitioner Company/Transferor Company got dissolved and only thereafter, the respondent department had initiated proceedings under Section 148 of the Income Tax Act, 1961 against the non-existing entity. It is a well settled principle that if any notice is issued against a non-existent entity and if any order came to be passed pursuant to the said notice, the said order is non sustainable in law and accordingly, the same is liable to be set aside. In the instant case, the merger of the petitioner Company/Transferor Company viz., M/s.Shapoorji Pallonji Samalpatti Operator Services Private Limited with the Transferee Company viz., Shapoorji Pallonji Infrastructure Capital Company Private Limited by virtue of an order dated 14.10.2011 passed by Hon'ble Bombay High Court was communicated to the Deputy Commissioner of Income Tax - Headquarters, Chennai vide letter dated 29.03.2012 and the same was also acknowledged by the respondent. After making such acknowledgement, without verifying the Book of Accounts of the Transferee Company, due to non-application of mind, the notice under Section 148 of the Income Tax Act, 1961 was issued to the petitioner Company alleging that a sum of Rs.3.10 Crores invested in the Mutual



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Fund had not been disclosed and therefore, reassessment was made and impugned Assessment Order came to be passed.

7. On a careful consideration of the case on hand, this Court does not find any material to show that the petitioner Company had concealed any investment because once the petitioner Company/Transferor Company is merged with the Transferee Company, the entire investment will stand transferred in the name of the Transferee Company and same also got reflected in the Book of Accounts of the Transferee Company. Hence, the interest of the revenue was no way affected. However, without verifying the same, the respondent had issued notice in the name of the petitioner Company/Transferor Company [which is not in existence on and from 14.10.2011], even after receipt of the communication of merger vide letter dated 29.03.2012 and passed the impugned Assessment Order. Hence, for all the aforesaid reasons, the impugned Assessment Order is liable to be set aside and accordingly set aside.

8. At this juncture, learned standing counsel representing on behalf of the respondent seeks leave of this Court to remand the matter back to the



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respondent to pass Assessment Order afresh. However, in the case on hand, as the petitioner Company/Transferor Company got merged with the Transferee Company on and from 14.10.2011 by virtue of the order dated 14.10.2011 passed by the Hon'ble Bombay High Court in Company Scheme Petition No.511 of 2011 and the same was also communicated to the respondent as early as 29.03.2012 and inspite of the same the impugned Assessment Order came to be passed, this Court is not inclined to remand the matter back to the respondent and to pass orders once again against the non-existent entity.

9.In fine, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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Neutral Citation : Yes/No

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