

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

Writ Petition No.22308 of 2021

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr.Kamal Sawhney, learned counsel on behalf of Mr.G.Narendra Chetty, learned counsel for the petitioner; Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India for the first respondent; and Mr.A.Radha Krishna, learned Standing Counsel, Income Tax Department for the second respondent.

2. By filing this petition under Article 226 of the Constitution of India, petitioner has assailed legality and validity of the notice dated 29.06.2021 issued by the second respondent under Section 148 of the Income Tax Act, 1961 (briefly 'the Act' hereinafter).

3. The challenge has been made on two grounds:-

(i) After 01.04.2021, the procedure for re-assessment has undergone a change by insertion of Section 148A of the Act. Instead of following the procedure laid down under

Section 148A of the Act, second respondent had issued the notice under Section 148 of the Act; and

(ii) Impugned notice was issued to Polaris Consulting and Services Limited, Chennai as the assessee. Polaris Consulting and Services Limited has merged with the petitioner i.e., M/s.Virtusa Consulting Services Private Limited following order dated 09.12.2019 passed by the National Company Law Tribunal, Chennai (NCLT). Therefore, the impugned notice was issued to a non-existent assessee. Such a notice is null and void.

4. In the proceedings held on 15.06.2022, this Court held as follows:

“The impugned notice dated 29.06.2021 issued by the assessing officer under Section 148 of the Income Tax Act, 1961 (briefly referred to hereinafter as the ‘Act’) for the assessment year 2014-15 has been assailed on the ground that post 01.04.2021 Section 148A of the Act has been introduced which lays down a completely new procedure to be followed which has not been complied with rendering the notice null and void. On this ground, the Court had granted stay. Subsequently, Supreme Court in

Union of India vs. Ashish Agarwal reported in **2022 SCC Online SC 543** has disposed of a bunch of civil appeals on the same issue by holding that such a notice would be construed to be a notice under the amended provision as a one time measure and thereafter issued a series of directions. To that extent, the challenge is covered by **Ashish Agarwal** (*supra*).

Today learned counsel for the petitioner submits that in addition to the above ground, there is a more fundamental ground to the challenge to the impugned notice and that is non-existence of the noticee itself.

It is contended that the noticee is no longer in existence having merged with the petitioner following order passed by the National Company Law Tribunal, Chennai. In this connection, learned counsel for the petitioner has placed before us a letter dated 12.07.2021 issued by the Principal Commissioner of Income Tax (DR), 'D' Bench, ITAT, Chennai addressed to the President of ITAT, Mumbai, which says that M/s. Polaris Consulting Services Pvt. Ltd. (noticee) stood merged with M/s. Virtusa Consulting Services Pvt. Ltd. (petitioner) pursuant to order of National Company Law Tribunal dated 09.12.2019.

*Supreme Court in **Principal Commissioner of Income Tax vs. Maruti Suzuki India Limited [416 ITR 613]** has held that issuance of notice to a company which has undergone amalgamation and thus has ceased to exist would be without jurisdiction.*

That being the position, we are of the view that respondents should file counter affidavit on this aspect.

Interim stay granted by this Court on 27.09.2021 shall be continued until further orders.”

5. Thereafter respondents have filed counter affidavit. After referring to the facts, an endeavour is made to distinguish the judgment of the Supreme Court in **Maruti Suzuki (supra)**. It is stated that similar contention raised in **M/s.Skylight Hospitality LLP V. Assistant Commissioner of Income Tax**,¹ was rejected by Delhi High Court and the decision of the Delhi High Court was affirmed by the Supreme Court. That apart, it is contended that petitioner has got adequate remedy against the impugned notice. It is submitted that the impugned notice be treated as a notice issued to the petitioner. On the

¹ [2018] 90 taxmann.com 413 (Delhi)

above contentions respondents seek dismissal of the writ petition.

6. Subject matter of challenge has already been summed up in our order dated 15.06.2022 which we have extracted above.

7. In the hearing today learned counsel for the petitioner submits that the fact that Polaris Consulting and Services Limited has merged with M/s.Virtusa Consulting Services Private Limited was known to the revenue which would be evident from the letter dated 12.07.2021 issued by the Principal Commissioner of Income Tax (DR), D – Bench, ITAT, Chennai addressed to the President of ITAT, Mumbai. However, Mr.Radha Krishna, learned Standing Counsel submits that the aforesaid communication is post the notice dated 29.06.2021.

8. Without entering into the above controversy, what is evident is that by an order dated 09.12.2019 passed by the NCLT, Polaris Consulting Services Limited stood merged with M/s.Virtusa Consulting Services Private

Limited. As a matter of fact, Principal Commissioner of Income Tax – IV, Chennai had issued notification No.3/2020 – 2021 dated 13.04.2021 transferring the assessment jurisdiction from Assessing Officer in Chennai to Assessing Officer in Hyderabad, following the merger. This notification is prior to the issuance of the impugned notice.

9. Be that as it may, in ***Maruti Suzuki (supra)***, Supreme Court held that issuance of notice on the basis of which jurisdiction was invoked by the Assessing Officer would be fundamentally at odds with the legal principle that the amalgamating entity (assessee) ceases to exist upon the approved scheme of amalgamation. Even participation by the assessee in re-assessment proceedings would not operate as an estoppel against such a legal principle.

10. In the course of the aforesaid judgment, Supreme Court noted a divergent view taken by the Delhi Court in ***Sky Light Hospitality (supra)*** which was affirmed by the Supreme Court but in the peculiar facts of that case. The

peculiar facts have been highlighted in paragraph 27 of ***Maruti Suzuki (supra)***.

11. That being the position and following the decision of the Supreme Court in ***Maruti Suzuki (supra)***, we have no hesitation in holding that the impugned notice issued by the Assessing Officer under Section 148 of the Act to a non-existent assessee would be legally untenable. Consequently the same is set aside and quashed.

12. Writ petition is accordingly allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

28.02.2023
MRM