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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/530/2024

M/S. INCREDIBLE INDUSTRIES LIMITED
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(1) AND ORS.

BEFORE :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY
Date: 12th August, 2024

Appearance :
Mr. Siddharth Das, Adv.
Ms. Swapna Das, Adv.
…for the petitioner
Mr. Aryak Dutt, Adv.
Ms. Riya Kundu, Adv.
….for respondents

The Court :- 1. Challenging, inter alia, the notice issued under Section 148A(b) of the Income Tax Act, 1961 (hereinafter referred as the 'said Act') for the assessment year 2017-18 dated 30th March, 2024 as well as the order passed under Section 148A(d) dated 29th April, 2024 for the same assessment year including the notice under Section 148 of the said Act dated 29th April, 2024 for the assessment year 2017-18, the writ application has been filed.

2. Mr. Das, learned Advocate appearing for the petitioner by drawing attention of this Court to the order of amalgamation dated 23rd September, 2009 passed in CP No.301 of 2009 would submit that in terms of the scheme of amalgamation passed by the Hon'ble Company Court, all assets and liabilities of Adhunik Ispat Limited stood transferred and vested in Bhagwati

Resources Limited, the transferee company named therein. By placing before this Court, a fresh certificate of incorporation issued by the Ministry of Corporate Affairs, he submits that Bhagwati Resources Limited had since been renamed as Adhunik Industries Limited and such fact would corroborate from a fresh certificate of incorporation issued by the Ministry of Corporate Affairs dated 5th January, 2010.

3. Since then the name of Adhunik Industries Limited had once again been changed to Incredible Industries Limited and a fresh certificate of incorporation had been issued by the Ministry of Corporate Affairs on 6th May, 2021. Notwithstanding the aforesaid, a notice under Section 148A(b) of the said Act was issued on 30th March, 2024 in respect of the assessment year 2017-18 in the name of Adhunik Ispat Ltd.

4. Immediately upon receipt of such notice, the petitioner had responded to the same and had brought all subsequent developments to the notice of the Assessing Officer, unfortunately the Assessing Officer by ignoring the same had purported to pass the order under Section 148A(d) of the said Act on 29th April, 2024 and had also issued notice under Section 148 of the said Act. He submits that apart from notice under Section 148 of the said Act being without jurisdiction as the same was required to be issued in the faceless manner, the entire proceedings initiated by the respondents are bad.

5. By drawing attention of this Court to the previous assessment order dated 29th May, 2023 for the assessment year 2015-16 passed under Section 143(3)/147 read with Section 144B, it is submitted that the Assessing Officer had previously by accepting the contention of the petitioner, having found that in terms of the scheme of amalgamation of Bhagwati Resources

Limited with Adhunik Ispat Limited, there was no further requirement of Adhunik Ispat Limited to file any returns as the entire assets and liabilities of Adhunik Ispat Limited along with its undertaking stood transferred and vested in Bhagwati Resources Limited w.e.f. 1st April, 2008 had observed that considering the variation of income of the assessee for years under consideration was unwarranted, NIL income was assessed.

6. In the facts noted hereinabove, Mr. Das submits that the entire proceedings are bad in law and should be set aside.

7. Mr. Dutt, learned Advocate appearing for the respondents, however, submits that although, there appears to be some confusion at the end of the respondents for issuing notice under Section 148A(b) of the said Act for the assessment year 2017-18 dated 30th March, 2024 and the order passed under Section 148A(d) dated 29th April, 2024 including the notice under Section 148, however, the entire confusion has been created by Adhunik Ispat Limited by reason of retaining its old PAN.

8. Having heard learned Advocates appearing for the parties and after considering the materials on record, I find that Adhunik Ispat Limited has long been amalgamated with Bhagwati Resources Limited w.e.f. 1st April, 2008 pursuant to the order dated 23rd September, 2009 passed in CP No.301 of 2009. The said Bhagwati Resources Limited had also been renamed to Adhunik Industries Limited and such change had been effected by issuing a fresh certificate of incorporation dated 5th January, 2010 by the Ministry of Corporate Affairs, which had once again been changed to Incredible Industries Limited by issuing a fresh certificate of incorporation dated 6th May, 2021. The Assessing Officer on a previous occasion had issued an order under Section 143(3)/Section

147 read with Section 144B of the said Act for the assessment year 2015-16 and in its order by taking note of the aforesaid development dropped all proceedings against Adhunik Ispat Limited by reason of merger of Adhunik Ispat Ltd with Bhagwati Resources Ltd by legal implication whereby, Adhunik Ispat Limited along with its assets and liabilities had stood transferred and vested in Bhagwati Resources Limited which had since, been ultimately renamed as Incredible Industries Limited in the manner as indicated above. As such, there was no reason for the jurisdictional Assessing Officer to issue notice under Section 148A(b) of the said Act for the assessment year 2017-18 dated 30th March, 2024 on Adhunik Ispat Ltd. In fact, the Assessing Officer, despite receipt of the reply from the petitioner, by ignoring the contention of the petitioner and its previous decision, had purported to pass an order under Section 148A(d) of the said Act dated 29th April, 2024 for the assessment year 2017-18. He had also issued a further notice under Section 148 of the said Act on 29th April, 2024 for the assessment year 2017-18.

9. Without going into controversy as to whether the notice issued under Section 148 of the said Act, by the jurisdictional Assessing Officer could have been in the light of Section 151A of the said Act and the Notification dated 29th March, 2022, issued in a faceless manner, I am of the view that no further proceeding could have been initiated against the Adhunik Ispat Limited for the Assessment year 2017-18 since the Adhunik Ispat Limited stood merged and amalgamated with the Bhagwati Resources Limited by order dated 23rd September, 2009 passed in CP 301 of 2009.

10. In view thereof, the notice issued under Section 148A(b) of the said Act dated 30th March, 2024 for the assessment year 2017-18, the order

passed under Section 148A(d) of the said Act dated 29th March, 2024 for the assessment year 2017-18 and the notice under Section 148 of the said Act for the self-same assessment year on Adhunik Ispat Ltd cannot be sustained and the same should be and is accordingly set aside. However, at the same time taking note of the submissions made by Mr. Dutt, I direct the respondents to forthwith cancel the PAN of Adhunik Ispat Limited, which has along with its undertaking long been amalgamated in the manner indicated hereinabove.

11. With the above observations and directions, the writ application stands disposed of.

(RAJA BASU CHOWDHURY, J.)

akg/sd.