IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.08.2023	**Pronounced on:** 02.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9689 of 2022
and
W.M.P.Nos.9423 & 9424 of 2022

M/s. NRP Projects P. Ltd.,
(successor to the erstwhile firm 'N.R. Patel & Co.')
Represented by its Director Hitesh J Patel,
1st Floor, 47, Desabhandu Plaza, Whites Road,
Royapettah, Chennai – 600 014. .. Petitioner

Vs.

1.Additional / Joint / Deputy / Assistant
Commissioner of Income Tax / Income-tax Officer,
National Faceless Assessment Centre, Delhi.

2.The Income Tax Officer,
Non-Corporate Ward-11(3),
121, Nungambakkam High Road,
Chennai – 600 034. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the 1st respondent and quash the impugned order in PAN: AACFN9222D, dated 25.03.2022 in DIN: ITBA/AST/S/147/2021-22/1041593179(1) passed by the 1st respondent under Section 147 r.w.s. 144 read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2015-16, and the impugned notice in PAN: AACFN9222D, dated 28.03.2021 in DIN: ITBA/AST/S/148/2020-21/1031849422(1) issued by the 2nd respondent under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2015-16.

For Petitioner : Mr.N.V.Balaji

For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

O R D E R

The petitioner has filed this Writ Petition to call for the records on the file of the 1st respondent and quash the impugned order in PAN : AACFN9222D, dated 25.03.2022 in DIN : ITBA/AST/S/147/2021-22/1041593179(1) passed by the 1st respondent under Section 147 r/w Section 144 read with Section 144B of the Income Tax Act, 1961 for the Assessment Year 2015-2016 and the impugned notice in PAN : AACFN9222D, dated 28.03.2021 in DIN : ITBA/AST/S/148/2020-21/1031849422(1) issued by the 2nd respondent under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2015-2016.

2.It is the specific case of the petitioner that although the petitioner had intimated to the respondents regarding the change in the situation of the petitioner from Partnership Firm to a Private Limited Company under Chapter IX of the Companies Act, 1956 vide letter dated 23.04.2014, the respondent initiated proceedings against the Firm by issuance of the notice under Section 148 of the Income Tax Act, on 28.03.2021 which is culminated in the impugned order dated 25.03.2022 for the Assessment Year 2015-16 under Section 147 r/w 144 of the Income tax Act, 1961.

3.The specific case of the petitioner is that the petitioner was a partnership firm and was converted as a Private Limited Company under Chapter IX of the Companies Act, 1956 and the firm was also dissolved by Deed of Resolution dated 14.07.2010. It is submitted that all the business are after the registration of the petitioner's company viz.,PAN.No.AADCN3383M and not with the PAN.No.AACFN9222D of the partnership firm.

4.The impugned assessment order dated 25.03.2022 preceeds a show cause notice dated 01.03.2023 wherein it has been stated that from the information gathered it indicates that the business was carried out by the firm namely NR.Patel and Co., (AACFN9222D) and confirms that it has not filed return for the assessment year 2015-16 although several transactions are carried in the said name as is evident from the shipping bills with a tune of Rs.69,47,528/- and Bills of Entry for import for a sum of Rs.10,22,70,166/-. Apart from that Contractual receipts of Rs.19,589/- on which TDS of Rs.392/- was deducted and remittance of Rs.44,60,567/- towards non-resident of foreign company.

5.The petitioner has replied to the same wherein it has been categorically stated that Commerce Ministry issued fresh certificate of IE Code on 18.10.2010 incorporating the changes and by incorporating the new PAN of the petitioner Company ie, NRP Projects Pvt.Ltd. (PAN AADCN3383M) allotting the same IE code of the erstwhile firm M/S.N.R.Patel & Co., (PAN AACFN922D) after the business was taken over by the petitioner's company.

6.It is submitted that all the transactions that has been referred to show cause notices were in the name of the petitioner's company and duly acknowledged for the assessment by the Income Tax Act, 1961.

7.Specifically, the learned counsel for the petitioner has referred to the copy of the shipping bill and the Bills of Entry wherein name of the petitioner with reference of the income tax PAN No.AADCN3383M has been used for import and export of goods. It is submitted that despite the same, the respondent has confirmed the demand of Tax on the petitioner with the impugned order.

8.The learned counsel further submitted that on a identical proceeding for the Assessment Year 2016-17, the department has also dropped the proceedings on 30.03.2023 under Section 148(A)(d) of the Income Tax Act.

9.The learned counsel for the petitioner has also placed reliance on the following decisions of this Court and Supreme Court:-

(i)**Principal Commissioner of Income Tax.New Delhi vs. Maruti Suzuki India Ltd.**, (2019) 416 ITR 613;
(ii)**Commissioner of Income Tax, vs. Spice Infotainment Ltd.**, C.A.No.285 of 2014;
(iii)**Spice Infotainment Ltd., vs. Commissioner of Income Tax**, C.A.Nos475 & 476 of 2011;
(iv)**Principal Commissioner of Income Tax vs. BMA Capfin Ltd.**, (2018) 100 Taxmann.com 330 (SC);

(v)**Commissioner of Income-Tax III vs. Dimension Apparels (P) Ltd.**, (2015) 370 ITR 288(Delhi);
(vi)**Commissioner of Income Tax(C)-II vs. Micra India (P)Ltd.**, (2015) 57 taxmann.com 163 (Delhi);
(vii)**Marshall Sons & Co., (India) Ltd., vs. Income-tax Officer**, (1996) 89 Taxman 619(SC);
(viii)**eMudhra Ltd., vs. Assistant Commissioner of Income Tax**, (2020) 117 taxmann.com 550 (Karnataka);
(ix)**Assistant Commissioner of Income Tax, vs. Vijay Television (P) Ltd.**, (2018) TaxCorp(DT) 73784 and
(x)**Coffee Day Resorts (MSM) Pvt.Ltd., (for the merged entity shankar Resources Pvt.Ltd.,) A company incorporated under the Companies Act, 1956 vs. The Deputy Commissioner of Income Tax and another**, W.P.No.9594 of 2023.

10.On the other hand, the learned counsel for the respondent has submitted that the petitioner had used the old PAN No.AACFN9222D in making the transaction. It is submitted that although the firm was dissolved, the PAN No. AACFN9222D was utilized for transaction and thereby there was escape of tax by the petitioner.

11.It is submitted that the impugned order does not suffer from any irregularities warranting interference under Article 226 of the Constitution of India. It is submitted that the petitioner has an alternate remedy before the Appellate Court under Section 246 of the Income Tax Act, 1961.

12.It is submitted that the case was reopened as there was an information in the NMS portal that M/s.N.R.Patel and Co., (PAN : AACFN9222D) had entered into the following transaction and had not filed its return of income for the Assessment Year 2015-16:-

(i)Shipping bill for export to the tune of Rs.69,47,528/-.
(ii)Bill of Entry for import to the tune of Rs.10,22,70,165/-.
(iii)Contractual receipt of Rs.19,589/- on which TDS of Rs.392/- was deducted.
(iv)Remittance of Rs.44,60,567/- to a non-resident or foreign company.

13.It is submitted that it is clear that the petitioner is carrying out transactions in the PAN of the dissolved firm, but when the case was re-opened in the name of the dissolved firm, the petitioner is objecting to the same without furnishing any valid ground as to why the PAN of the dissolved firm was used. It is submitted that if the petitioner has any dispute in the addition, it should have approached the Commissioner of Income Tax (Appeals).

14.It is submitted that notice under Section 148 was issued on 28.03.2021 and there was no response from the petitioner to the notice issued. It is submitted that *vide* letter dated 1st November 2021 of the petitioner, it was submitted that the firm got dissolved w.e.f.14.07.2010 and the petitioner is filing return regularly in the PAN of the company: AADCN3383M. It is submitted that therefore notice under Section 142(1) was issued on 17.11.2021 calling for the details with regard to the import export, foreign remittance, contract receipt, P&L, Balance sheet etc., but here was no response to the same.

15.The learned counsel further submitted that the respondent after giving many opportunities to the petitioner, having no response, issued notice under Section 142(1) dated 31.12.2021 to the petitioner and was specifically asked to state/explain how the PAN of the dissolved firm was used after its dissolution for making the several financial transactions. It is submitted that the petitioner has not furnished any explanation to the same with documentary evidence, and therefore show cause notice was issued to the petitioner on 11.03.2022.

16.The learned counsel for the respondents submitted that only in response to the show cause notice the petitioner submitted details on 15.03.2022 and the Assessing Officer being not satisfied with the details filed by the petitioner completed the assessment under Section 147 r/w Section 144 r/w Section 144B on 25.03.2022.

17.I have considered the arguments advanced by the learned counsel for the petitioner and learned Senior Standing Counsel for the respondents.

18.I have also perused the affidavit filed in support of the Writ Petition and the counter filed by the respondents. I have perused the documents filed by the petitioner.

19.The facts are not in dispute. The petitioner Company was formerly a Partnership Firm. It was later converted into a Private Limited Company with the dissolution of the Partnership Firm on 14.07.2010. With the conversion of the Partnership Firm into Private Limited Company, the PAN Numbers were also altered. The PAN Number of the Partnership Firm and the petitioner Company are as under:-

	Partnership Firm	Partnership Company
Name	N.R.Patel & Co.	NRP Projects P.Ltd.
PAN Number	AACFN9222D	AADCN3383M

20.The petitioner as also a firm appears to have had export transactions which included both exports and import. The Firm was earlier issued with an Importer-Exporter Code (hereinafter referred to as "IE Code") under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 read with Foreign Trade (Regulation) Rules, 1993 export import policy as it stood then.

21.The IE Code was subsequently amended and a fresh IE Code was issued on 15.06.2001 with the IE Number : 0499011287. The IEC number is linked to the PAN Number. It appears that earlier the IE Code would have been obtained in the name of an individual and thereafter same IE Code was re-issued in the name of the Firm.

22.After the Firm was dissolved on 14.07.2010, a fresh IE Code was issued in the name of petitioner company with the same IEC number. Copy of the certificate of the said IE Code has been filed. The certificate of IEC

Code is dated 18.10.2010. It is reproduced below:-

RE-ISSUED WITH AMENDMENT

भारत सरकार

GOVERNMENT OF INDIA

वाणिज्य एवं उद्योग मंत्रालय

MINISTRY OF COMMERCE AND INDUSTRY

ZONAL JT. DIRECTOR GENERAL OF FOREIGN TRADE

4TH FLOOR, SHASTRI BHAVAN ANNEX 26,HADDOWS ROAD CHENNAI-600006

CERTIFICATE OF IMPORTER-EXPORTER CODE (IEC)

1.	Name	NRP PROJECTS PRIVATE LTD
2.	Address	DESBANDHU PLAZA, FIRST FLOOR , 47, W ROAD , CHENNAI,TN 600014
3.	Name and Designation of the person whose photograph has been affixed on the Bank Certificate	Photo as on Bank Certificate JAYANTHIBHAI RAMDASS PATEL DIRECTOR
4.	Address of the Branch/Div./Unit if any	Branches NIL
5.	IEC Number	0499011287
6.	Date Of Issue	10.09.1999
7.	PAN	AADCN3383M

Place :Chennai

Date :18.10.2010

(D. SRIDHAR)

Asst. Director General of Foreign Trade

Issued From File No.:Issued from File No. 04/04/130/01119/AM00/ dated 07.09.1999

Note: 1. In case of any change in the Name/Address or Constitution of IEC holder, the IEC holder shall cease to be eligible to Import or Export against the IEC after expiry of 60 days from the date of such a change unless in the meantime, the consequential changes are effected in the IEC by the concerned Licensing Authority.

23.The documents that have been filed by the petitioner in respect of which the proceedings were initiated with the issuance of Notice dated 28.03.2021 under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2015-2016 pertains to exports made by the petitioner with the same IE Code. Copies of the export shipping bills for Rs.69,47,528/- shows that the PAN Number of the company with the above IE Code has been declared.

24.Similarly, some of the copies of the Bill of Entries filed by the petitioner before this Court also indicate that the Bills of Entry also contain the PAN number of the petitioner company with the same IE Code and not the PAN number of the Partnership Firm which seems to expire with effect from 14.07.2010.

25.The petitioner has also filed Copy of Form 15 CA acknowledgement with respect to Remittance to non-resident or foreign company which also indicate the name of the petitioner Company with the petitioner's PAN number.

26.On the other hand, the impugned order itself has been passed in the name of the non-existing firm based on a notice that was issued in the name of non-existing Firm.

27.All along the petitioner has replied to the Department. However, the Department has failed to take note of the same and has thus confirmed the demand. The consequences in the impugned order is thus unsustainable. That apart for the subsequent Assessment Year, namely the Assessment Year 2016-2017, a notice was issued under Section 148A(b) of the Income Tax Act, 1961, which was issued under the same circumstances.

28.The Assistant Commissioner of Income Tax NON CORP WARD 11(3) CHE has also rightly dropped the proceedings by an order dated 30.03.2023 under Section 148A(d) of the Income Tax Act, 1961.

29.Although the Court would have been justified in referring the petitioner to workout the remedy before the Appellate Commissioner, Court is of the view that this is a fit case for interfering with the order passed by the respondents as it is arbitrary and shows the clear non-application of mind.

30.Under these circumstances, the Impugned Order dated 25.03.2022 and the impugned notice dated 28.03.2021 are set aside. Accordingly, the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

02.02.2024

kkd / krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.Additional / Joint / Deputy / Assistant
Commissioner of Income Tax / Income-tax Officer,
National Faceless Assessment Centre, Delhi.

2.The Income Tax Officer,
Non-Corporate Ward-11(3),
121, Nungambakkam High Road,
Chennai – 600 034.

C.SARAVANAN, J.

kkd / krk

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