IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11225 of 2023 and
W.M.P.Nos.11089 & 11090 of 2023

Pon Pure Chem P. Ltd.,
No.77, Perambur High Road,
Perambur, Chennai-600 012.

Now amalgamated with,
Pon Pure Chemical India Private Limited,
Represented by its Managing Director,
M.Ponnuswami,
S/o.Muthusamy, Aged 70 years,
No.32, H-Block, 15th Main Road,
Anna Nagar, Chennai-600 040. ...Petitioner

Vs.

1. The Income Tax Officer,
National Faceless Assessment Centre,
Assessment Unit, Income Tax Department,
Ministry of Finance, Room No.401,
2nd floor, E-Ramp, Jawaharlal Nehru Stadium,
Delhi-110 003.

2.The Assistant Commissioner of Income Tax,
Circle 1, LTU Chennai,
Chennai-Wanaparty Block,
Aayakar Bhavan, No.121,
Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in DIN ITBA/AST/S/147/2022-23/1050743386(1) dated 14.03.2023 on the file of the 1st respondent relating to assessment year 2015-2016 and quash the same.

For Petitioner : Mr.R.Sandeep Bagmar

For Respondents : Mr.V.Mahalingam,
Senior Standing Counsel

ORDER

By a scheme of amalgamation, which was sanctioned by order dated 26.03.2008, Pon Pure Chem Private Limited merged with Pure Chemicals and Solvent Private Limited. The resulting entity Pure Chemicals and Solvent Private Limited changed its name to Pon Pure Chem Private Limited on 26.06.2008 and eventually from Pon Pure Chem Private Limited to Pon Pure Chemical India Private Limited on 13.03.2015. As regards assessment year 2015-2016, an assessment order was issued in the name of the resulting company on 20.12.2017. Thereafter, a notice dated 19.03.2022 under Section 148A(b) was issued to the transferor company under the scheme of amalgamation. The resulting company replied thereto on 22.03.2022 and stated that PAN

AADCP3173B, which had been allotted to the transferor company, was surrendered on 01.08.2008. Thereafter, show cause notice dated 28.02.2023 was issued to the transferor company. By reply dated 08.03.2023, it was stated that such company was amalgamated with Pure Chemicals and Solvent Private Limited. The order sanctioning the scheme of amalgamation was enclosed. It was also stated that the transferor company did not maintain account No.531470742 with the Punjab National Bank. The impugned assessment order was issued in these facts and circumstances.

2. Learned counsel for the petitioner referred to the above sequence of dates and events and contended that the transferor company stood dissolved without being wound up in terms of the order dated 26.03.2008 of this Court. Upon such dissolution, he submits that legal proceedings cannot be initiated against a non existent entity. In support of this contention, he relies upon several judgments of the Hon'ble Supreme Court and of High Courts. In particular, he referred to the judgments of the Supreme Court in *Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Limited, (2019) 107 Taxmann.com 375 (SC) (Maruti Suzuki)* and *Principal Commissioner of Income Tax v.*

Mahagun Realtors Private Limited, 443 ITR 194 (SC) (Mahagun Realtors). After pointing out that the Supreme Court permitted proceedings against the transferor company in *Mahagun Realtors*, learned counsel referred to the judgment of this Court in *M/s.Pharmazell (India) Private Limited v. Additional/Joint/Deputy/Asst. Commissioner of Income Tax/Income Tax Officer and another, order dated 27.02.2024 in W.P.No.22468 of 2021 (Pharmazell)*. He pointed out that this Court considered the judgments in *Maruti Suzuki* and *Mahagun Realtors* and concluded that the decision in *Mahagun Realtors* turned on the fact that the transferor company had participated in proceedings without bringing to the notice of the Income Tax authorities the amalgamation and even filed a return of income. By distinguishing the said judgment, he pointed out that the Court applied the ratio of *Maruti Suzuki*. On the merits of the case, learned counsel submits that the petitioner pointed out that account No.531470742 was not maintained with the Punjab National Bank by the transferor company. He also pointed out that the Punjab National Bank confirmed this position by communication dated 06.03.2023.

3. In response to these contentions, Mr.V.Mahalingam, learned senior standing counsel, who appears for the respondents, submits that

the petitioner merely stated that PAN AADCP3173B was surrendered on 01.08.2008, but did not state in the reply dated 22.03.2022 that the transferor company did not maintain bank account no.531470742 with the Punjab National Bank. Therefore, he submits that the issue relating to the bank account calls for examination by the assessing officer. He seeks a remand for such purpose.

4. The petitioner has placed on record the order sanctioning the scheme of amalgamation. Such order is dated 26.03.2008. The petitioner has stated that the order was communicated to the Registrar of Companies. Upon the issuance of the order and the communication thereof to the Registrar of Companies, the amalgamation took effect on the appointed date (i.e. 01.04.2007) under the scheme of amalgamation. With effect from the said date, all the assets and liabilities of the transferor stood transferred to and vested with the transferee. The order provides for the dissolution without winding up of the transferor company. Upon such dissolution, it is no longer permissible to initiate proceedings against the transferor company. As noticed in *Pharmazell*, the decision in *Mahagun Realtors* turned on the fact that the transferor company participated in proceedings and did not provide information

relating to the amalgamation when such proceedings were initiated. In this case, the petitioner informed the Income Tax Department about the amalgamation and enclosed a copy of the order of this Court with communication dated 08.03.2023. It should also be noticed that the Income Tax Department issued an assessment order against the transferee company in respect of assessment year 2015-2016 on 20.12.2017.

5. When the above facts and circumstances are considered cumulatively, the impugned assessment order cannot be sustained.

6. Therefore, the impugned assessment order dated 14.03.2023 is quashed by leaving it open to the respondents to initiate proceedings against the transferee company in accordance with law. Accordingly, the writ petition stands allowed without any order as to costs. Consequently, connected miscellaneous petitions are closed.

11.07.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
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SENTHILKUMAR RAMAMOORTHY,J.

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