BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.7848 & 7849 of 2022
and
W.M.P.(MD) Nos.5900, 5901, 5903 & 5904 of 2022

SPB Papers Limited
No.109, Nungambakkam High Road,
Chennai – 600 034
Now amalgamated with
M/s.Seshasayee Paper and Boards Limited,
Rep. by its Managing Director,
Sri.K.S.Kasi Viswanathan,
S/o.Subramaniyan,
Pallipalayam, Cauvery RSPO,
Erode – 638007. ... Petitioner in both W.Ps.

Vs.

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

2.The Deputy Commissioner of Income Tax,
Circle - 1, Income Tax Office - Tirunelveli,
Nellai City Centre,

Tiruchendur Road,
Rahmath Nagar,
Tirunelveli - 627 011. ... 1st and 2nd Respondents in both W.Ps.

3.The Principal Commissioner of Income Tax,
Madurai - 1,
Central Revenue Buildings,
No.2, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai - 625 002. ... 3rd Respondent in W.P.(MD) No.7848/22

4.The Joint/Additional Commissioner of Income Tax,
Tirunelveli Range,
Income Tax Office - Tirunelveli,
Nellai City Centre,
Tiruchendhur Road,
Rahmath Nagar,
Tirunelveli - 627 011. ... 3rd Respondent in W.P.(MD) No.7849/22

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the records in DIN: ITBA/AST/S/147/2021-22/1042109340(1) dated 30.03.2022 and in DIN: ITBA/AST/S/147/2021-22/1042105289(1) dated 30.03.2022 on the file of the first respondent relating to the Assessment Years 2013-2014 and 2016-2017 and to quash the same.

For Petitioner in both W.Ps. : Mr.A.L.Somayagi
Senior Counsel
for Mr.G.Baskar

For Respondents
in both W.Ps. : Mr.J.Parekh Kumar
Senior Standing Counsel

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COMMON ORDER

By this common order, both these Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioner which stands amalgamated with M/s.Seshasayee Paper and Boards Limited has challenged the impugned Assessment Orders dated 30.03.2022 passed by the first respondent under Section 147 r/w. Section 144 r/w. Section 144B of the Income Tax Act, 1961, for the Assessment Years 2013-2014 and 2016-2017.

3. The petitioner company actually is not in existence and has merged with M/s.Seshasayee Paper and Boards Limited pursuant to the orders passed by the Principal Bench of this Court in C.P.Nos.268 & 269 of 2012 on 26.04.2013. Hence, this Writ Petitions have been filed by the transferee company namely, M/s.Seshasayee Paper and Boards Limited

by giving particulars in the cause title as SPB Papers Limited now amalgamated with M/s.Seshasayee Paper and Boards Limited.

4. After the order was passed on 26.04.2013, the Director of the dissolved company had also intimated the same to the jurisdictional Deputy Commissioner of Income Tax, Circle-1, Rahmath Nagar, Tirunelveli – 627011. M/s.Seshasayee Paper and Boards Limited has also filed Form No.62 under Rule 9C giving particulars of the amalgamated company namely SPB Papers Limited and the date of the amalgamation as 01.04.2012 being the effective date of the amalgamation sanctioned by the Court vide its order dated 26.04.2013 in C.P.No.268 & 269 of 2012.

5. It is noticed that for the Assessment Year 2013-2014, the regular return of income was also filed by M/s.Seshasayee Paper and Boards Limited under Section 139 of the Income Tax Act, 1961, on 29.11.2013. This return would have included the income of the transferrer company namely, SPB Papers Limited. The Department has however issued a notice under Section 148 of the Income Tax Act, 1961 on 31.03.2021 being the last date invoking the machinery for issuance of notice under Section 148 of the Act as changed with effect from 01.04.2021. The said

Notice was addressed to SPB Papers Limited since merged with M/s.Seshasayee Paper and Boards Limited.

6. Thereafter, notices were issued to SPB Paper Limited under Section 142(1) of the Income Tax Act, 1961 on 11.11.2021 which were replied back by the Chartered Accountant on 20.11.2021 stating that the said company stood merged with M/s.Seshasayee Paper and Boards Limited pursuant to the order of this Court w.e.f. 01.04.2012. It has been clearly stated that the said company was not in existence from 01.04.2012 and therefore, filing of income tax returns in the name of SPB Papers Limited which stood merged with M/s.Seshasayee Paper and Boards Limited does not arise.

7. Further, a notice was issued under Section 142(1) of the Act in the name of the said company on 03.02.2022. Once again, a reply was given on 17.02.2022. However, the Department proceeded to issue notice still in the name of SPB Papers Limited which stood merged with M/s.Seshasayee Paper and Boards Limited on 27.03.2022 which has now culminated in the impugned Assessment Orders dated 30.03.2022.

8. The learned Senior Counsel for the petitioner would place reliance on the decision of this Court in **NRP Projects (P.) Ltd.** Vs. **Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer, National Faceless Assessment Centre, Delhi**, [2024] 162 taxmann.com 71 (Madras), wherein, it was held as under:-

> *"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.

9. The learned Senior Counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in **Principal Commissioner of Income-tax** Vs. **Mahagun Realtors (P.) Ltd.**, [2022] taxmann.com 91 (SC).

10. The respondents in their counter affidavit has stated as follows:-

> "*8. ....*
>
> *f) It is the obligation of the 2nd petitioner to intimate about the amalgamation to the department during the course of scrutiny proceedings. Moreover, the 2nd Petitioner had neither given information to the amalgamating company, Ms. Seshasayee Paper and Boards Limited (1st Petitioner) about the case having been selected for scrutiny nor filed the details of return of income filed by the Amalgamating company which admitted all the income of amalgamated company to the department.*"

11. Opposing the prayer, the learned Senior Standing Counsel for the respondents would submit that these Writ Petitions are devoid of merits as the petitioner has an alternate remedy before the Appellate Authority and therefore, these Writ Petitions are liable to be dismissed.

12. That apart, the learned Senior Standing Counsel for the respondents would submit that though the said SPB Papers Limited (transferor company) stood merged with M/s.Seshasayee Paper and Boards Limited (transferee) pursuant to the order passed by this Court in

C.P.Nos.268 & 269 of 2012 on 26.04.2013, with effect from 01.04.2012, there were several incomes received by the transferor company SPB Papers Limited which have not been taxed either in the hands of the transferor company SPB Papers Limted or in the hands of transferee company M/s.Seshasayee Paper and Boards Limited.

13. It is further submitted that even during the Financial Year 2015-2016 for the relevant Assessment Year 2016-2017, there was income on the Fixed Deposits made by the transferor company SPB Papers Limited and therefore, Notices were issued in respect of the incomes tax paid, wherein, TDS was deducted with PAN No.AAJCS8079D and hence it is submitted that the tax is payable by the transferor company SPB Papers Limited.

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

15. The facts are not in dispute. The dispute in these Writ Petitions pertains to the Assessment Years 2013-2014 and 2016-2017. The said

SPB Papers Limited stood merged with M/s.Seshasayee Paper and Boards Limited in terms of the order dated 26.04.2013 passed by this Court in C.P.Nos.268 & 269 of 2012. The effective date of the merger under the Scheme of Amalgamation is 01.04.2012. Thus, w.e.f. 01.04.2012, the said SPB Papers Limited ceased to exist. The tax lability of the said transferor company SPB Papers Limited would have stood merged with the transferee company M/s.Seshasayee Paper and Boards Limited.

16. Thus, it is incumbent on the part of the transferee namely, M/s.Seshasayee Paper and Boards Limited to have included the tax liability of the transferor company SPB Papers Limited in view of the merger with effect from 01.04.2012. If this was not done, it is for the Income Department to proceed against the transferee company M/s.Seshasayee Paper and Boards Limited and not against the transferor company SPB Papers Limited which stood merged w.e.f. 01.04.2012. Therefore, the impugned Assessment Orders are liable to be quashed and are accordingly quashed.

17. In case, there was any short payment of tax by the transferor company SPB Papers Limited, the Income Tax Department was without

remedy to proceed against said M/s.Seshasayee Paper and Boards Limited.

18. Therefore, these Writ Petitions are allowed with liberty to the respondents Income Tax Department to proceed against the said transferor company M/s.Seshasayee Paper and Boards Limited in the manner known to law. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.07.2024

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:

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C.SARAVANAN, J.

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