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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7852/2023**

**M/S KAYEM FOODS INDUSTRIES PRIVATE LIMITED (AS
SUCCESSOR OF RIVER INFRACON PVT LTD)Petitioner**

Through: **Mr. Gaurav Jain, Mr. Shubham
Gupta, Ms. Shalini Upadhyay,
Advocate**

versus

INCOME TAX OFFICER WARD 21 (1) NEW DELHI

.....Respondents

Through: **Mr. Puneet Rai, Sr. St. Counsel with
Mr. Ashvini Kumar, Mr. Rishabh
Nangia, Jr. St. Counsel**

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

27.11.2024

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1. The petitioner i.e. M/s. Kayem Foods Industries Private Limited has
filed the present petition *inter alia* praying as under:-

a) a writ of and/or order and or directions in the nature of certiorari,
prohibition, mandamus or any other appropriate writ, order or
direction quashing impugned notice 30.05.2022, order dated
27.07.2022 under section 148A(d) alongwith notice dated 27.07.2022
issued under section 148 of the Act for the assessment year 2013-14
and proceedings initiated pursuant thereto;

b) a writ of and/or order and/or direction in the nature of prohibition
commanding Respondent to forebear from giving effect to and/or
taking any step whatsoever pursuant to and/or in furtherance of the
said purported notice under section 148 of the Act and/or in any
proceedings initiated thereunder for the assessment year 2013-14;



c) such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. It is the petitioner's case that the impugned notice under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) and the impugned order passed under Section 148A(d) of the Act, was issued in the name of M/s. River Infracon Pvt. Ltd.— a company that is dissolved.

3. It is the petitioner's case that the said company i.e. M/s. River Infracon Pvt. Ltd. (the assessee) was amalgamated with the petitioner i.e. Kayem Foods Ltd. (the petitioner) by virtue of the order dated 18.03.2014 passed by the learned Company Court whereby the scheme of arrangement under Sections 391-394 of the Companies Act, 1956 was approved. The petitioner submits that the re-assessment proceedings initiated, pursuant to the impugned notices and orders are liable to be set aside.

4. The issue involved in the present petition is covered by an earlier decision of this Court in *International Hospital v. DCIT Circle 12 (2): 2024:DHC:7422-DB*. We consider it apposite to set out the following passages of the said judgment, which are dispositive of the present petition as well:

“32. In view of the aforesaid, the position in law appears to be well settled that a notice or proceedings drawn against a dissolved company or one which no longer exists in law would invalidate proceedings beyond repair. Maruti Suzuki conclusively answers this aspect and leaves us in no doubt that the initiation or continuance of proceedings after a company has merged pursuant to a Scheme of Arrangement and ultimately comes to be dissolved, would not sustain.

33. We note that in this batch of writ petitions and in light of the disclosures which have been made, the assessee clearly appear to



have apprised their respective AOs of the factum of amalgamation and merger at the first available instance. If the respondents chose to ignore or acknowledge those fundamental changes, they would have to bear the consequences which would follow. Once the Scheme came to be approved, the transferor companies came to be dissolved by operation of law. They, thus, ceased to exist in the eyes of law. Proceedings thus drawn in their name would be a nullity and cannot be validated by resort to Section 292B of the Act.”

5. In a connected appeal (ITA 116/2023) which was disposed of by the common order, the Court held as under:

ITA 116/2023 [International Hospital Ltd. Vs. DCIT Circle 12(2)]

36. The aforementioned appeal which stood tagged with the batch poses the following question of law for our consideration: -

“Whether the Income Tax Appellate Tribunal has misdirected itself in law and on facts in sustaining the order of the Commissioner of Income Tax (Appeals) dated 30.05.2019 and the order dated 29.01.2019 passed by the Assessing Officer (AO) under Section 154 of the Income Tax Act, 1961?”

37. **Escorts Heart and Super Specialty Institute Ltd** is stated to have filed its Return of Income for AY 2013-14 on 30 September 2013. Pursuant to a Scheme of Arrangement which came to be sanctioned by the Punjab and Haryana High Court on 13 December 2013 it merged with **International Hospital Limited**, the appellant herein. The appointed date under the Scheme was stipulated to be 01 January 2013. A notice under Section 143(2) came to be issued in the name of EHSSIL on 05 September 2014. During the course of the assessment which ensued, the Revenue is stated to have been duly apprised the respondents of the sanction of the Scheme and EHSSIL having merged with IHL. The appellants have also placed on our record a letter dated 16 February 2016 in terms of which details relating to the Scheme were duly provided to the AO.

38. The record further bears out that the AO had duly acknowledged the factum of merger and had specifically alluded to the order of the High Court. However, the ultimate assessment order dated 28 March



2016 came to be drawn in the name of EHSSIL. In the appeal which was preferred by IHL before the Commissioner of Income Tax (Appeals), a specific ground with respect to invalidity of that order on the ground of the same having been made in the name of EHSSIL was taken. It was during the pendency of that appeal that the AO invoked Section 154 asserting that the assessment order had inadvertently come to be framed in the name of EHSSIL. It is the validity of this order which was questioned before the Tribunal. The Tribunal has upheld the action of the AO leading to the filing of the present appeal.

39. We find ourselves unable to be concur with the view as taken by the Tribunal for the following reasons. Undisputedly, the factum of merger was duly brought to the notice of the AO. In fact, the said authority has duly taken note of the order of the High Court and in terms of which the Scheme had come to be approved. However, inexplicably, it proceeded to frame an order in the name of EHSSIL. We note that the Return in this case was submitted by EHSSIL prior to the Scheme being sanctioned. It was perhaps in that backdrop that the notice under Section 143(2) came to be issued in its name, albeit after the Scheme had come into force. The assessment proceedings were thus ongoing at the time when the Scheme came to be sanctioned.

40. However, and admittedly, the factum of merger had been duly brought to the attention of the AO. The merger was taken into consideration at more than one place in the order of assessment that came to be framed. Despite the above, the AO proceeded to draw the order in the name of an entity which had ceased to exist. We also bear in consideration the indubitable fact that the rectification order came to be passed three years after the framing of the original order of assessment, and that too, during the pendency of the appeal of the assessee and where a specific ground of challenge was raised in this regard. This was therefore not a case of discovery of an inadvertent error or mistake immediately after the passing of an order.

41. We also bear in consideration *Maruti Suzuki* having clearly held that such a mistake would not fall within the ken of Section 292B of the Act. An exercise of rectification as undertaken in the present case, if accorded a judicial imprimatur, would in effect amount to recognising a power to amend, modify or correct in an attempt to



overcome a fundamental and jurisdictional error contrary to the principles enunciated in *Maruti Suzuki*.

42. We also cannot lose sight of the fact that this was not a case where the assessee had attempted to mislead or suppress material facts and which may have warranted the case of the assessee being placed in the genre which was considered in *Mahagun Realtors*. The mere submission of replies on the letter head of EHSSIL also fails to convince us to hold in favour of the Revenue. In any event, none of the authorities below have held that the appellant was guilty of suppression. We would thus be inclined to allow the instant appeal and answer the question as posed in favour of the appellant and against the Revenue.

6. It is material to note that in the present case, the assessee had filed a revised return for the assessment year 2013-14 which incorporated the results of the amalgamating company (River Infracon). The said return was scrutinised and the assessment order under section 143(3) of the Act was framed. Thus, the Assessing Officer (AO) was fully aware of the fact that River Infracon stood merged with the petitioner and the income of the said petitioner company was subsumed in the income of the petitioner which was subjected to the assessment proceedings. The petition is accordingly allowed.

7. The impugned notices issued under Section 148A(b) and the impugned order passed under section 148A(d) of the Act are set aside.

8. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 27, 2024/j

[Click here to check corrigendum, if any](#)