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29.01.2025

WPA 28811 of 2024

Bimal Sarawgi (Former Director Sikha Movies Private Limited)
Vs.
Income Tax Officer, Ward 12(1), Kolkata & Ors.

Mr. Avra Maumder
Ms. Alisha Das
Mr. Suman Bhowmik
Mr. Samrat Das
Ms. Elina Dey
Mr. Sourendra Nath Banerjee
Mr. Alishan Hossain
… … for the petitioner
Mrs. Smita Das De
… … for the respondents

1. The petitioner has filed the present writ petition challenging the notice dated August 30, 2024, issued under Section 148 of the Income Tax Act, 1961 along with the impugned approval issued under section 151 of the Income Tax Act, 1961 for the Assessment Year 2015-16 by the respondent no.1 and respondent no.2.

2. The petitioner, a lawful citizen of India, identified by PAN No. AJQPS5463A, is a regular assessee under the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The petitioner was previously the director of *Sikha Movies Private Limited*, a company incorporated under the Companies Act, 2013 (hereinafter referred to as "the erstwhile company"). The said company underwent voluntary liquidation, culminating in its dissolution by an order dated November 9, 2021, passed by the National Company Law Tribunal (NCLT), pursuant to Section 59(8) of the Insolvency and Bankruptcy Code, 2016. The liquidation process was undertaken following the passage of a special resolution by the members of the company on February 22, 2019 and subsequent compliance with all statutory formalities, including the filing of requisite intimation with the jurisdictional Assessing Officer under Section 178(1) of the Act on February 27, 2019.

3. The NCLT order, after a meticulous examination of the liquidator's report, confirmed that all outstanding liabilities had been duly discharged and that the dissolution was carried out bona fide, free from any intent to defraud creditors. As a result, *Sikha Movies Private Limited* ceased to exist as a legal entity upon the issuance of the said order.

4. Subsequently, on June 21, 2022, a search and seizure operation was conducted under Section 132 of the Act targeting various entities allegedly connected with Aludecor Group & Others. During the operation, incriminating material and electronic evidence were seized from the premises of a Chartered Accountant, one Banwari Lal Agarwal. The said material purportedly implicated the erstwhile company as a beneficiary of accommodation entries facilitated by a web of shell entities, allegedly including *M/s Krishnasudha Dealtrade Pvt. Ltd.* It was alleged that the erstwhile company had received a bogus unsecured loan amounting to ₹65,00,000 during the Financial Year 2014-15, relevant to Assessment Year 2015-16 and had paid interest amounting to ₹2,04,493 on the same. The modus operandi involved the purported routing of unaccounted funds through fictitious entities in exchange for commission payments.

5. Based on the above findings, the respondent authority issued a notice under Section 148 of the Act on August 30, 2024, seeking to reopen the assessment for Assessment Year 2015-16 on the ground that income to the tune of ₹67,04,493 had allegedly escaped assessment.

6. Submissions for the Learned Counsel for the petitioner are that the petitioner seeks to quash the impugned notice issued under Section 148 of the Act, contending that it suffers from jurisdictional infirmity, procedural impropriety and contravention of established legal principles.

7. The petitioner asserts that the notice is fundamentally invalid as it has been issued in the name of a non-existent entity, namely *Sikha Movies Private Limited*, which was dissolved pursuant to the NCLT order dated November 9, 2021. Relying on the legal principle established in ***Principal Commissioner of Income Tax v. Maruti Suzuki India Limited*** reported in ***(2019) 416 ITR 613 (SC)***, the petitioner contends that proceedings initiated against a dissolved company are non-est in law. The petitioner submits that such jurisdictional defect cannot be rectified or cured by invoking the provisions of Section 292B of the Act, as the defect pertains to the very identity of the assessee, rendering the proceedings void ab initio.

8. The petitioner further contends that the notice issued under Section 148 for Assessment Year 2015-16 is time-barred. It is submitted that under the pre-amended provisions of Section 149(1)(b) of the Act, reassessment proceedings could not be initiated beyond six years from the end of the relevant Assessment Year unless the income escaping assessment exceeded ₹1,00,000. Accordingly, the statutory deadline for issuing a notice for Assessment Year 2015-16 expired on March 31, 2022. The petitioner also argues that the amended provisions of Section 149 introduced by the Finance Act, 2021, which extend the time limit to ten years for cases involving income escaping assessment exceeding ₹50,00,000, cannot operate retrospectively and do not apply to the present case.

9. The petitioner highlights that the issuance of the impugned notice is vitiated by a lack of compliance with mandatory procedural safeguards prescribed under the Income Tax Act and the Central Board of Direct Taxes (CBDT) circulars. The petitioner emphasizes that under the e-Assessment of Income Escaping Assessment Scheme, 2022, reassessment notices are to be issued through a faceless mechanism to ensure transparency and mitigate the scope for arbitrary action. The petitioner argues that the failure to adhere to these procedural requirements violates the principles of natural justice and renders the proceedings unsustainable.

10. The petitioner submits that the search and seizure operation under Section 132 of the Act, forming the basis for the reopening of assessment, was conducted after the dissolution of the erstwhile company. Consequently, any material recovered during the search cannot be used as a basis for initiating proceedings against a non-existent entity. The petitioner further contends that the respondent authorities have failed to establish a credible nexus between the seized material and the erstwhile company, thereby failing to discharge the burden of proof mandated under the Act.

11. The petitioner argues that the impugned notice reflects a mechanical and arbitrary exercise of power by the respondent authorities. It is submitted that the respondent failed to independently verify the allegations of bogus transactions and relied solely on generalized information gathered during the search. Such lack of application of mind, the petitioner contends, renders the reassessment proceedings liable to be quashed as per the principles laid down ***in GKN Driveshafts (India) Ltd. v. Income Tax Officer [(2003)*** reported in ***259 ITR 19 (SC)***.

12. In light of the above, the petitioner submits that the impugned notice dated August 30, 2024, issued under Section 148 of the Act, be quashed as null and void and that all consequential proceedings initiated pursuant to the impugned notice be declared as non-est in law.

13. The Learned Counsel appearing for the respondent authority submits that the issuance of the notice under Section 148 of the Act was undertaken in compliance with statutory requirements amidst an exigency that necessitated the reopening of numerous cases under Section 147 of the Act within a constrained timeframe during August 2024. At the material time, the competent authority, while granting approval for such issuance, was unaware of the liquidation or dissolution of the assessee company.

14. Pursuant to present writ petition, it has subsequently come to the attention of the respondent authorities that the petitioner had, by way of a communication dated February 27, 2019, addressed to the respondent no.1, apprised the department of the initiation of voluntary winding-up proceedings in accordance with Section 59(a) of the Insolvency and Bankruptcy Code, 2016. However, owing to a restructuring of departmental jurisdictions on August 13, 2020, which amalgamated four erstwhile charges into a consolidated entity, there arose a logistical impediment in locating the said communication. The resultant disorganization in records, documents and storage led to the unavailability of the petitioner's letter at the juncture of issuing the notice under Section 148 of the said Act.

15. The respondent further submits that, in the absence of contemporaneous information regarding the liquidation or dissolution of the company, as furnished either by the National Company Law Tribunal or the appointed Liquidator, the PAN of the assessee company continued to remain active in the department's system. Consequently, the notice under Section 148 was issued through the system based on the PAN's active status. The respondent acknowledges the oversight in deactivating the PAN in a timely manner and affirms that steps are now being undertaken to remedy the same in accordance with prescribed procedures.

16. The deactivation or deletion of the PAN necessitates the submission of requisite documents, such as an Indemnity Bond or the relevant NCLT order, which are presently unavailable with the undersigned. Nonetheless, the undersigned has initiated the process for deactivating the PAN, which entails forwarding a request to the Range Head, obtaining the requisite approval and thereafter enabling the final deactivation/deletion through the departmental system. The respondent craves indulgence for a reasonable period to complete this procedural compliance.

17. It is further assured by the respondent authorities that henceforth, any matter arising in relation to the subject entity will be appropriately dealt with in consultation with the appointed Liquidator. The respondent authority, therefore, prays that this Court consider the foregoing submissions and the bona fide circumstances leading to the issuance of the notice, while granting sufficient time to ensure compliance with the due process in the matter.

18. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court is of the opinion that the notice issued under Section 148 of the Income Tax Act, 1961, on August 30, 2024, was addressed to *Sikha Movies Private Limited,* a company that had ceased to exist following its dissolution by the National Company Law Tribunal (NCLT) order dated November 9, 2021. Citing the Supreme Court judgment in ***Principal Commissioner of Income Tax v. Maruti Suzuki (supra)***, this Court reiterated that any notice or proceedings initiated against a non-existent entity are non-est in law and void ab initio. The dissolution of the company as per Section 59(8) of the Insolvency and Bankruptcy Code, 2016, terminated its legal identity, rendering any subsequent actions against it legally untenable.

19. This Court noted that the defect in jurisdiction could not be cured through the provisions of Section 292B of the Income Tax Act, which address procedural errors. The fundamental issue in the case pertained to the identity of the assessee. Proceedings against an entity that no longer exists due to dissolution amount to a jurisdictional error and such a defect cannot be rectified by procedural safeguards or corrections.

20. It was further observed that the PAN of the dissolved company remained active in the Income Tax Department's system at the time of issuing the notice, which led to its issuance in error. The respondent authority admitted to this oversight and stated that steps were being undertaken to deactivate the PAN. This Court also acknowledged this admission but held that such procedural lapses do not alter the legal position that a notice against a non-existent entity is invalid.

21. Since the official liquidator was subsequently added as a party in the case, this Court ruled that any future proceedings relating to the erstwhile company must be directed solely against the official liquidator in accordance with law, if any. The erstwhile director, who is the petitioner in this case, cannot be held liable or served with any notice under Section 148 for the dissolved company's alleged tax liabilities.

22. For the foregoing reasons, this Court quashed the notice issued under Section 148, holding it to be without jurisdiction and legally unsustainable. It further clarified that any subsequent proceedings, if initiated, must strictly adhere to the applicable legal framework and involve only the official liquidator as the representative of the dissolved entity.

23. All pending applications are accordingly disposed of.

24. There shall be no order as to costs.

25. All parties shall act on the server copy of this order duly downloaded from the official website of this Hon'ble Court.

(Rajarshi Bharadwaj, J.)