IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11915 OF 2024

J M Mhatre Infra Pvt. Ltd.(Erstwhile J M Mhatre, Partnership firm) .. Petitioner

Versus

The Union of India, through the Secretary and Ors. .. Respondents

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Mr. **Bharat Raichandani a/w Ms. Bhagrati Sahu i/b UBR Legal***, Advocates for Petitioner.*

Mr. Ashok Kotangale a/w Mr. Nikitesh Kotangale a/w Mr. Nikhil Kamble, a/w Mr. Suresh Kabra a/w Ms. Neha Pande a/w Ms. Lizna Namavati, *Advocates for the Respondents/Revenue.*

CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.
DATE: DECEMBER 16, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed, *inter alia*, challenging the validity and legality of the impugned Notice dated 31st March 2021 and the consequent Assessment Order dated 31st March 2022. The short ground on

which the aforesaid notice, as well as the assessment order are challenged, is that the notice itself has been issued against a non existent entity.

3. According to the Petitioner, the Notice has been issued in the name of M/s. J. M. Mhatre, which is a partnership Firm. This partnership Firm merged into the Petitioner Company w.e.f. 29th January 2010. The Notice issued under Section 148 (dated 31st March 2021) is seeking to re-open the Assessment of the said Firm for Assessment Year 2016-17. At that time, the Firm was not in existence and had already merged with the Petitioner Company. This being the factual position, it is submitted that the impugned notice, being issued in the name of a non-existence entity, is null and void and has to be set aside. Consequently, the Assessment Order also has to go, is the submission of the petitioner.

4. The Learned Advocate appearing on behalf of the Revenue submitted that under Section 189 of the Income Tax Act, 1961, notwithstanding the fact that the Firm is dissolved, or the business is dis-continued, the Assessing Officer can make an Assessment of the total income of the Firm as if no such dis-continuance or dissolution has taken place, and all the provisions of the Income-Tax Act, including the provisions relating to the levy of penalty or any other sum, would apply to such Assessment. He

submitted that once the provisions of Section 189 specifically provide for the same, the Petitioner cannot contend that the notice issued under Section 148 in the name of the erstwhile Firm is bad in law. Consequently, the Learned Advocate on behalf of the Revenue submitted that the Writ Petition be dismissed with costs.

5. We have heard the learned counsel for the parties. We have also perused the papers and proceedings in the present case. It is not in dispute that the erstwhile Firm, M/s J. M. Mhatre, merged into the Petitioner Company w.e.f. 29th January 2010. After 29th January 2010, the Firm ceased to exist and merged into the Petitioner Company. The Assessing Officer has issued a notice under Section 148 for Assessment Year 2016-17.

6. In other words, the Assessing Officer was to re-assess income of the erstwhile Firm for a period when it was not in existence. Once this is the factual position, Section 189 can be of no assistance to the Revenue. What Section 189 postulates is that, notwithstanding the fact that the firm may be dissolved or dis-continued, the Assessing Officer can bring to tax any income of that Firm even after its dissolution or discontinuance. Section 189 would have absolutely no application in a case like the present one. Once we have negated the contention of the Revenue that Section 189 would not apply to

the facts of the present case, then, it is clear that the impugned notice cannot be allowed to stand, as the same has been issued in the name of non-existent entity. This has now been consistently held not only by the Hon'ble Supreme Court in the case of ***Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Limited (416 ITR 613) (SC),*** but several other decisions of this court.

7. In view of the aforesaid discussion, the impugned notice dated 31st March 2021 and the impugned order dated 31st March 2022 are hereby quashed and set aside.

8. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.] **[B. P. COLABAWALLA, J.]**

Rohit Ghuge (PA)