

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 14088 OF 2021

Implenia Services and Solutions Pvt. Ltd.Petitioner

V/s.

Deputy / Asst. Commissioner of Income
Tax, Circle-3(4) & Ors. ...Respondents

Mr. Madhur Agarawal a/w Ms Priyanka Bora for Petitioner
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ
DATED : 25th OCTOBER 2021

PC. :

1 Petitioner prays the impugned notice dated 27th March 2021 be quashed on the ground that it has been issued to a non existing entity. In the affidavit in reply for respondents, it is admitted that notice has been issued to a non existing entity but respondents state that it ought to be treated as a mistake and the name given in the notice could be corrected under Section 292B of the Income Tax Act, 1961 (the said Act). Respondents have relied upon a judgment of the Delhi High Court in the case of *Skylight Hospitality LLP Vs. Assistant Commissioner of Income Tax., Circle-28(1), New Delhi*¹ In the said affidavit, it is also stated that the said order of Delhi High Court has been subsequently affirmed on 6th April 2018 by a two Judge Bench of Hon'ble Supreme Court. This submission has been considered by this court in *Alok Knit Exports Ltd. Vs. Deputy Commissioner*

1. (2018) 405 ITR 296 (Delhi)

of Income Tax in its order dated 10th August 2021 in Writ Petition No.2742 of 2019. Paragraphs 5 to 9 of the said order read as under:

5 Mr. Mohanty appearing for respondents submitted that it was a human error which could be corrected under Section 292B of the Act. According to Mr. Mohanty human errors and mistakes cannot and should not nullify proceedings which were otherwise valid and no prejudice has been caused. Mr. Mohanty, relying upon the judgment of the Delhi High Court in **Sky Light Hospitality LLP V/s. Assistant Commissioner of Income Tax**², submitted that that was the effect and mandate of Section 292B of the Act. Mr. Mohanty also relied upon the order passed by the Apex Court when Sky Light Hospitality (supra) was escalated to the Apex Court (**Sky Light Hospitality LLP V/s. Assistant Commissioner of Income Tax**³). These do not help Mr. Mohanty's case. This cannot be a general proposition as the Apex Court has expressly stated "In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the IT Act (emphasis supplied)".

6 The Apex Court in its recent judgment on this subject in **Principal Commissioner of Income Tax V/s. Maruti Suzuki India Ltd.**⁴ considered the judgment of Sky Ligh Hospitality (supra) of the Apex Court and said that the Apex Court has expressly mentioned that in the peculiar facts of that case wrong name given in the notice was merely a clerical error. The Apex Court in Maruti Suzuki India Ltd. (supra) has also observed that what weighed in the dismissal of the Special Leave Petition were the peculiar facts of that case. The Apex Court has reiterated the settled position that the basis on which jurisdiction is invoked is under Section 148 of the Act and when such jurisdiction was invoked on the basis of something which was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation, the notice is bad in law. The Apex Court has held as under :

In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainment on 2 November

2. (2018) 405 ITR 296 (Delhi)

3. (2018) 92 taxmann.com 93 (SC)

4. (2019) 416 ITR 613 (SC)

2017. The decision in Spice Entertainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainment.

7 *This quotation squarely applies to this case at hand. In the case at hand as well, the indisputable fact is respondent no.1 has invoked jurisdiction by issuing notice under Section 148 of the Act to an entity that had ceased to exist. This is notwithstanding the fact that respondent no.1 was aware that Niraj Realtors had ceased to exist. Respondent no.1, as noted earlier, was aware because the notice under Section 148 of the Act was issued for the Assessment Year 2011-2012 in the name of petitioner for re-opening the assessment of Niraj Realtors. Infact even the reasoning dated 6th July 2018 for re-opening of the Assessment Year 2011-2012 starts with the following : "The M/s. Niraj Realtors & Shares Pvt. Ltd. (PAN : AABPS7071E) now merged with M/s. Alok Knit Exports Private Limited (PAN : AACCA8337K) is an Assessee of this charge."*

8 *The stand now taken in the affidavit in reply and submissions of Mr. Mohanty is nothing but an afterthought by respondent after having committed a fundamental error. We would have expected respondent no.1 to have atleast applied his mind and looked for documents which were already on file to see whether Niraj Realtors existed before issuing notice under Section 148 of the Act. Respondents' records would have indicated that Niraj Realtors ceased to exist and his predecessor/colleague has issued notice for the Assessment Year 2011-2012 alongwith the reasoning in the name of petitioner.*

9 *Therefore, the stand of respondent today that it was an error which could be corrected under Section 292B of the Act is not acceptable to this Court. Mr. Mohanty submitted that when respondent filled up the form for recording the reasons and initiating proceedings under Section 148 of the Act and for obtaining the approval on 29th March 2019, he has mentioned in the form in the column name and address of the assessee as M/s. Niraj Realtors and Shares Pvt. Ltd. now merged in and known as M/s. Alok Knit Exports Pvt. Ltd. In our view, that itself should have made respondent no.1 realise that when a company is merging into another company that merging company ceases to exist. Infact the Principal Commissioner of Income Tax, who is supposed to have approved the initiating of proceedings under Section 148 of the Act, also should have brought to the notice of or guided respondent no.1 that the notice ought to be issued in the name of petitioner and not Niraj Realtors which ceased to exist.*

2 In our view, the facts of the case at hand are squarely covered by the views expressed by us in *Alok Knit Exports Ltd.* (supra).

3 In the circumstances notice dated 27th March 2021 issued under Section 148 of the Act is quashed and set aside.

4 Petition disposed.

(AMIT B. BORKAR, J)

(K.R. SHRIRAM, J.)