

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5308 OF 2022

New Age Buildtech Private Limited ...Petitioner

Versus

National Faceless Assessment Centre
(formerly known as National E-Assessment
Centre) and Ors. ...Respondents.

...

Mr. Devendra Jain i/by Ms. Namita Chandra for the petitioner

Mr. Akhileshwar Sharma a/w. Ms. Shilpa Goel for the respondents.

...

CORAM : DHIRAJ SINGH THAKUR AND
KAMAL KHATA, JJ.

DATED : 26TH APRIL 2023.

ORDER

[PER: KAMAL KHATA, J]

1. Rule. By consent of both the parties, Rule made returnable forthwith to dispose of the Petition at the stage of admission.

2. By this Petition under Article 226 of the Constitution, the Petitioner seeks quashing of the impugned assessment order under section (u/s) 143 (3) read with 144B dated 28th September 2022 and the consequential impugned notices of demand issued u/s 156 dated 28th September 2022 and the show cause notices

dated 28th September 2022 u/s 270A and u/s 271 AAC(1) initiating penalty proceedings on the ground that the notices were issued in the name of a non-existent company.

3. Briefly stated the material facts are that the Petitioner amalgamated with the erstwhile ERP Infrastructure Projects Private Limited pursuant to the order passed by the National Company Law Tribunal (NCLT) on 3rd December 2021 with effect from (w.e.f.) 1st April 2021. This fact was communicated by uploading the order of the NCLT on 28th July 2022 in response to the Notice issued u/s 142 (1) of the Act on the portal evinced by e-Proceedings Response Acknowledgment. Disregarding the repeated communications by the Petitioner evincing the amalgamation of the erstwhile ERP Infrastructure Projects Private Limited., with the Petitioner, show cause notices dated 26th August 2022, 19th September 2022, assessment order u/s 143 dated 28th September 2022 and consequential notice of demand dated 28th September 2022 u/s 156, 270A, & 271AAC(1) were issued by the Respondents to the non-existent company ERP Infrastructure Projects Private Limited.

4. The factum of knowledge of amalgamation is not disputed by the Respondents' Counsel Mr. Sharma nor is there any denial of

information with regard to the amalgamation being received in the Affidavit in Reply dated 28th March 2023 filed by the Jurisdictional Assessment Officer.

5. Be that as it may, this Court in the case of ***CLSA India Private Limited vs DCIT-4(1)(1)***¹ (passed by the bench of whom one of us viz. Hon'ble Justice Dhiraj Singh Thakur was a member) has held that an active PAN of a non-existent company cannot create an exception in favour of the revenue to dilute in any manner the principles enunciated by the following judgments:

i. The judgment of the Apex Court in the case of ***Saraswati Industrial Syndicate Ltd. vs CIT***² which held that when two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another; the amalgamating company loses its entity;

ii. The judgment of the Delhi High Court in the case of ***Spice Entertainment Ltd vs CST***³ which held that once the factum of amalgamation of a company had been brought to the notice of the A.O., despite which the proceedings are continued and an order of assessment passed in the name of

1 Order dated 10th February 2022 in Writ Petition No. 2462 of 2022

2 186 ITR 278 (SC)

3 2012 (280) ELT 43 (Del)

non-existent company, the order of assessment would not be merely a procedural defect but would render it void; and

iii. The judgment of the Apex Court in the case of *PCIT, New Delhi vs Maruti Suzuki India Ltd.*⁴ which held that if despite informing the assessing officer if the jurisdictional notice was issued in the name of erstwhile company, then the basis on which the jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation and the participation in the proceedings by the assessee cannot operate as an estoppel against law.

6. In our view, considering the facts of the present case on the touchstone of the aforestated well settled propositions of law therefore, the Order of assessment u/s 143(3) dated 28th September 2022 and consequential notices u/s 156, 270A, 271AAC(1) issued in the name of a non-existent entity are void.

7. The Writ Petition is allowed. The impugned assessment order u/s 143 dated 28th September 2022 and consequential notices of

4 [2019]107 taxmann.com 375 (SC)

demand and penalty under sections 156, 270A, & 271AAC(1) all dated 28th September 2022 are set aside. The Respondents are at liberty to issue fresh notices in accordance with law.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]