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

WRIT PETITION No. 950 OF 2020

Teleperformance Global Services)
Private Limited, Plot CST No. 1406-A/28)
Teleperformance Towers Mindspace,)
Goregaon (West), Mumbai 400 104,)
Maharashtra, India … **Petitioner**

Vs.

1. Assistant Commissioner of Income-tax)
Central Circle 25(1), New Delhi,)
C R Building, ITO, I P Estate, 104B,)
Indrapastha Marg, New Delhi 110 002)

2. Principal Commissioner of Income-tax 25(1),
C R Building, ITO, I P Estate, 104B,)
Indrapastha Marg, New Delhi 110 002)

3. Assistant Commissioner of Income-tax-12)
Central Circle 12(2)(2), Mumbai, Aaykar)
Bhavan, Maharishi Karve Road,)
Mumbai 400 020, Maharashtra)

4. Principal Commissioner of Income-tax-12)
Room No. 127, 1st Floor, Aaykar)
Bhavan, Maharishi Karve Road,)
Mumbai 400 020, Maharashtra)

5. Union of India, Department of Legal Affairs
Ministry of Law and Justice, Government)
of India, 4th Floor, A-Wing, Shastri Bhavan)
New Delhi – 110 001 … **Respondents**

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Mr. Jehangir D. Mistri, Sr. Counsel a/w Madhur Agarwal and Atul Jasani, for the Petitioner.

Mr. Sham Walve, for the Respondents.

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CORAM : SUNIL P. DESHMUKH, & J.
ABHAY AHUJA, JJ.

RESERVED FOR JUDGMENT : MARCH 17, 2021
JUDGMENT PRONOUNCED ON : APRIL 9, 2021

JUDGMENT [PER : SUNIL P. DESHMUKH, J.]

1. Rule. Rule made returnable forthwith. Heard learned Senior Advocate Mr. J. D Mistri for the petitioner and Mr. Sham Walve advocate for respondent-State finally by consent.

2. The petition questions propriety, legality and validity of notice dated 30th March, 2019 issued by respondent No. 1 - the Assistant Commissioner of Income Tax, Delhi pursuant to section 148 of the Income Tax Act, 1961 (for short "the Act") for the assessment year 2012-13; and order dated 31st December, 2019 passed under section 144 read with section 147 of the Act in the name of M/s. TecnovateEsolutions Private Limited.

3. Mr. J. D. Mistri, learned senior advocate for the petitioner draws our attention to the factual events that, M/s. Tecnovate Esolutions Pvt. Ltd. (for short "TSPL") was a registered company engaged in business of providing back office support services/ remote data entry services for customers in and outside India. Under order dated 11th February, 2011, a scheme of amalgamation of aforesaid company with M/s. Intelnet Global Services Pvt. Ltd. , was approved

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with effect from 1st April, 2010 and since then the aforesaid TSPL ceased to exist. Subsequently, M/s. Intelenet Global Services Pvt. Ltd. amalgamated with M/s. Serco BPO Pvt. Ltd. Thereafter there had been change in the name with effect from 11th January, 2016 from M/s. Serco BPO Pvt. Ltd to M/s. Intelnet Global Services Pvt. Ltd. There had been a further change in the name from M/s. Intelenet Global Services Pvt. Ltd to Teleperformance Global Services Pvt. Ltd. (TGSPL) with effect from 12th February, 2019. He submits that as such, petitioner is successor of M/s. TecnovateEsolutions Pvt. Ltd.

4. It has been referred to that post amalgamation, for assessment year 2012-13 M/s. Intelenet Global Services Pvt. Ltd. filed its income tax returns on 30th November, 2012 and revised its return on 31st March, 2014 for the period 1st April, 2011 to 6th July, 2011. Its assessment was completed under ection 143(3) of the Act vide order dated 23rd September, 2016. M/s. Intelenet Global Services Pvt. Ltd. had filed returns for the period from 7.07.2011 to 31.03.2012 on 30th November, 2012 and revised returns on 31st March, 2014. Its assessment had been completed under Section 143(3) of the Act under order 31st January, 2017.

5. Notice dated 30th March, 2019 under section 148 of the

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Act for the assessment year 2012-13 in the name of TSPL had been issued by respondent No. 1 directing to file return of income within thirty days stating there is reason to believe that income chargeable to tax had escaped assessment,, without realising that said company was a non existing entity.

6. He submits, petitioner became aware of aforesaid notice based on telephonic conversation of respondent No. 1 with an employee of petitioner in second week of September, 2019. Petitioner had filed a letter dated 18th September, 2019 stating that TSPL has been amalgamated with effect from 1st April, 2010 and since then said company has ceased to exist, and as such, there is no question of filing returns of income for assessment year 2012-13 by said company. The then company M/s. Intelenet Global Services pvt. Ld. had duly filed returns of income for all the subsequent assessment years, and had as such submitted that the notice had been issued on misconception and appears to be an inadvertent error. In ensued telephonic conversation with respondent No. 1, the petitioner was advised to file online response. While attempts had been unsuccessful and portal was not letting petitioner to upload any document including reply, reply had been submitted via email on 29th November, 2019, enclosing a separate letter of even date. Petitioner had submitted that even after merger,

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some times the payers make payment to the petitioner, however, erroneously, continue to mention the PAN of erstwhile company and accordingly said deduction is reflected in the 26 AS of erstwhile company and not petitioner company, and petitioner in its return considered all such payments and claimed all such deduction. As such, there is no question of escaping assessment for the assessment year 2012-13.

7. It is contended that without considering the reply or even referring to the telephonic conservation of petitioner with respondent No. 1, assessment order dated 31st December, 2019 for the assessment year 2012-13, under section 144 read with section 147 of the Act, in the name of TSPL computing total income at Rs. 14,50, 95,452/- was passed. It has been referred to that respondent No. 1 purports to allege that petitioner had neither filed response to the show-cause notice nor filed returns of income for relevant assessment year. As per 26AS statement, taxes have been deducted with respect to transactions amounting to Rs. 14.51 Crores, hence, the same is treated as taxable under the provisions of the Act.

8. Petitioner on realising that assessment order dated 31st December, 2019 had been passed against M/s. TecnovateEsolutions

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Pvt. Ltd., the petitioner is constrained to file writ petition, challenging notice dated 30th March, 2019 and assessment order dated 31st December, 2019.

9. Mr. Mistri, learned senior counsel submits that while the facts are indisputable, impugned notice dated 30th March, 2019 and impugned order dated 31st December, 2019 for assessment year 2012-13 in the name of M/s. Tecnovate Esolutions Pvt. Ltd. are clearly without jurisdiction. He submits that having ragard to the amalgamations with effect from 1st April, 2010 onwards petitioner is the only company in existence and subsequent to period of the merger, any proceedings could be initiated only by officer having jurisdiction over the petitioner i.e. respondent No. 3 and not respondent No. 1. Impugned notice issued for the period viz. assessment year 2012-13 after the amalgamation is clearly outside the scope of jurisdiction of respondent No. 1. He refers to the letters dated 18th September, 2019 and 29th November, 2019 as well as e-mails dated 16th October, 2019. He submits that despite aforesaid, the decision purports to consider that impugned notice has not been responded to. He submits that there is not even a whisper about the objection by petitioner to the notice and the proceedings. He submits that no assessment or re-assessment proceedings can be initiated against a person not in existence during

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the relevant period. Thus the impugned notice and impugned order are absolutely without jurisdiction. He submits that it has been ignored that M/s. Tecnovate Esolutions Pvt. Ltd. had not been in existence with effect from 1.4.2010 for the financial year 2011-12. He submits that M/s. Intelenet Global Services Pvt. Ltd. had already filed returns of income for the assessment year 2012-13 and assessment completed under Section 143(3) of the Act. In the circumstance, there is no question of assessment being reopened or the assessment order being passed in the name of erstwhile company.

10. He submits, petitioner was not afforded any opportunity of hearing. Notice dated 4th December, 2019 was not served on the petitioner, even the same was not uploaded on the e-portal. The impugned notice and the impugned order of assessment are in breach of principles of natural justice. He thereafter, urges to allow the petition, quashing and setting aside impugned notice date 30th March and the impugned order dated 31st December, 2019.

11. Respondent No. 4 has submitted its reply. The petition is resisted contending that notice dated 30th March, 2019 and assessment order dated 31st December, 2019 for assessment year 2012-13 are legal and sustainable as per the provisions of the Act. It is contended that

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petitioner as successor entity had been responsible to reply the notices including show-cause notice issued on 4th December, 2019 through ITBA system of the department and the notices and orders were dispatched to the concerned assessee on its email id which is registered with the department for receiving such communications. It had been realized that the PAN of the entity TSPL had been apparently active in the database of the department. It is being referred to that petitioner has appellate forum to approach against the order passed. It is further being referred to that jurisdiction over the company TSPL is with the Circle 25(1), Delhi. Thus, it is contended that petitioner is not entitled to any of the relief claimed, as such, petition is liable to be dismissed.

12. Learned counsel Mr. Walve for respondents vehemently submits that jurisdictional issue would arise in the petition since the order has been passed by the authority at Delhi.

13. Mr. J. D. Mistri, learned senior advocate lays particular emphasis on clause (2) of Article 226 of India, which reads as under:

> *"(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or*

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> *in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."*

14. He submits that there are lot of decisions throwing light on territorial jurisdiction of courts. He refers to the case of *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Anr.*[1] wherein Supreme Court considered that even if a small fraction of cause of action accrues within the territorial jurisdiction of a court, the court is competent to entertain writ petition by virtue of clause (2) of Article 226 of the Constitution of India. It has been observed that if passing of a parliamentary legislation gives rise to civil or evil consequences, a cause for writ petition questioning constitutionality thereof arises and can be filed in any high court. It is not so, a cause of action arises only when the provisions of the Act or some of them are implemented would give rise to civil or evil consequences to the petitioner. The seat of the Parliament or a State Legislature would not be relevant factor for determining territorial jurisdiction of a high court to entertain a petition. It has been held in the same that the material facts which are imperative for the suitor to allege and prove constitutes the cause of action.

1 AIR 2004 SC 2321

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15. It has also been referred to in said decision, paragraph 24 thereof in using the terms ‘cause of action’, it has been considered that litigant who is the *dominus litis* to have his *forum conveniens* and litigant has the right to go to ‘a Court’ where part of cause of action arises.

16. Referring to he case of *Vodafone India Ltd. & Ors. Vs.The Competition Commissioner of India & Ors.*[2], it is contended that it would not be a case at all jurisdiction to entertain the writ petition. It is being submitted that there is no denial to the factual aspects and as a matter of fact petitioner is being considered responsible being successor company, stationed at Mumbai. It is an entity at Mumbai and it cannot be said it is not afflicted by impugned order in Mumbai. Lot of correspondence ensued from Mumbai.Though order is passed in Delhi, it affects a person at Mumbai. As such, cause of action for petitioner has arisen in Mumbai.

17. Learned senior counsel also refers to a decision of this court dated 7.3.2011 in the case of *Wills India Insurance Brokers Pvt. Ltd. Vs. Insurance Regulatory and Development Authority*[3] wherein it has been observed that part of cause of action has arisen within

2 Writ Petition No. 8594 of 2017 with connected matters, dated 21.9.2017
3 Writ Petition No. 2468 of 2010

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territorial jurisdiction of this court. Referring to clause (2) of Article 226 of the Constitution, the court observed that the petitioner's registered office is located at Mumbai, it operates business from Mumbai. Since office of respondent No. 1 was located at Hyderabad, renewal application was required to be preferred at Hyderabad, it would not be a case that no part of cause of action can be said to have arisen within the territorial jurisdiction of the Mumbai court. The case of *Navinchandra Majithia Vs. State of Maharashtra*[4] had also been referred to wherein it has been held that high court has jurisdiction if any part of the cause arisen within territorial limits of its jurisdiction, though the seat of government or authority or residence of person against whom direction, order or writ is sought to be issued is not within the territorial jurisdiction. It was considered that respondent had been located at Hyderabad where decision is taken in connection with renewal application, a person who is likely to be affected on the basis of such decision, can approach the court where he is affected by such decision and it cannot be said that no part of cause of action arose within territorial jurisdiction of this court.

18. Mr. Walve, learned counsel for respondents purports to refer to and rely upon a decision of this Court in the case of *Principal*

4 (2007) 7 SCC 640

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Commissioner of Income-tax, Pune Vs. Sunguard Solutions (I) (P.) Ltd.[5]. It appears that in said case, order by tribunal in Bangalore was passed on 30.7.2015. On 8.9.2015 an order was passed under section 127 transferring the assessee's case from the assessing officer at Bangalore to an assessing officer at Pune and the appeal was filed in January, 2006 before this court contending that *situs* of the assessing officer would alone determine the high court which would have jurisdiction over the orders of the tribunal under section 260A of the Act. At the time of appeal, seat of assessing officer is at Pune therefore this high court will have jurisdiction. Aforesaid submissions were opposed by the assessee contending that appeals to high court are governed by chapter XX of the Act. Section 260A provides appeals to high court from every orders passed in appeal by tribunal. Section 269 of the Act, defines the high court of the State. It was contended that section 127 of the Act deals with the jurisdiction of the authorities and would not control / decide and/or determine which high court will be the appellate forum. Perusal of said decision shows that it was observed that Sections 260A and 269 read together would mean that the high court referred to in section 260 A will be the high court as provided/defined in section 269 i.e. in relation to any State, the High Court of that State. It would be seen that in aforesaid matter, apart

5 (2019) 105 taxmann.com 67 (Bombay)

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from distinguishable factual position, context had also been different. *D*ecision of the supreme court in the case of *Alchemist Limited & Anr. Vs. State Bank of Sikkim & Ors.*[6] is being referred to in support of contentions that this court would not have jurisdiction. Said case appears to be on different factual background. It appears that appellant company had certain negotiations with respondent bank in respect of disinvestment of equity capital of the bank at place 'S'. Appellant was situated at place 'C'. It was contended that while negotiations were held between appellant and respondent at the place 'S', yet letters of proposal and acceptance and also of rejection were communicated at the place 'C'. Writ petition was filed against the rejection by appellant company had been dismissed by the high court at 'C' for want of territorial jurisdiction and in appeal therefrom, the supreme court had considered that it is not a case where essential, integral or material facts so as to constitute a part of 'cause of action' within tthe meaning of Article 226(2) of the Constitution of India, in the high court at place 'C'.

19. In the present case, it is seen there is acceptance in reply on behalf of respondents that petitioner is a successor company of erstwhile M/s. Tecnovate Esolutions Pvt. Ltd. and successor has its

6 2007 AIR (SC) 1812

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registered office at Mumbai and is stationed at Mumbai carrying in bvusiness. After impugned notice dated 30th March, 2019, correspondence from the petitioner's side ensued from September, 2019 onwards has not been disputed. It would not be said to be a case wherein no part of cause of action has arisen for the petitioner where petitioner would to be affected by impugned order, going by decisions referred to on behalf of petitioner.Having regard to facts and circumstances and the decisions, relied on, on behalf of the petitioner, it does not appear that resistance to the petition on the ground of jurisdiction would carry any efficacy.

20. Position emerges that there is no dispute on factual aspect that TSPL had been amalgamated into M/s. Intelnet Global Services Pvt. Ltd. with effect from 1st April, 2010. As a matter of fact, same has been endorsed in the affidavit-in-reply filed on behalf of the respondents, referring to that petitioner is its ultimate successor. Thereafter, said company had also been submitting returns and those were assessed from time to time in respect of subsequent financial and assessment years. This aspect as well has not been disputed. So is the case in respect of averments appearing in paragraph 4J. (c) of the petition to the following effect:

> "(c) The Petitioner submitted that even after merger,

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> sometimes the payers make payment to the Petitioner, however, erroneously continue to mention the PAN of the erstwhile company and not the Petitioner's company. However, the Petitioner in its return of income consider all such payments and claim all such deduction. Therefore, there can be no question of any escaping assessment for the assessment year 2012-13."

21. During the course of submissions, learned senior counsel Mr. Mistri refers to decision of the Supreme Court of India in the case of *Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd.*[7] *(Maruti Suzuki)*

22. The Supreme Court in the case of *Maruti Suzuki (supra)* had considered that income, which was subject to be charged to tax for the assessment year 2012-13 was the income of erstwhile entity prior to amalgamation. Transferee had assumed liabilities of transferor company, including that of tax. The consequence of approved scheme of amalgamation was that amalgamating company had ceased to exist and on its ceasing to exist, it cannot be regarded as a person against whom assessment proceeding can be initiated. In said case before notice under Section 143(2) of the Act was issued on 26.9.2013, the scheme of amalgamation had been approved by the high court with effect from 1.4.2012. It has been observed that assessment order

7 (2019) 416 ITR 613 (SC)

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passed for the assessment year 2012-13 in the name of non-existing entity is a substantive illegality and would not be procedural violation of Section 292 (b) of the Act.

The Supreme Court in its aforesaid decision, has quoted an extract from its decision in *Saraswati Industrial Syndicate Ltd. Vs. CIT*[8]. The Supreme Court has also referred to decision of Delhi high court in the case of *CIT Vs. Spice Enfotainment Ltd.*[9]and observed that in its decision Delhi high court had held that assessment order passed against non-existing company would be void. Such defect cannot be treated as procedural defect and mere participation of appellant would be of no effect as there is no estoppel against law. Such a defect cannot be cured by invoking provisions under section 292B. The Supreme Court had also taken note of decision in *Spice Entertainment (supra)* was followed by Delhi high court in matters, viz. *CIT Vs. Dimensions Apparels (P.) Ltd.*[10], *CIT Vs. Micron Steels (P) Ltd.*[11]*;* CIT Vs. Miscra India (P). Ltd.[12] and in *CIT Vs. Intel Technology India Ltd.*[13] Karnataka high court has held, if a statutory notice is issued in the name of non-existing entity, entire assessment would be nullity in the eye of law. It has also been so held by Delhi high court in the case of *Pr. CIT Vs.*

8 (1990) 186 ITR 278 (SC)
9 (2018) 12 ITR-OL 134 (SC)
10 (2015) 370 ITR 288
11 (2015) 59 taxmann.com 470/233 Taxman 120/372 ITR 386 (Del.) (Mag.)
12 (2015) 57 taxmann.com 163/231 Taxman 809 (Delhi)
13 (2016) 380 UTE 272 (Kar.)

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Nokia Solutions and Network India (P) Ltd.[14]

23. The Supreme Court in *Spice Infotainment Ltd. Vs. CIT*[15] found that there is no reason to interfere with the impugned judgment of Delhi high court and it found no merits in the appeal and special leave petition and were dismissed accordingly.

The Supreme Court had taken note of revenue resistance contending that contrary position emerges from decision of Delhi high court decision in *Sky Light Hospitality LLP Vs. Assistant Cdommissioner of Income-tax*[16] and that it had been affirmed by the Supreme Court. However, the Supreme Court had also taken note of *Sky Light* LLP (supra) was in peculiar facts of the case, where the high court had catgegorically concluded that there was clerical mistake within the meaning of section 292B and the case had been distinguished by decisions of Delhi, Gujarat and Madras high courts in *Rajender Kumar Sehgal Vs. ITO*[17]; *Chandreshbhai Jayantibhai Patel Vs. IOT*[18]; and *Alamelu Veerappan Vs. ITO*[19].

24. In the circumstances, though the respondents refer to decision of Delhi High Court in case of *Sky Light Hospitality LLP Vs.*

14 (2018) 90 taxmann.com 369/253 Taxman 409/402 ITR 21 (Delhi)
15 (2012) 247 CTR 500 (Delhi)
16 (2018) 92 taxmann.com 93 (SC)
17 (2019) 10 taxmann.com 233/260 Taxman 412 (Delhi)
18 (2019) 101 taxmann.com 362/261 Taxman 137 (Guj.)
19 (2018) taxmann.com 155/257Taxman 72 (Mad.)

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Assistant Commissioner of Income Tax, Circle 28(1), New Delhi[20] it would be of little avail for the respondents. The decision in the case of *Maruti Suzuki (supra)* would hold sway over present facts and circumstances.

25. Foreoing discussion and decisions referred to on behalf of petitioner lead us to consider that petitioner has made out a case for reliefs and it would be appropriate to allow petition in terms of prayer clause (a). Rule is made absolute in terms of prayer clause (a). The writ petition is disposed of.

Sd/-
[ABHAY AHUJA, J.]

Sd/-
[SUNIL P. DESHMUKH, J.]

Vinayak Halemath

20 (2018)90 taxamann.com 413 (Delhi)

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