

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

*** * ***

WRIT PETITION No.11247 of 2023

Between:

M/s. Virchow Drugs Limited.

Petitioner

VERSUS

The Income Tax Officer and Ors.

Respondents

ORDER PRONOUNCED ON: 20.09.2023

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY
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! Counsel for Petitioner(s) : Mr. Bommareddy Gangadhara
Reddy

^Counsel for the respondent(s) : Ms. Sundari R.Pisupati and
Mr. Gadi Praveen Kumar

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> HEAD NOTE:

? Cases referred

1. [2019] (416 ITR 613)
2. (2018) 405 ITR 296 (Delhi)
3. (2012) 247 CTR 500
4. (2023) 7 NYPCTR 174 (Bom)

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY
WRIT PETITION No.11247 of 2023

ORDER: *(per Hon'ble Sri Justice P.SAM KOSHY)*

The instant writ petition has been filed by the petitioner assailing the order dated 24.03.2023, passed by the respondent No.1/The Income Tax Officer vide DIN & Notice No. ITBA/AST/S/148A/2022-23/1051256350(1), under Section 148A (d) of the Income Tax Act, 1961 (for short 'the Act') for the assessment year 2016-2017 against Siri Drugs India Private Limited. The aforesaid company i.e. Siri Drugs Indiva Private Limited since had got merged with the petitioner's Company under the scheme of amalgamation with effect from 01.04.2015, the challenge is also to the consequence notice under Section 148 of the Act.

2. Heard Mr. Bommareddy Gangadhara Reddy, learned counsel for the petitioner, Ms. Sundari R.Pisupati, learned counsel for respondent Nos.1 & 2 and Mr. Gadi Praveen

Kumar, learned Senior Standing Counsel for respondent No.3.

3. A Company Petition was filed before this High Court vide C.P.No.41 of 2016 seeking sanction of the scheme of amalgamation of Siri Drugs India Private Limited with the petitioner's Company i.e. M/s. Virchow Drugs Limited. The said company petition finally stood allowed vide order dated 30.03.2016. The High Court in the course of allowing the company petition, ordered approval of the scheme of amalgamation which stood approved in the meeting of the Board of Directors of the transferor Company i.e. Siri Drugs India Private Limited on 04.01.2016, sanctioning the effect of the amalgamation from the appointed date i.e. 01.04.2015. As a consequence of the approval of the scheme by the High Court, the transferor Company i.e. Siri Drugs India Private Limited stood dissolved with effect from 01.04.2015. Thereafter, it stood merged with the transferee Company i.e. M/s. Virchow Drugs Limited. As a consequence of the dissolution of the said Company, the transferor Company i.e. Siri Drugs India Private Limited

became non-existing. Since 01.04.2015 onwards it was only the amalgamating Company i.e. transferee Company which remained in existence along with the assets and liabilities of the amalgamated Company.

4. Though Siri Drugs India Private Limited stood dissolved with effect from 01.04.2015, the respondent No.1 had issued a notice under Section 148A(b) of the Act in the name of the said non-existing Company i.e. Siri Drugs India Private Limited, alleging escapement of income for the assessment year 2016-2017 to the extent of Rs.3,06,25,283/-.

5. The petitioner entered appearance and raised objection as to the veracity of the notice when it stands issued against the Company which ceases to exist and which became non-existing since 01.04.2015. Though the objection was raised by the petitioner on issuance of notice on a non-existing Company, the respondent No.1 ignoring the said fact held that it was a fit case for issuance of notice under Section 148 of the Act for the assessment year 2016-

2017. It is this proceedings which is under challenge in the present writ petition.

6. Learned counsel for the petitioner contended that the Hon'ble Supreme Court of India itself in one of the recent decisions in the case of ***PCIT Vs. Maruti Suzuki (India) Limited***¹ dealing with a somewhat similar situation held that initiating proceedings and framing of assessment against a non-existing Company i.e. a Company which stood amalgamated is impermissible under the law.

7. According to the learned counsel for the petitioner, since the High Court itself had given the approval of the scheme of amalgamation and further ordered the dissolution of the transferor Company i.e. Siri Drugs India Private Limited, no proceedings could had been drawn against the said Company as it was no longer in existence.

8. It was also the contention of the learned counsel for the petitioner that in spite of the fact that the petitioner/amalgamating Company having intimated the

¹[2019] (416 ITR 613)

authorities concerned about the amalgamation and the Company having got merged and being no longer in existence, the respondent authorities without paying heed to the objection, has proceeded further with the reassessment.

9. According to the learned counsel for the petitioner it is a settled position of law that once when the Company gets merged, the transferor Company becomes non-existing company. Thereafter, it is only the transferee Company or the amalgamating Company which remains in existence. It was also contended that the fact that Siri Drugs India Private Limited being a non-existing Company, it was illogical on the part of the respondents in issuing directions seeking filing of the return by a Company which no longer exists.

10. On the basis of the aforesaid submissions, the learned counsel for the petitioner prayed for allowing of the present writ petition and quashment of the proceedings drawn.

11. *Per contra*, learned counsel for the respondents/ Income Tax Department opposing the petition contended that it is a case where admittedly, on the amalgamation of the two Companies, neither the transferee nor the transferor intimated the respondent authorities in respect of the amalgamation. It was also contended that since the petitioner's Company or the merged Company failed in their duty and responsibility of intimation of amalgamation to the respondent authorities, in the eyes of law, the said Companies were in existence. Thereafter, the issuance of the notices cannot be faulted with, nor can be the same said to be bad in law.

12. It was also the contention of the learned counsel for the respondents that now that the notices have been issued under Section 148, the petitioner can enter appearance and make all the submissions that they have, including the plea of amalgamation. And the respondent authorities would be scrutinizing the same on its own merits in accordance with the law. It was further contended that, it was mandatorily required for the petitioner to have obtained a No Objection

Certificate from the Income Tax Department so far as their being no dues payable on its part for the purpose of getting approval for the scheme of amalgamation. In the absence of No Objection Certificate obtained from the Income Tax Department and in addition there being no intimation given to the Income Tax Department and the amalgamating Company i.e. the petitioner being located in a different range, the authorities concerned cannot be said to have committed any mistake or error while issuing the said notice to the amalgamating company i.e. Siri Drugs India Private Limited.

13. This again, according to the learned counsel for the respondent can be raised by the petitioner in respect of the notice and proceedings initiated which shall be duly considered in accordance with law. For this reason also, the learned counsel prayed for rejection of the writ petition.

14. Learned counsel for the respondent placed heavy reliance on the judgment of the High Court of Delhi in the case of ***Sky Light Hospitality LLP Vs. Assistant***

Commissioner of Income Tax, Circle-28(1), New Delhi²

and contended that the High Court of Delhi in an identical set of facts had refused to entertain the writ petition and directed the amalgamated Company to raise all these objections and grounds before the authorities concerned themselves.

15. Having heard the contentions and submissions put forth by the learned counsel appearing on either side and on perusal of records, some of the admitted factual matrix of the case which needs to be considered is that; C.P.No.41 of 2016 was allowed by High Court approving the scheme of amalgamation with M/s. Virchow Drugs Limited vide order dated 13.03.2016. Further, in the approval of the scheme of amalgamation by High Court, the transferor Company i.e. Siri Drugs India Private Limited got merged with the transferee Company i.e. M/s.Virchow Drugs Limited. The approval and sanction granted for the amalgamation is from the appointed date i.e. 01.04.2015.

² (2018) 405 ITR 296 (Delhi)

16. Another admitted fact is that, technically pursuant to the approval of the scheme given by the High Court, the transferor Company i.e. Siri Drugs India Private Limited has become extinct with effect from 01.04.2015. This in other words also means that Siri Drugs India Private Limited was no longer in existence from the appointed day i.e 01.04.2015.

17. What is required to be taken note of at this juncture is that, the Hon'ble Supreme Court of India recently had an occasion of dealing with an issue, similar to the instant writ petition in the case of Maruti Suzuki (India) Limited, supra. The matter which went to the Hon'ble Supreme Court was one where the Division Bench of the High Court had upheld the decision of the Tribunal holding that assessment and the proceedings drawn against M/s. Suzuki Powertrain India Limited (for short "SPIL") is a nullity, since the said entity had got amalgamated with Maruti Suzuki (India) Limited after the approval of the scheme of amalgamation.

18. The Hon'ble Supreme Court, in the aforesaid case, after considering the contentions raised on either side and

after elaborately deliberating upon the issue, dismissed the appeal filed by the Income Tax Department. The Hon'ble Supreme Court affirmed the order of the Division Bench of the High Court and that of the Tribunal holding that any proceedings/assessment initiated against an amalgamated Company is a nullity in the eye of law.

19. What is also relevant at this juncture is that, while deciding the said issue, the Hon'ble Supreme Court has considered the two judgments cited by the learned counsel on either side i.e. ***Spice Infotainment Ltd. v. Commissioner of Income Tax***³ relied upon by the learned counsel for the petitioner and the case of ***Sky Light Hospitality LLP***, supra, relied upon by the learned counsel for the respondent, both being the judgments from the High Courts. It is thereafter that the Hon'ble Supreme Court reached to the aforesaid conclusion that the notices and proceedings initiated against the amalgamated Company deserves to be set aside/quashed.

³ (2012) 247 CTR 500

20. The Hon'ble Supreme Court finally endorsing the earlier view of the High Court of Delhi in the case of Spice Infotainment, supra, in paragraph Nos.33 to 35 held as under:

“In the present case, despite the fact that the AO 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 estoppels against law. This position now holds the filed in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Infotainment on 2nd Nov., 2017. The decision in Spice Infotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for asst. yr. 2011-12. In doing so, this Court has relied on the decision in Spice Infotainment.

We find no reason to take a different view. There is a value which the Court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for asst. yr. 2011-12 must, in our view be adopted in respect of the present appeal which relates to asst. yr. 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.

For the reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs.”

21. It is also relevant at this juncture to take note of yet another recent decision of the High Court of Bombay in the case of **SLSA INDIA (P) LTD. VS. DEPUTY COMMISSIONER OF INCOME TAX**⁴, wherein the Bombay High Court reiterating the view of the High Court of Delhi in the case of Spice Infotainment, supra, and also following the dictum of the Hon'ble Supreme Court in the case of Maruti Suzuki (India) Limited, supra, in paragraph Nos.7 and 8 has held as under:

“The stand of the Revenue that the reassessment was justified in view of the fact that the PAN in the name of the non-existent entity had remained active does not create an exception in the favour of the Revenue to dilute in any manner the principles enunciated hereinabove.

Be that as it may the writ petition is allowed. The impugned notice dt. 31st March, 2021 the order of assessment dt. 31st March, 2022 as also the consequential demand notice and penalty notice dt. 31st March, 2022 are set aside.”

22. Given the aforesaid facts and circumstances of the case and also the admitted factual matrix, as has been, revealed in the preceding paragraphs, we are of the considered view that the present is also the case which

⁴ (2023) 7 NYPCTR 174 (Bom)

squarely stands covered by the decision of the Hon'ble Supreme Court in the case of **Maruti Suzuki (India) Limited** (supra), and the recent decision of the High Court of Bombay in the case of **SLSA INDIA (P) LTD.**, (supra), and the earlier judgment of the High Court of Delhi in the case of **Spice Infotainment** (supra).

23. The present Writ Petition deserves to be and is accordingly allowed, holding that the notice dated 24.03.2023 issued Section 148A(d) of the Act and the consequential notice of the same date i.e. 24.03.2023 under Section 148 of the Act, both being bad in law, are set aside, as the entire proceedings itself is against a non-existing Company. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

P.SAM KOSHY, J

LAXMI NARAYANA ALISHETTY, J

Date: 20.09.2023

GSD/kkm