Suridhi Commercial Infra Private ... vs Income Tax Officer & Anr on 21 February, 2024

Author: Yashwant Varma

Bench: Yashwant Varma, Purushaindra Kumar Kaurav

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5535/2023
SURIDHI COMMERCIAL INFRA PRIVATE LIMITED
.....
Through: Mr. Vikas Jain with Mr.
Saxena and Ms.Shrawani

Versus

INCOME TAX OFFICER & ANR. ..... Respond
Through: Mr. Ruchir Bhatia, Sr.SC wi
Ms. Deeksha Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV
ORDER

% 21.02.2024 PER: PURUSHAINDRA KUMAR KAURAV J.

1. The petitioner in the instant writ petition seeks to assail the impugned notice dated 15.03.2023 and order dated 28.03.2023 passed under the sections 148A(b) and 148A(d) of the Income Tax Act, 1961["Act"] respectively.

2. The brief facts that are necessary for the adjudication of the present controversy would reveal that a Scheme of Amalgamation of Suridhi Infracon Private Limited ["SIPL"] was approved by this Court vide order dated 26.05.2014 in Company Petition No. 43/2014 and consequently, SIPL was amalgamated with Suridhi Retail Private Limited ["SRPL"] with effect from 01.04.2013. Subsequently, vide order dated 16.05.2016 of this Court in Company Petition No. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2024 at 21:45:49 775/2015, a further amalgamation was undertaken and SRPL was amalgamated with the petitioner/assessee i.e. Suridhi Commercial Infra Pvt. Ltd. with effect from 01.04.2015.

3. The petitioner filed its Income Tax Return ["ITR"] for Assessment Year ["AY"] 2016-17 disclosing total income of INR 22,77,100/-. Pursuant to the same, an impugned notice dated 15.03.2023 under section 148A(b) of the Act has been issued to the petitioner stating that the income chargeable to tax for AY 2016-17 has escaped assessment qua the sale of immovable property to the tune of Rs. 50,00,000/-. Thereafter, a reminder notice dated 19.03.2023 was issued to the petitioner that a property bearing No. B-20, Vasant Vihar, New Delhi was sold for a consideration of Rs. 50,00,000/- to M/s. Sanskar Homes and Interiors Pvt. Ltd., on which a tax deducted at source ["TDS"] of Rs. 50,000/- was effected and the petitioner was granted a final opportunity to file a reply by 21.03.2023.

4. Thereafter, on 21.03.2023, the petitioner submitted a reply to the aforementioned notice and stated that the ITR with respect to the amalgamating entity i.e., SRPL could not be filed as the entity ceased to exist on the date of issuance of the show cause notice. Subsequently, on 28.03.2023, the Revenue passed the impugned order under section 148A(d) of the Act holding that the sale transaction amounting to INR 50,00,000/- has escaped assessment. Aggrieved by the aforesaid order and show cause notice, the petitioner preferred the present writ petition.

5. Learned counsel for the petitioner, Mr. Vikas Jain, submits that the sole reason for the issuance of the impugned show cause notice is the non-filing of the ITR. He further contends that the notices were addressed to SIPL and SRPL, which are the predecessor companies This is a digitally signed order.

 that ceased to exist as on the date of issuance of notice.

6. Furthermore, while attacking the Revenue, he submits that the impugned show cause notice which is now addressed to the amalgamated entity is bereft of any reasoning and application of mind. Assailing the manifest arbitrariness and non-application of mind by the statutory body, he further bolts an attack on the Revenue that the petitioner has already submitted its ITR way back on 08.09.2016, which reflects the transactions of the predecessor company. He contends that a bare perusal of the ITR filed before the Revenue would indicate that the sale transaction of INR 50,00,000/- qua the abovementioned property with Sanskar Projects and Housing Limited and TDS deduction of INR 50,000/- is reflected there and thus, there exists no iota of justification on part of the Revenue to issue the show cause notice under section 148A(b) of the Act.

7. He contends that the factum of amalgamation had been duly informed to the Revenue and despite the recording of the Scheme of Amalgamation in the impugned order dated 28.03.2023 under section 148A(d) of the Act, the Revenue has failed to consider that no income has escaped the assessment.

8. Per contra, the learned standing counsel for Revenue, Mr. Ruchir Bhatia, vehemently opposes the submissions advanced by the writ petitioner. He submits that before passing the impugned order, the Revenue has complied with the principles of natural justice and the petitioner has been duly

given an effective opportunity of hearing. He submits that the Assessment Officer ["AO"] has duly considered the response of the petitioner and then passed a reasoned order. Furthermore, he contends that the material relied upon by the petitioner before this Court has never been produced before the AO This is a digitally signed order.

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9. We have heard the learned counsel appearing on behalf of the parties and perused the record.

10. The order sheet would reflect that on 02.06.2023, notice was issued to the Revenue and time was granted to file counter affidavit, however, no reply has been filed till date. The learned counsel appearing for the Revenue, however, submits that the matter can be remitted back to the AO for fresh consideration.

11. On perusal of the record, we find that the Revenue issued the notices dated 24.02.2023 and 13.03.2023 under section 148A(b) of the Act to amalgamating entities i.e., SIPL and SRPL respectively, which are non-est in law.

12. This leads us to take into consideration the only valid notice dated 15.03.2023 which was addressed to the petitioner. The relevant extract of the abovementioned show cause notice is reproduced here as under:-

> "M/s Suridhl lnfracon P Ltd., PAN AAMCS6142G, A.Y. 2016-17 (amalgamated with M/s Suridhi Commercial Infra P Ltd, PAN AAVCS5570M) As per information available on Insight Portal, M/s Suridhi lnfracon P Ltd., PAN AAMCS6142G has entered into following financial transaction during F.Y. 2015-16.
>
> | S.No. | Transa |
> |---|---|
> | 01 | |
>
> The nature of receipt strongly indicates that the assessee company was in receipt of taxable income for the A.Y. 2016-17 This is a digitally signed order.
>
> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2024 at 21:45:49 however no return of income was filed by it for A.Y. 2016-17. Hence, the above transaction has escaped assessment. In view of the

above, an opportunity of being heard is provided to the assessee company as to why a notice u/s 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in this case for A.Y. 2016-

17."

13. A bare perusal of the impugned show cause notice issued under section 148A(b) of the Act would reflect that the solitary ground for exercising this reassessment exercise by the Revenue is based on the premise that the petitioner has not declared its return of income for AY 2016-17.

14. Thereafter, on 24.02.2023, in response to the impugned show cause notice, the petitioner furnished its reply to the Revenue. The extract of aforementioned reply is reproduced here as under:-

"Respected Sir, With reference to your above referred notice issued u/s 148A(b) dt.

15.02.2023, it is stated that the above referred notice was received by the representative of the company on 23.02.2023, thus it could not reply to such on or before 22.02.2023.

Further, it is respectfully submitted as under:

1. The Company "Suridhi Infracon Private Limited" ('Suridhi Infracon') (the transferor company), had already been amalgamated with Suridhi Retail Private Limited ('Suridhi Retail') (the transferee company) w.e.f. 01.04.2013 vide order dt 26.05.2014 passed by the Hon'ble Delhi High Court, New Delhi u/s 391-394 under the provisions of the Companies Act, 1956. Copy of Amalgamation order is enclosed (Page No. 1-18).

Thus, w.e.f. 26.05.2014, 'Suridhi Infacon' ceased to exist and became nonexistent/ stood dissolved.

2. The fact of amalgamation of 'Suridhi Infracon' with 'Suridhi Retail' had duly been intimated to CPC, Bangalore on 13.07.2015 (Page No.19 -21) and also informed the fact to AO Circle 24(1) in May' 2016, when the AO made enquiry for not filing ITR for the AY 2014-15. The fact was also intimated at Compliance Response Sheet. Copy of letter is enclosed. (Page No.22-23) This is a digitally signed order.

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4. Copy of master data of 'Suridhi Infracon Private Limited' downloaded from MCA is enclosed (Page No. 24), wherein the status is "Amalgamated".

Thus, 'Suridhi Infracon' was not in existence and proceedings initiated in the name of dead/dissolved company is without jurisdiction and bad in law.

5. Since, 'Suridhi lnfracon' was not in existence in the FY 2015-16 thus, it had not filed its ITR for the AY 2016-17 and it had not entered into any business transaction in its name in the FY 2015-16 (being a dead company).

6. In respect of transaction of Rs.50,00,000 /- it is submitted that the company had not entered into any such transaction of sale of immovable property nor claimed TDS of Rs.50000/-.

7. Reporting of transaction of deduction and deposit of TDS on the Income Tax/TDS portal by Sanskar Homes and Interior Private Limited (AAMCS4062P) in the name ('Suridhi Infracon') a dead/dissolved entity, is not correct information.

Thus, in view of the above, there is no escapement of any income within the meaning of u/s 148 and your goodself is requested to drop the assessment proceedings initiated u/s 148A(b) on the 'Suridhi Infracon' a dissolved/dead company.

We hope that you will find the above in order and in case you need any other information and explanation, let us know and give us an opportunity of being heard in case adverse view is being taken."

15. It is evident from the above extracted reply that the petitioner has duly intimated the Revenue about the amalgamation scheme and apprised them that the corporate entities namely SIPL and SRPL do not exist. Thus, the question of filing ITR on behalf of the non- existent companies was a sheer impossibility. It is also unequivocally stated in the aforenoted reply that there is no escapement of the income under section 148 of the Act as the petitioner has never entered into any transaction with M/s. Sanskar Homes and Interior Private Limited.

16. It is to be noted that the amalgamation per se does not lead to the death of the corporate entity, however, it leads to the fundamental change in the structure of the corporate entity, wherein, only the outer shell of the company is destroyed. Reliance can be placed upon the decision of Pr. CIT v. Mahagun Realtors (P) Ltd. [2022 SCC OnLine SC 407], whereby, it was held as under:-

> "18. Amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues - enfolded within the new or the existing transferee entity. In other words, the business and the adventure lives on but within a new corporate residence, i.e., the transferee-company. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil law and procedure where upon

amalgamation, the cause of action or the complaint does not per se cease- depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

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20. In Saraswati Syndicate (supra), the facts were that after amalgamation, the transferee-company claimed exemption from tax, of a sum which had been allowed as a trading liability - on accrual basis, in the hands of the transferee-company which had ceased to exist. The Revenue disallowed that claim; that view was upheld. This court stated that :

"In an amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or 'amalgamation' has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the share- holders of each blending company become substantially the share- holders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See : Halsbury's Laws of England, 4th Edition vol. 7 para 1539. Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. 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.

In General Radio and Appliances Co. Ltd. v. M. A. Khader (1986) 2 SCC 656, the effect of amalgamation of two companies was considered. M/s. General Radio and Appliances Co. Ltd. was tenant of a premises under an agreement providing that the tenant shall not sub-let the premises or any portion thereof to anyone without the consent of the landlord. M/s. General Radio and Appliances Co. Ltd. was amalgamated with M/s. National Ekco Radio and Engineering Co. Ltd. under a scheme of amalgamation and order of the High Court under sections 391 and 394 of the Companies Act, 1956. Under the amalgamation scheme, the transferee-company, namely, M/s. National Ekco Radio and Engineering Company had acquired all the

interest, rights including leasehold and tenancy rights of the transferor-company and the same vested in the transferee- company. Pursuant to the amalgamation scheme the transferee-company continued to occupy the premises which had been let out to the transferor company. The landlord initiated proceedings for the eviction on the ground of unauthorised sub-letting of the premises by the transferor- company. The transferee-company set up a defence that by amalgamation of the two companies under the order of the Bombay High Court all interest, rights including lease-hold and tenancy rights held by the transferor-company blended with the transferee-company, therefore the transferee- company was the legal tenant and there was no question of any sub-letting. The rent controller and the High Court both decreed the landlord's suit. This court in appeal held that under the order of amalgamation made on the basis of the High Court's order, the transferor-company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. This decision lays down that after the amalgamation of the two companies the transferor-company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets. In the instant case the Tribunal rightly held that the appellant-company was a separate entity and a different assessee, therefore, the allowance made to Indian This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2024 at 21:45:50 Sugar Company, which was a different assessee, could not be held to be the income of the amalgamated company for purposes of section 41(1) of the Act. The High Court was in error in holding that even after amalgamation of two companies, the transferor-company did not become non-existent instead it continued its entity in a blended form with the appellant-company. The High Court's view that on amalgamation 'there is no complete destruction of corporate personality of the transferor-company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor-company loses its entity as it ceases to have its business. However, their respective rights of liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor-company ceases to exist with effect from the date the amalgamation is made effective."

21. Saraswati Syndicate (supra) noticeably was decided in relation to assessment issues when amalgamation was not separately defined under the Income-tax Act. By an amendment of 1967, this term was for the first time defined in the form of section 2(1A). That provision reads as follows :

"(1A) "amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that--

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation, become the liabilities of the amalgamated company by virtue of the amalgamation ;

(iii) shareholders holding not less than nine-tenths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated This is a digitally signed order.

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[Emphasis Supplied]

17. Thus, it is evident that ITR on behalf of the amalgamated entity could not have been filed as such entity is non-est in law. However, it is discernible from the record before us that on 08.09.2016, the petitioner submitted its ITR for AY 2016-17. It is pertinent to note that the petitioner in the aforenoted ITR had also declared the income earned by the amalgamating entity ("SRPL") as the amalgamating entity had ceased to exist. In the aforementioned ITR, the income of the amalgamating entity and particularly in respect of the sale transaction of INR 5,00,000/- with M/s. Sanskar Homes and Interiors Pvt. Ltd. is duly reflected. The relevant extract of the ITR is reproduced hereunder for reference:-

"NAME OF ASSESSEE: SURIDHI COMMERCIAL. INFRA PRIVATE LIMITED A.Y. 2016-17 PAN : AAVCS5570M CODE: SCIPL Details of T.O.S on Non-Salary (26AS Date: 22 Aug 2016) Claimed in ITR AY2016-17 S.NO Name of Tax Deduction Nature Income Total Amou Sectio 26 AS Deductor A/c No. of Credite Tax nt out n (Belongs

Transac d Deducte of (4) to) tion d Claime d for this Year 1 Aruna AAGCA3070K Property 2.500,00 25,000 25,000 194IA Suridhi Buildwell 0 Retail Private Private limited Limited 2 Sanskar AALCS747BN Propert 5.000,00 50,000 50,000 194IA Suridhi Projects and y 0 lnfracon Housing Private Limited Limited This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2024 at 21:45:50 3 Sanjeev AMRS14285F Interest 648,770 64,877 64,877 194A Suridhl Verma Commercia l lnfra Private Limited 4 AAP DELA19708D Interest 107,509 10,751 10,751 194A Suridhi Investment Retail Private Private Limited Limited 5 Auris DELA3126F Interest 44,493 4.449 4,449 194A Suridhi Developers Retail Private Private Limited Limited 6 JPL DELAOB126G Interest 3,288,41 328,842 328,84 194A Suridhi Infrastructure 9 2 Retail Private Private Limited Limited 7 JPL DELJ08632B Interest 80,366 8,037 8.037 194A Suridhi Hospi1ality Retail Services Private Private Limited Limited 8 Nani Resorts DELN03753B Interest 367,833 36,783 36,783 194A Suridhi and Retail Floriculture Private Private Limited Limited 9 Tilak Raj DELT12792D Interest 832,880 83,288 83,288 194A Suridhi Batra Commercia l Infra Private Limited 612,02 Signature (BHUPESH KUMAR DHINGRA) For SURIDHl COMMERCIAL INFRA PRIVATE LIMITED

18. Thus, it is evident from the record that the AO neither before passing of the show cause notice under section 148A(b) of the Act nor before the impugned order under section 148A(d) of the Act, has considered the ITR filed by the petitioner on 08.09.2016, which duly captures the income earned by the amalgamated entity.

19. It is to be noted that the statutory authority which is entrusted with the wide powers is also casted with the responsibility that those This is a digitally signed order.

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20. It is also pertinent to point out the legislative intent behind the introduction of section 148A of the Act which primarily intends to reduce the frivolous litigation and effective disposal of cases. Reliance can be placed upon the decision of this Court in the case of Divya Capital One (P.) Ltd. v. Asstt. CIT [2022 SCC Online Del 461], wherein, it was held as under that:-

"7. This Court is of the view that the new re-assessment scheme (vide amended Sections 147 to 151 of the Act) was introduced by the Finance Act, 2021 with the

> intent of reducing litigation and to promote ease of doing business. In fact, the legislature brought in safeguards in the amended re-assessment scheme in accordance with the judgment of the Supreme Court in GKN Driveshafts (India) Ltd. v. ITO, (2003) 259 ITR 19 (SC) before any exercise of jurisdiction to initiate re-assessment proceedings under Section 148 of the Act.
>
> 8. This Court is further of the view that under the amended provisions, the term "information" in Explanation 1 to Section 148 cannot be lightly resorted to so as to re-open assessment. This information cannot be a ground to give unbridled powers to the Revenue. Whether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under Section 148A(b) but would certainly not vest it with the power to issue a re-assessment notice under Section 148 post an order under Section 148A(d)."

21. The bona fide objective behind the introduction of the new assessment scheme has also been discussed by this Court in Rithala Education Society v. UOI [2022 SCC Online Del 2501].

22. Thus, understanding of the legislative intent and the cardinal duty entrusted upon the authority to duly apply its mind before the issuance of the notice under section 148A(d) of the Act, clearly elucidates that it is pertinent for the AO to consider the material before it to even form a prima facie opinion.

23. In the present case, the petitioner vide its ITR filed on 08.09.2016 and reply to the show cause notices has already intimated the Revenue regarding the amalgamation of the entities. It is evident that the bone of contention in the instant case i.e., sale transaction of INR 50,00,00/- undertaken by the amalgamating entity, which is solitary rationale for issuance of the show cause notice under section 148A(b) of the Act, has also been rightly reflected in the ITR filed by the petitioner.

24. Therefore, it is crystal clear that the Revenue has not considered the ITR filed by the petitioner and issued the impugned notice without due application of mind and in a mechanical manner, without adhering to the statutory responsibilities envisaged under section 148 of the Act.

25. We are also not inclined to accept the submission of the learned counsel, appearing on behalf of the Revenue, to remit the matter back to the concerned AO for the simple reason that on a bare examination of the facts, we find that the reason for the issuance of the notice under section 148A(b)

of the Act is itself de hors the available record. Nonetheless, we leave it open to the Revenue to take appropriate fresh steps, if permissible in law on any other count.

26. In light of the above, we accordingly allow the writ petition and set aside the show cause notice dated 15.03.2023 and order dated 28.03.2023.

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27. The petition thus stands allowed and disposed of along with the pending application(s), if any.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

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