

Gayatri Microns Ltd. vs The Assistant Commissioner Of Income ... on 24 December, 2019

Equivalent citations: AIRONLINE 2019 GUJ 568

Author: Harsha Devani

Bench: Harsha Devani, Sangeeta K. Vishen

C/SCA/13871/2019

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13871 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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GAYATRI MICRONS LTD.

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX

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Appearance:

JAIMIN A GANDHI(8065) for the Petitioner(s) No. 1

MRS MAUNA M BHATT(174) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 24/12/2019

CAV JUDGMENT

(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

1. By way of the present petition, the petitioner, that is, Gayatri Microns Limited has inter alia prayed for direction to issue a writ of prohibition or any other writ, order or direction for quashing and setting-aside the notice dated 25th March, 2019, issued under section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The brief facts are as under:-

2.1 The petitioner is a company registered under the Companies Act, 1956 (hereinafter referred to as "the Companies Act"). Somewhere in the year 2015, Company Petition No.89 of 2015 in Company Application No.24 of 2015 and other allied applications, were filed before this court by the petitioner company as well as by three companies viz. Gayatri Mine-Chem Private Limited, Gayatri Integrated Services Private Limited and Gayatri Fillers Private Limited inter alia praying for sanction of composite scheme of arrangement in the nature of amalgamation with the petitioner company under the provisions of the Companies Act. During the said proceedings before this court, the Regional Director, North-Western Region, Ministry of Corporate Affairs, had filed his affidavit dated 13 th May, 2015. In response whereof, additional affidavit was filed inter alia providing explanation to the issues raised by the Regional Director, Ministry of Corporate Affairs. As per one of the explanations, objection was invited from the Income Tax Department; however, within the statutory period of 15 days, no objection was raised by the Income Tax Department and it was presumed that the Income Tax Department, had no objection to the proposed scheme of arrangement.

2.2 Thereafter, this court upon being satisfied that the amalgamation under the scheme was in the interest of the companies, sanctioned the composite scheme of arrangement vide order dated 18th June, 2015. As a result whereof, the three companies viz. Gayatri Mine-Chem Private Limited, Gayatri Integrated Services Private Limited and Gayatri Fillers Private Limited came to be amalgamated with the petitioner.

2.3 The petitioner had filed its return for the assessment year 2015-16 furnishing all the information including the information regarding amalgamation of the aforesaid three companies with the petitioner. In the return filed by the petitioner under the heading "Holding Status", further details were provided below the column "Business Organisation" that is, the status of the afore-stated three companies having been amalgamated with the petitioner.

2.4 For the assessment year 2015-16, the Income Tax Officer Ward-2(1)(1), Ahmedabad had sought for certain information vide his letter dated 1st September, 2017. Apropos which, the petitioner had submitted the details wherein it had been categorically informed that by virtue of the order passed by the High Court of Gujarat, the amalgamation has taken place amongst the three companies, viz. the petitioner - Gayatri Microns Limited, Gayatri Mine-Chem Limited Gayatri Fillers Private Limited and Gayatri Integrated Services Private Limited.

Along with said information, the order dated 18th June, 2015 passed by this court was also furnished to the Income Tax Officer, Ward-2(1)(1), Ahmedabad.

2.5 The respondent, on 25th March, 2019, issued a notice under section 148 of the Act for the assessment year 2012-13 to the Gayatri Integrated Services Private Limited, indicating that the respondent has reason to believe that income chargeable to tax for the assessment year 2012-13 has escaped assessment within the meaning of section 147 of the Act. By the said notice, Gayatri Integrated Services Private Limited was called upon to file its return in the prescribed form for the said assessment year 2012-13.

2.6 On 1st April, 2019, Gayatri Integrated Services Private Limited addressed a letter to the respondent inter alia informing that the return of income filed under section 139 of the Act be treated as return filed under section 148 of the Act for the assessment year 2012-13. In the said letter Gayatri Integrated Services Private Limited also requested the respondent to furnish the reasons on the basis of which, the respondent had believed that income chargeable to tax for the assessment year 2012-13 has escaped assessment within the meaning of section 147 of the Act.

2.7 On 6th August, 2019, the respondent issued a show-cause notice calling upon Gayatri Integrated Services Private Limited to show cause as to why the assessment for the year 2012-13 should not be finalised ex-parte under the provisions of section 144 of the Act on the basis of material available on record. Gayatri Integrated Services Private Limited was also informed that as to why penalty proceedings under clause (b) of sub-section (1) of section 271 of the Act should not be initiated separately for failure on its part.

2.8 It appears that Gayatri Integrated Services Private Limited requested for some time so as to enable it to respond to the show-cause notice. It is the case of the petitioner that on 7th August, 2019 itself, the respondent issued a notice under section 274 read with section 271F of the Act calling upon Gayatri Integrated Services Private Limited, to show cause as to why order imposing penalty should not be made under the provisions of section 271F of the Act, since it had failed to furnish the return of the income as required under the provisions of sub-section (1) of section 139 of the Act .

3. Being aggrieved, the petitioner has filed the present petition with the aforementioned prayer.

4. The respondent has filed an affidavit indicating the events which took place during the proceedings of reopening of the assessment. It has been stated that the respondent has scrupulously

followed the procedure for issuance of notice under section 148 of the Act and that there is no procedural irregularity as alleged by the petitioner. It has been urged that in absence of any illegality in the proceedings, notice issued under section 148 of the Act is a valid and legal.

5. Mr. Jaimin Gandhi, learned advocate for the petitioner, vehemently submitted that the action of the respondent, in issuing the notice under section 148 of the Act is illegal. It is further submitted that the respondent has proposed to reopen the proceedings against a non-existing entity, that is, Gayatri Integrated Services Private Limited inasmuch as, it has got amalgamated with the petitioner and thus, it has ceased to exist. It is thus submitted that the reopening of the assessment by issuing the impugned notice dated 25th March, 2019 under section 148 of the Act, is bad in law and without jurisdiction.

5.1 Mr. Gandhi, then submitted that immediately after the passing of the order dated 18th June, 2015 under the provisions of the Companies Act, the respondent was informed about the amalgamation. Thereafter, during the assessment proceedings for the year 2015-16, all the details were provided to the Income Tax Officer, Ward-2(1)(1); further followed by a communication dated 9th June, 2017, bringing to his notice that the amalgamation has taken place during the year 2015-16 between the petitioner, that is, Gayatri Microns Limited and three other companies including Gayatri Integrated Services Private Limited. It is submitted that along with said letter dated 9th September, 2017, the order of the High Court sanctioning the scheme of amalgamation was supplied to him for his consideration. It is submitted that it is not that the respondent was not aware about the amalgamation, inasmuch as, the said factum was duly brought to the notice of the respondent and thus, the respondent ought not to have issued the notice dated 25th March, 2019, reopening the assessment of Gayatri Integrated Services Private Limited for the assessment year 2012-13, when the said company is no longer in existence. It is also submitted that there can be no quarrel with the proposition that once the company ceases to exist, it is not amenable to the assessment proceedings under the provisions of the Act.

5.2 It is further submitted that the respondent though was requested to provide the copy of the reasons recorded, he had not provided the same. The respondent without providing the copy of the reasons recorded, proceeded further with the assessment proceedings by issuing notice under section 142 of the Act. It is further submitted that the respondent ought to have provided the copy of the reasons recorded so as to enable the petitioner to file its objection. It is only after offering an opportunity to the petitioner to file its objection and rendering his decision thereon, that it was open to the respondent to proceed further with the assessment proceedings.

5.3 It is further submitted that the respondent ought not to have issued the notice dated 7th August, 2019 under the provisions of section 271 of the Act inasmuch as, Gayatri Integrated Services Private Limited had filed its return for the assessment year 2012-13 under the provisions of section 139 of the Act and thus, the respondent had no jurisdiction or authority to issue the notice under section 271 read with section 274 of the Act.

5.4 Mr. Gandhi while placing reliance on the judgment of the Supreme Court in the case of Principal Commissioner of Income Tax vs. Maruti Suzuki India Ltd. reported in (2019)107 taxmann.com 375,

submitted that the Apex Court, in the said case has observed and held that if the Assessing Officer was informed about the factum of amalgamation of the transferor company with the transferee company and the transferor company having ceased to exist as a result of the approved scheme of amalgamation; the jurisdictional notice issued would be illegal and bad. Mr Gandhi further submitted that the Apex Court has categorically observed that the basis on which jurisdiction was invoked was fundamentally at odds with the legal principle and participation in the proceedings by the party concerned cannot operate as an estoppel against the law.

5.5 Mr. Gandhi further placed reliance on the judgment of this court in the case of Dharmnath Shares & Services (P) Ltd. vs. Assistant Commissioner of Income Tax Cen. Cir. 1(2) of this court reported in (2018)94 taxmann.com 458 (Gujarat) and submitted that it is well settled proposition of law that if the assessee company has amalgamated with the transferee company, its independent existence does not survive and therefore, it would no longer be amenable to the assessment proceedings. It is submitted that in similar circumstances, this court had quashed the notice issued under section 148 of the Act to the company which had already merged in another company.

5.6 Further reliance has been placed on the judgment of this court in the case of Khurana Engineering Ltd. vs. Deputy Commissioner of Income Tax (OSD)-1 reported in (2013) 34 taxmann.com 261 (Gujarat) to contend that this court, has held that the transferor company would no longer be amenable to the assessment proceedings for the concerned assessment year if subsequently the said company, has amalgamated in another company. The notice under the provisions of the Act, for reassessment, would therefore be invalid.

5.7 In support of the aforesaid proposition, further reliance has been placed on the judgments in the case of (i) Rustagi Engineering Udyog (P) Ltd. vs. Deputy Commissioner of Income- Tax reported in (2016)67 taxmann.com 284 (Delhi), and (ii) Assistant Commissioner of Income-tax vs. DLF Cyber City Developers Ltd. reported in (2015)53 taxmann.com 81 (Delhi - Tribunal).

6. As against this, Ms. Mauna Bhatt, learned Senior Standing Counsel for the respondent submitted that the procedure for issuance of the notice under the provisions of section 148 of the Act has been duly complied with and that there is no procedural irregularity. In the absence of any illegality, the notice issued under section 148 of the Act is a valid and legal notice.

7. Having heard the learned counsel for the respective parties, it emerges from the record that this court, under the provisions of the Companies Act, has vide order dated 18 th June, 2015, sanctioned the composite scheme of arrangement in the nature of amalgamation of the three transferor companies viz. Gayatri Mine-Chem Private Limited, Gayatri Integrated Services Private Limited and Gayatri Fillers Private with the petitioner that is, Gayatri Microns Limited, the transferee company. Pertinently, amalgamation took place, much prior to the issuance of notice dated 25th March, 2019 for reopening the assessment. Thereafter the petitioner informed the respondent about the said amalgamation of all the three companies with the petitioner. The record reveals that the factum of amalgamation of the Gayatri Integrated Services Private Limited with the petitioner, was communicated to the respondent with sufficient details viz. (i) Passing of the order dated 18 th June, 2015 by this court; (ii) communication dated 9th September, 2017 addressed by the petitioner to the

Income Tax Officer, Ward-2(1)(1) during the assessment proceedings for the assessment year 2015-16 containing the information of amalgamation and (iii) details of amalgamation in the return for the assessment year 2015-16 .

8. Concededly, in the present case the notice under section 148 of the Act has been issued to Gayatri Integrated Services Private Limited which, as aforesaid, had long back got amalgamated with the petitioner vide order dated 18th June, 2015 passed by this court and thus, it had ceased to have its own existence so as to render it amenable for the reassessment proceedings under the provisions of section 147 of the Act. Moreover, the respondent and the department were duly informed by the petitioner about the amalgamation and despite the said factum having been brought to the notice of the respondent, statutory notice under section 148 came to be issued to Gayatri Integrated Services Private Limited for reopening the assessment on the ground that the respondent has reason to believe that income chargeable to tax for the assessment year 2012-13 has escaped the assessment within the meaning of section 147 of the Act.

9. The controversy in the present petition, is no longer *res integra*. The Apex Court in the case of Principal Commissioner of Income Tax vs. Maruti Suzuki India Limited (*supra*), in paragraph 33, has categorically held that if the company has ceased to exist as a result of the approved scheme of amalgamation then in that case, the jurisdictional notice issued in its name would be fundamentally illegal and without jurisdiction. It is also held that upon the amalgamating entity ceasing to exist, it cannot be regarded as a person under sub- section (31) of section 2 of the Act; against whom assessment proceedings can be initiated. The Apex Court has further held that participation by the amalgamated company in the proceedings would be of no effect as there is no estoppel against law.

10. Similarly, this court, in the judgment in the case of Dharamnath Shares and Services (P) Ltd. (*supra*) while referring to its earlier decision in the case of Khurana Engineering Limited (*supra*) held that once the assessee company gets amalgamated with the transferee company, its independent existence does not survive and therefore it would no longer be amenable to the assessment proceedings. Thus, it is well settled proposition of law that upon its amalgamation the transferor company ceases to exist and becomes extinct, and it would no longer be amenable to the assessment proceedings considering the fact that the extinct entity would not be covered within the ambit of the provisions of the Act.

11. Accordingly, in view of the aforesaid concluded proposition of law; which applies on all fours to the facts of the present case, the notice dated 25th March, 2019 issued by the respondent under the provisions of section 148 of the Act for the assessment year 2012-13, being without jurisdiction, is not sustainable.

12. For the foregoing reasons, the petition succeeds and is accordingly so allowed. The impugned notice dated 25th March, 2019 issued by the respondent under section 148 of the Act, and all proceedings taken pursuant thereto, are hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs.

(HARSHA DEVANI, J) (SANGEETA K. VISHEN,J) BINOY B PILLAI