

City Corporation Limited Through Its Director Mr. Aniruddha P. Deshpande Vs Assistant Commissioner Of Income Tax Circle 1-1, Pune

Court: Bombay High Court

Date of Decision: Jan. 30, 2025

Acts Referred: Income Tax Act, 1961 " Section 143(2), 148, 148A(b), 292B

Hon'ble Judges: M.S.Sonak, J; Jitendra Jain, J

Bench: Division Bench

Advocate: Sham Walve, Sanket S. Bora, Vidhi Punmiya, Bhavik Chheda, Suresh Kumar

Final Decision: Allowed

Judgement

To

AMANORA FUTURE TOWERS PRIVATE LIMITED

917/19A CITY CHAMBERS, F.C. ROAD PUNE

PUNE 411004, Maharashtra India",,,

PAN : AAKCA3074H,A.Y : 2013-14,Dated : 31/03/2023,"D I N & Notice No:

ITBA/AST/S/148_1/2022-

23/1051822997(1)

GANESH SHAMRAO RAKH,,,

CIRCLE 1(1), PUNE"â€œ",,,

16. The impugned notices in the connected Petitions are also similar, the crucial factor being that all such notices were issued to and in the name of",,,

"Amanora Future Towers Private Limited"â€œ",,,

17. As of the date of the issue of the impugned notices, the noticee "Amanora Future Towers Private Limited"â€œ could not have been regarded as",,,

a "person"â€œ under Section 2(31) of the IT Act. In fact, that was a non-existent entity. In Maruti Suzuki (supra) the Hon"ble Supreme Court",,,

has held that notice issued in the name of a non-existent company is a substantive illegality and not merely a procedural violation of the nature",,,

adverted to in Section 292B of the IT Act.,,,

18. In Maruti Suzuki (supra), the Hon"ble Supreme Court noted that the merged company had no independent existence after the merger. The",,,

Court noted that even though the Assessing Officer was informed of the merged company having ceased to exist due to the approved merger scheme," ,,,

the jurisdictional notice was issued only in its name. The Court held that the basis on which jurisdiction was invoked was fundamentally at odds with,,,

the legal principle that the merged entity ceases to exist upon the approved merger scheme. Participation in the proceedings by the petitioner company,,,

into which the merged company had merged or amalgamated could not operate as an estoppel against the law.,,,

19. In *Ubber India Systems (supra)*, the Coordinate Bench held that where by virtue of an order passed by the NCLT, the assessee company stood" ,,,

amalgamated with the petitioner, notice issued under Section 148A(b) and Section 148 to the assessee, which was a non-existent company was illegal," ,,,

invalid and non-est. Similarly, in *Alok Knit Exports Ltd (supra)*, another Coordinate Bench where the Assessing Officer had committed a fundamental" ,,,

error by issuing notice under Section 148 of the IT Act in the name of an entity which had ceased to exist because of it having merged with the,,,

petitioner company, the stand of the Assessing Officer that this was only an error which could be corrected under Section 292B could not be" ,,,

sustained.,,,

20. Mr Suresh Kumar, however, relied upon the explanation in paragraphs 4.2 and 4.3 of the affidavit filed by Dr. Ganesh S. Rakh, Joint" ,,,

Commissioner of Income Tax (OSD), in these Petitions. To appreciate the contention, Paragraphs 4.2 and 4.3 are transcribed below for the" ,,,

convenience of reference: -,,,

4.2. With reference to the contents of Para No. 3 A of the Writ Petition, notice issued u/s. 148 of the Income-tax Act, 1961 (hereinafter referred as 'the Act') dated" ,,,

31/03/2023 issued by the Respondent No. 1 in the case of the petitioner for A.Y. 2013-14. I deny that the notice issued by respondent No. 1 is bad-in-law, illegal or" ,,,

unlawful as the same is issued on to a non-existing company which is merged with Amanora Future Tower Private Limited. The petitioner grounds that the notices,,,

were issued on non-existent entity. In this regard, it is to submit that the seized material is for assessment years prior to merger of Amanora Future Towers Private" ,,,

Limited (PAN:AAKCA3074H) into City Corporation Limited (PAN:AACCC2820K) i.e. the seized material is showing the transaction in the name of Amanora Future,,,

Towers Private Limited (referred hereinafter as AFTPL), the information is related to Amanora Future Towers Private Limited and same were reflected on the" ,,,

PAN of Amanora Future Towers Private Limited on insight portal. The insight portal shows and highlights/flags information as per the PAN and Name of the Party. A,,,

search action was conducted on 15/02/2023 on the City Group. The conducting DDIT(Inv.) who is holding the incriminating documents for the years prior to the,,,

merger of AFTPL into CCL, uploaded the information on the PAN of AFTPL. But while taking the approval from the competent authorities (Respondent No.2) as per",,,

the provisions of Sec. 148, 148A, 149, 151 of the Act, the name of both the entities i.e. AFTPL and CCL along with the respective PANs were duly quoted. The Copy",,,

of the approval of the competent authority is shared with the assessee as well with the Notice u/s 148 of the Act. In short, the notice u/s 148 was issued on the PAN",,,

of non-existent entity as the information was reflected/ flagged on that PAN on the insight portal. There is not a single field on this notice which is editable. So the",,,

Notice was generated on the PAN of AFTPL. But assessee was simultaneously communicated that all the approvals are taken in the name of- Āçâ,¬ĒœM/s Amanora Future",,,

Towers Pvt. Ltd. (Now Merged with M/s City Corporation Ltd.)Āçâ,¬â,,ç. So, considering the above facts and after verifying that Amanora Future Towers Private Limited",,,

was merged with City Corporation Limited, the approval was taken from competent authority in the name of Amanora Future Towers Private Limited",,,

(PAN:AAKCA3074H) which merged in City Corporation Limited (PAN:AACCC2820K). A copy of the same approval is attached herewith for kind reference as",,,

Exhibit-R1. The same copy was also shared with petitioner alongwith notices issued u/s. 148 of the Act. All the internal procedure has been communicated with the",,,

name of resultant entity. However, due to non-linking of amalgamating entityĀçâ,¬â,,çs PAN to amalgamated entityĀçâ,¬â,,çs PAN, and non-availability of modification option",,,

in the 148 notice before issuance, notice u/s 148 was generated through system in the name of Amanora Future Towers Private Limited. As such, the approval was",,,

taken in the name of existing entity thus; the notice should have been issued in the name of resultant entity. Thus, Hon'ble Court is requested to direct petitioner to",,,

treat the notice as good as in the name of existent entity",,,

4.3. With reference to the contents of Para No. 3 B of the Writ Petition, the Petitioner states that the Respondent was well aware of the fact that Amanora Future",,,

Tower Private Limited was merged with the PetitionerĀçâ,¬â,,çs company i.e. City Corporation Limited. To that, I reiterate my comments in the earlier paragraphs of this",,,

reply and agree that the amalgamation of the company was brought to notice of the Department. I say that the notice was issued on the non-existing company due to",,,

technical glitch in the system wherein no field in the notice u/s 148 of the Act is editable.Āçâ,¬â€",,,

21. The averments in the above paragraphs support the PetitionerĀçâ,¬â,,çs case. In paragraph 4.3, there is a clear admission that the amalgamation of the",,,

company was brought to the notice of the Department. The only explanation is that Āçâ,¬Ā“notice was issued on the non-existing company due to",,,

technical glitch in the system wherein no field in the notice u/s 148 of the Act is editable.Āçâ,¬â€",,,

22. In paragraph 4.2, the approval obtained from the Principal Commissioner for the issue of impugned notices is emphasised. The affidavit states that",,,

files were moved proposing notices in the names of both entities, AFTPL and the Petitioner (CCL). There was a reference to seizure proceedings, the",,,

two PAN numbers, and the lack of an editable field on this notice. Therefore, it was submitted that the notice was generated on AFTPL's PAN.",,,

23. In short, the averments in paragraphs 4.2 and 4.3 of the affidavit purport to apportion the blame on the department's utility system. Based upon",,,

this, the fundamental error is sought to be passed off as a mere technical glitch. Finally, the concluding sentence of paragraph 4.2 of the affidavit urges",,,

this Court:",,,

"Thus, Hon'ble Court is requested to direct petitioner to treat the notice as good as in the name of existent entity.",,,

24. Based on the above averments and the arguments, we are afraid we cannot condone the fundamental error in issuing the impugned notices against",,,

a non-existing company despite full knowledge of the merger. The impugned notices, which are non-existent cannot be treated as "good" as urged on",,,

behalf of the Respondents. In Maruti Suzuki (supra), the Hon'ble Supreme Court has held that issuing notice in the name of a non-existing",,,

company is a substantive illegality and not a mere procedural violation of the nature adverted to in Section 292B of the IT Act.,,,

25. Mr Suresh Kumar's contention about the facts in the present case being akin to those in Skylight Hospitality LLP (supra) cannot be accepted.,,,

Except for submitting that the facts are similar or comparable, nothing was shown to us based upon which such a submission could be entertained",,,

much less sustained. In any event, the Hon'ble Supreme Court, in the case of Maruti Suzuki (supra), considered the Delhi High Court's",,,

decision in Skylight Hospitality LLP (supra) and held that the same was delivered "in the peculiar facts of the case". In fact, even the Delhi High",,,

Court had clarified that the decision was in the case's peculiar facts.,,,

26. In that case, there was substantial and affirmative material and evidence on record to show that issuing the notice in the name of the dissolved",,,

company was only a mistake. The Court held that the Special Leave Petition filed by the Skylight Hospitality LLP (supra) against the judgment of the",,,

Delhi High Court rejecting its challenge was dismissed in the peculiar facts of the case, which weighed with the Court in concluding that there was",,,

merely a clerical mistake within meaning of Section 292B. The Hon'ble Supreme Court held that in Maruti Suzuki (supra) the notice under Section",,,

143(2) under which jurisdiction was assumed by the assessing officer, was issued to a non-existent company. The assessment order was issued",,,

against the amalgamating company. "This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B",,,

27. The argument now sought to be raised by Mr Suresh Kumar based on Skylight Hospitality LLP (supra) was considered and rejected by the,,,

Gujarat High Court in Anokhi Realty (P) Ltd. Vs. Income-tax Officer (2023) 153 taxmann.com 275 (Gujarat). In Adani Wilmar Ltd. Vs. Assistant,,,

Commissioner of Income-tax 2023 150 taxmann.com 178 (Gujarat), another Division Bench of the Gujarat High Court rejected the Revenue's,,,

argument based on lack of inter-departmental coordination or non-application of mind when materials relating to amalgamation were already available,,,

with the department. The Court held that based upon such grounds, notices could not have been issued to a non-existent company." ,,,

28. The Delhi High Court, in the case of Principal Commissioner of Income Tax -7, Delhi Vs. Vedanta Limited ITA No. 88 of 2022 decided on 17" ,,,

January 2025 rejected a contention very similar to that raised by Mr Suresh Kumar, relying on Skylight Hospitality LLP (supra). The Delhi High Court" ,,,

noted that the decision of the Supreme Court in Maruti Suzuki (supra), while enunciating the legal position concerning an order being framed in the" ,,,

name of a non-existent entity, had unequivocally held as being a fatal flaw which could neither be corrected nor rectified. It had held explicitly that" ,,,

such an order cannot be salvaged by taking recourse to Section 292B of the IT Act. The Court also noticed the peculiar facts obtained in Skylight,,,

Hospitality LLP (supra), which alone had led to the Supreme Court upholding the assessment made, albeit in the name of an entity that had ceased to" ,,,

exist.,,,

29. Accordingly, after considering the above facts and circumstances and the law, we are satisfied that the impugned notices deserved to be quashed" ,,,

and set aside. We do so by making the rule absolute in these petitions.,,,

30. Before we conclude, we need to clarify that nothing in this order would preclude the respondents from issuing a fresh notice to CCL for" ,,,

reassessment, should the law otherwise permit it, and if the circumstances justify it. We have quashed the impugned notices only because they were" ,,,

issued to a non-existing company or entity despite the respondents' knowledge of its non-existence. All contentions in this regard are left open,,,

because we have not addressed them in this order.,,,

31. The rule is made absolute in each of these petitions without any cost orders.,,,

32. All concerned should act on an authenticated copy of this order.,,,