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

WRIT PETITION NO. 2462 OF 2022

CLSA India Private Limited }
having its offce at 88FF }
Dalamal HouseF Nariman PointF }
Mumbai 400021 } ...Petitioner

Versus

1) The Deputy Commissioner of }
Income-taxF 4(1)(1)F Mumbai }
having his address at Room No. }
640F Aayakar BhavanF M. K. Road }
Mumbai – 400 020 }

2) The Additional Commissioner }
of Income-taxF 4(1)F Mumbai }
having his address at Room No. }
641 Aayakar BhavanF M. K. Road }
Mumbai – 400 020 }

3) The Additional8Joint8Deputy8 }
Assistant Commissioner of Inco- }
me Tax8Income-tax 0ffcerF }
National Faceless Assessment }
CentreF Delhi }

4) Union of India }
Through the SecretaryF }
Department of RevenueF Ministry }
of FinanceF North BlockF New }
Delhi 100 001 } ...Respondents

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Mr. Paras Savla a8w Mr. Harsh R. ShahF Advocate for the Petitioner.

Mr. Suresh KumarF Advocate for the Respondents.

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CORAM : DHIRAJ SINGH THAKUR AND
KAMAL KHATAF JJ.

RESERVED ON : 23rd JANUARY 2023.
PRONOUNCED ON : 10th FEBRUARY 2023.

JUDGMENT

PER DHIRAJ SINGH THAKUR J.:

. The Petitioner challenges the notice dated 31st March 2021 issued under Section 148 of the Income Tax Act 1961 ("the Act") as also the order of assessment passed under Section 147 r8w Sections 144 and 144B of the Act dated 31st March 2022 for the assessment year 2017-18 on the ground that the notice under Section 148 of Act was issued in the name of a non-existent company.

2. Briefly stated the material facts are as under:

A notice dated 31st March 2021 under Section 148 of the Act for the assessment year 2017-18 was issued in the name of *Laysin BPO Pvt. Ltd.* proposing to reopen the assessment on the ground that income had escaped assessment within the meaning of Section 147 of the Act.

In response to the said notice the Petitioner herein *CLSA India Private Limited* informed the Respondents about the non-

existence of the assessee *Laysin BPO Pvt. Ltd.* on account of its amalgamation with the Petitioner *CLSA India Private Limited.* The Respondents stood informed that the merger had taken place with effect from 01st April 2015 vide order of this Court dated 16th April 2016 and therefore sought the dropping of the proceedings initiated against the said non-existent entity.

3. It is stated that the factum of the amalgamation was already within the knowledge of the revenue as is reflected from the order of assessment dated 16th December 2017 for the assessment year 2015-16 which show *M8s CLSA India Pvt. Ltd.* as the successor of *M8s Laysin BPO Pvt. Ltd.*. It is further stated that even for the assessment year 2016-17 return was fled by the Petitioner in which the factum of the amalgamation of *Laysin BPO Pvt. Ltd.* was reflected. For the assessment year 2017-18F the Petitioner states that it fled a response to e-verifcationF informing the Respondents yet again regarding the non-existence of the entity on account of its merger with the Petitioner herein.

4. Be that as it may it is thus clear that the notice under Section 148 of the Act which forms the basis for reassessment proceedings was issued in the name of a non-existent entity and despite the fact

that the Respondents had the knowledge regarding the non-existence of the said entity and despite having been informedF the order of assessment was passed in the name of the Petitioner while at the same timeF mentioning the name of the assessee as *Laysin BPO Pvt. Ltd*.

5. This is clearly untenable in view of the Apex Court judgment in ***Saraswati Industrial Syndicate Ltd. v8s. CIT***[1]F wherein the following principles were formulated:

> "5. GenerallyF where only one company is involved in change and the rights of the shareholders and creditors are variedF it amounts to reconstruction or reorganisation or scheme of arrangement. In 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 undertakingF the shareholders of each blending company become substantially the shareholders 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 companyF 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 volume 7 para 1539). Two companies may join to form a new companyF but there may be absorption or blending of one by the otherF both amount to amalgamation. When two companies are merged and are so joinedF as to form a third company or one is absorbed into one or blended with anotherF the amalgamating company loses its entity."

1. 186 ITR 278 (SC).

In the case of ***Spice Entertainment Ltd. V8s. CST***[2] a Division Bench of the Delhi High Court held that once the factum of amalgamation of a company had been brought to the notice of the A.O.F despite which the proceedings are continued and an order of assessment passed in the name of non-existence company the order of assessment would not be merely be a procedural defect but would render it void.

6. RecentlyF the Apex Court in the case of ***Principal Commissioner of Income TaxF New Delhi V8s. Maruti Suzuki India Ltd.***[3] reiterated the aforementioned principles and held as under:

> "33. In the present caseF despite the fact that the assessing offcer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamationF 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 estoppel against law. This position now holds the feld in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in ***Spice Enfotainment*** on 2 November 2017. The decision in ***Spice Enfotainment*** has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing soF this Court has relied on the decision in ***Spice Enfotainment***.

2. *2012* (*280*) *ELT 43* (*Delhi*)
3. [2019] 107 taxmann.com 375 (SC).

7. The stand of the revenue that the reassessment was justifed 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 favour ofthe revenue to dilute in any manner the principles enunciated hereinabove.

8. Be that as it mayF the writ petition is allowed. The impugned notice dated 31st MarchF 2021F the order of assessment dated 31st MarchF 2022 as also the consequential demand notice and penalty notice dated 31st MarchF 2022 are set aside.

(KAMAL KHATAF J.) **(DHIRAJ SINGH THAKURF J.)**

RUSHIKESH V PATIL

Digitally signed by RUSHIKESH V PATIL
Date: 2023.02.10 19:03:00 +0530