

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 1<sup>ST</sup> DAY OF JUNE, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV**

**WRIT PETITION NO. 9594 OF 2023 (T-IT)**

**BETWEEN:**

1. COFFEE DAY RESORTS (MSM) PVT. LTD.,  
(FOR THE MERGED ENTITY SHANKAR  
RESOURCES PVT. LTD.)  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
NO.23/2, COFFEE DAY SQUARE,  
VITTAL MALLYA ROAD,  
BENGALURU - 560 001  
REPRESENTED BY ITS DIRECTOR  
MR. NANJUNDA SHETTY J S  
... PETITIONER  
(BY SRI. T. SURYANARAYANA, SENIOR ADVOCATE FOR  
SRI TANMAYEE RAJKUMAR., ADVOCATE)

Digitally signed  
by VIDYA G R  
Location: High  
Court of  
Karnataka

**AND:**

1. THE DEPUTY COMMISSIONER OF INCOME-TAX,  
CIRCLE 2(1)(1)  
BMTc BUILDING,  
80 FEET ROAD, KORAMANGALA,  
BENGALURU - 560 095
2. THE PRINCIPAL COMMISSIONER OF  
INCOME TAX-1,  
5<sup>TH</sup> FLOOR, BMTc BUILDING ,

6<sup>TH</sup> BLOCK, 80 FEET ROAD,  
KORAMANGALA,  
BENGALURU - 560 095

... RESPONDENTS

(BY SRI. K.V. ARAVIND, ADVOCATE A/W  
SRI M. DILIP, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO-QUASH THE ORDER DTD 28/03/2023 BEARING NO. ITBA.AST.F.148A/2022-23/1051516338(1) (ANNEXURE-K) PASSED BY THE R-1 UNDER SEC 148A(D) OF THE ACT, REJECTING THE PETITIONERS OBJECTION AS TO THE INITIATION OF THE REASSESSMENT PROCEEDINGS FOR THE AY 2019-20 AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner has filed the present writ petition seeking quashing of the order dated 28.03.2023 at Annexure-K passed by the first respondent under Section 148A (d) of the Income Tax Act, 1961 ("the Act" for short) rejecting petitioner's objection as against initiation of re-assessment of proceedings for the Assessment year 2019-20.

2. The petitioner has also sought for setting aside of the notice dated 28.03.2023 at Annexure-L issued pursuant to the order at Annexure-K.

3. The petitioner Coffee Day Resorts (MSM) Pvt. Ltd., has questioned the validity of the re-assessment proceedings as noticed above. It is to be noticed that Shankar Resources Pvt. Ltd., was Non-Banking Financial Company (NBFC) and merged subsequently into the petitioner company by an order of amalgamation of National Company Law Tribunal (NCLT) dated 18.06.2019 with the appointed date being 01.04.2018.

4. It is submitted that respondent authorities issued a notice under Section 148A (b) of the Act on 28.01.2023 calling upon Shankar Resources Private Limited to show-cause as to why in view of the details contained in enclosures mentioned in point no.1 above, a notice under Section 148 of the Income Tax Act, 1961 should not be issued.

5. The petitioner made out reply on 04.02.2023 specifically stating that the company to which notice under Section 148A (b) came to be issued to M/s.Shankar Resources (P) Ltd., with PAN Number AAHCS6289D has

amalgamated with M/s.Coffee Day Resorts (MSM) Pvt. Ltd., with PAN Number AADCC6017D with effect from 01.04.2018. Accordingly, it was contended that the Company M/s.Shankar Resources (P) Ltd., ceased to exist from 01.04.2018 and there was no assessable entity by name M/s.Shankar Resources (P) Ltd., for the Assessment Year 2019-20.

6. Various other contentions have been taken, on substantive grounds as regards the correctness of issuance of notice under Section 148A (b) which however need not be adverted to in light of the first contention relating to non-existence of M/s.Shankar Resources (P) Ltd., as noticed above. Only on the short ground that the reply not having been taken note of, order being passed under Section 148A (d) of the Act, copy of which is produced at Annexure-K, the order requires to be interfered in light of said legal position.

7. It is noticed that in the order under Section 148A (d) the authority has taken note of merging of

M/s.Shankar Resources (P) Ltd., with Coffee Day Resorts (MSM) Pvt. Ltd., but has adverted on merits and concluded that case was made out for issuance of notice under Section 148 of the Act.

8. It is a matter of record that as on the date notice under Section 148A (b) was issued on 28.03.2023, the entity to which notice was issued was not in existence having merged along with the petitioner company. Even otherwise, it must be noted that consequent to merger, the transactions relating to erstwhile company M/s.Shankar Resources (P) Ltd., find mention in the books of the petitioner.

9. In light of the judgment of the Apex Court in the case of ***Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd.*** reported in **(2019) 107 taxmann.com 375 (SC)**, it is clear that notice and assessment order passed in the name of non-existing company is a substantive illegality and is an order passed without jurisdiction. Accordingly, only on the above ground

of M/s.Shankar Resources (P) Ltd., having merged with the petitioner company and was not an existing entity as on the date of issuance of notice, the notice under Section 148A (b) dated 28.01.2023 vide Annexure-D, similar identical notice dated 23.02.2023 at Annexure-F and notice dated 13.03.2023 at Annexure-H are set aside. So also, order under Section 148A (d) dated 28.03.2023 vide Annexure-K and notice under Section 148 dated 28.03.2023 vide Annexure-L are set aside.

9. Needless to state that the authorities are at liberty to initiate appropriate proceedings as is open in law and permissible insofar as contents of the notice at Section 148A (b) as against the petitioner company in accordance with law.

**Sd/-  
JUDGE**

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