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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6076 OF 2023

WITH

WRIT PETITION NO. 6077 OF 2023

WITH

WRIT PETITION NO. 6078 OF 2023

WITH

WRIT PETITION NO. 6079 OF 2023

WITH

WRIT PETITION NO. 6080 OF 2023

WITH

WRIT PETITION NO. 6081 OF 2023

CITY CORPORATION LIMITED,

Through its Director;

Mr Aniruddha P. Deshpande

Address: 917/19A, City Chambers,

FC Road, Deccan Gymkhana,

Pune – 411004

...Petitioner

VERSUS

**1. ASSISTANT COMMISSIONER OF
INCOME TAX CIRCLE 1(1), PUNE,**

Address: PMT Building,

Shankar Seth Road,

Pune – 411037

**2. PRINCIPAL CHIEF COMMISSIONER
OF INCOME TAX,**

2nd Floor Ayakar Bhawan, 12,

Sadhuvaswani Chowk,

Pune – 411001

3. **UNION OF INDIA,**]
 through the Ministry of Finance,]
 Department of Revenue,]
 Room No.46, North Block,]
 New Delhi – 110 001] ...Respondents

APPEARANCES-

Mr Sham Walve, a/w Mr Sanket S. Bora, Ms Vidhi Punmiya,
 Mr Bhavik Chheda, i/b. SPCM Legal, for the Petitioner
 in all Petitions.

Mr Suresh Kumar, for the Respondents in all Petitions.

**CORAM : M.S.Sonak &
 Jitendra Jain, JJ.**

RESERVED ON : 28 January 2025

PRONOUNCED ON : 29 January 2025

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. Rule in each of these Petitions. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. The learned counsel for the parties agree that all these Petitions can be disposed by a common order since they involve substantially common issues of law and fact. The learned counsel also agree that Writ Petition No.6076 of 2023 be treated as lead Petition.
4. Writ Petition No.6076 of 2023 concerns Assessment Year 2013-14. The remaining Writ Petitions are concerned with

Assessment Years 2014-15, 2016-17, 2017-18, 2018-19 and 2019-20 respectively.

5. All these Petitions are instituted by “City Corporation Limited” [CCL], which is engaged in constructing and developing infrastructure facilities. In terms of the NCLT’s order dated 27 April 2020, the CCL got merged with its wholly owned subsidiary “Amanora Future Tower Pvt. Ltd.” (AFTPL), with effect from 01 April 2018.

6. By communication dated 27 April 2020, the Petitioner informed the Income Tax Authority of the merger effective 01 April 2018. This intimation dated 27 August 2020 is at Exhibit-B (page 34 of the paper book in Writ Petition No.6076 of 2023). This intimation bears the stamp and endorsement of receipt from the office of the Deputy Commissioner of Income Tax, Circle 1(1), Pune. In the return filed on behalf of the Respondents, no dispute is raised about receiving this intimation on 27 August 2020.

7. On 31 March 2023, the Assistant Commissioner of Income Tax, Circle 1(1), Pune, issued a notice dated 31 March 2013 under Section 148 of the Income Tax Act, 1961 (“impugned notice”) to AFTPL seeking to reopen the case in PAN: AAKCA3074H. The Assistant Commissioner obtained approval from the Principal Chief Commission of Income Tax to issue this notice to “*Amanora Future Towers Private Limited (now merged with City Corporation Limited)*”.

8. The Petitioner thereupon instituted the present Petitions, questioning the impugned notice dated 31 March 2023, *inter alia*, on the ground that, post-merger, AFTPL was a non-

existing entity. Therefore, no notice under Section 148 of the Income Tax Act, 1961 (IT Act, 1961) could have been issued to AFTPL.

9. Mr. Walve, the learned counsel for the Petitioner, has relied on **Principal Commissioner of Income Tax, New Delhi vs Maruti Suzuki India Ltd.**¹; **Uber India Systems (P) Ltd. vs Assistant Commissioner of Income**²; and **Alok Knit Exports Ltd. vs Deputy Commissioner of Income-tax, Circle 6(1)(1), Mumbai**³; in support of the contention that the notice issued to a non-existing entity post-merger was a substantive illegality and not some procedural violation. Accordingly, he urged that the impugned notices be quashed and set aside.

10. Mr. Suresh Kumar, the learned counsel for the Respondents, submitted that issuing notices in the name of AFTPL was not illegal. He also submitted that the Principal Commissioner of Income Tax specifically approved the issuance of such notices.

11. Mr. Suresh Kumar submitted that the material on record shows that the notice was meant to be served upon the Petitioner. However, due to certain technical glitches, the utility system generated a notice in the name of AFTPL. He said the facts in the present case were like those in **Skylight Hospitality LLP vs Asstt. CIT**⁴. He submitted that, in this case, the Delhi High Court upheld a notice issued to the company that had already merged. Mr. Suresh Kumar Accordingly urged that these Petitions may be dismissed.

¹ (2019) 107 taxmann.com 375 (SC)

² (2024) 168 taxmann.com 200 (Bombay)

³ (2021) 130 taxmann.com 457 (Bombay)

⁴ (2018) 92 taxmann.com 93/254 Taxman 390 (SC)

12. Rival contentions now fall for our determination.

13. In all these Petitions, the merger between City Corporation Limited and Amanora Future Towers Private Limited, which was effective from 01 April 2018, is not disputed. This merger was based on the NCLT's order dated 27 April 2020.

14. There is also no dispute about the Petitioner, vide a communication received by the Income Tax Department on 27 August 2020 informing about the merger effective 01 April 2018. The communication, along with an endorsement from the office of the Deputy Commissioner of Income-tax, Circle 1(1), Pune, is placed on record at Exhibit-b (page 34 of the paper book in Writ Petition No.6076 of 2023), as also in the connected Petitions. In the affidavit in reply filed, no dispute was raised about the department not receiving the intimation on 27 August 2020 or about the department being unaware of the merger. Still, the impugned notices dated 31 March 2023 under Section 148 of the IT Act, 1961 were issued only in the name of "Amanora Future Towers Private Limited"

15. The contents of the impugned notice dated 31 March 2023 at Exhibit 'C' page 35 in Writ Petition No. 6076 of 2023 are transcribed below for the convenience of reference: -

**"EXHIBIT-C
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CIRCLE 1(1), PUNE**

To AMANORA FUTURE TOWERS PRIVATE LIMITED 917/19A CITY CHAMBERS, E.C. ROAD PUNE PUNE 411004, Maharashtra India	
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PAN : AAKCA3074H	A.Y : 2013-14	Dated : 31/03/2023	DIN & Notice No: ITBA/AST/S/148_1/2022- 23/1051822997(1)
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Notice under section 148 of the Income-tax Act, 1961

Sir/Madam/ M/s.

I have information that a search was initiated under section 132 of the Act in your case or in the case of the person in respect of which you are the assessable under the Act on the date 15/02/2023.

This notice is being issued after obtaining the prior approval of the PCCIT, PUNE accorded on date vide Reference No. 100000038654133.

2. I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2013-14 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2013-14.

GANESH SHAMRAO RAKH
CIRCLE 1(1), PUNE"

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'

17. As of the date of the issue of the impugned notices, the noticee '*Amanora Future Towers Private Limited*' could not have been regarded as a 'person' 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- 'M/s Amanora Future Towers Pvt. Ltd. (Now Merged with M/s City Corporation Ltd.)'. 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 entity's PAN to amalgamated entity's 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 Petitioner's 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."

21. The averments in the above paragraphs support the Petitioner's 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 "*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.*"

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-est 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**⁵. In **Adani Wilmar Ltd. Vs. Assistant Commissioner of Income-tax**⁶, 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.

⁵ (2023) 153 taxmann.com 275 (Gujarat)

⁶ 2023 150 taxmann.com 178 (Gujarat)

28. The Delhi High Court, in the case of **Principal Commissioner of Income Tax -7, Delhi Vs. Vedanta Limited**⁷ 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.

⁷ ITA No. 88 of 2022 decided on 17 January 2025

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.

(Jitendra Jain, J)

(M. S. Sonak, J)