

HC: 'Active PAN' no justification for initiating reassessment against merged entity; Follows Maruti ruling

Nov 10, 2023

Diversey India Hygiene Private Limited [TS-673-HC-2023(BOM)]

Conclusion

Bombay HC quashes reassessment proceedings initiated in the name of amalgamating entity and observes, *"The fact that PAN was not deactivated would not help the Revenue because there could be cases relating to various years when the company was in existence and it is possible those PAN numbers are picked up for scrutiny or for issuance of refund. That in our view, will not be a sanction for Department to issue notices to a non-existing entity, particularly, when they were aware that the entity was not in existence"*; Assessee challenged the reassessment proceedings for AY 2016-17 and AY 2017-18 on the grounds that notices were issued in the name of amalgamating non-existent entity; Amalgamating entity i.e. Diversey India Private Limited got amalgamated with the Assessee i.e. Diversey India Hygiene Private Limited w.e.f from Apr 1, 2015 through Court order and the same was informed to the Revenue on May 12, 2016; Assessee contended that notices issued in the name of amalgamating company being non-existent entity is a substantial illegality and not merely a procedural violation, thus, not a curable defect under Section 292(B); Relied on SC rulings in [Maruti Suzuki](#) and [Saraswati Industrial](#); Revenue argued that Assessee did not protest and participated in the reassessment proceedings for AY 2012-13 and AY 2013-14, also, the PAN of the amalgamating company was not deactivated; HC rejects Revenue's argument observing that the CIT(A) set aside the reassessment order for AY 2012-13 and AY 2013-14 being passed in the name of non-existent entity; HC condemns Revenue for not disclosing this fact in the affidavit submitted after passing of CIT(A) order and remarks *"the affiant should have been aware of the order passed. We would have expected affiant to be truthful and disclose this fact in his reply"*; Thus, disposes of the writ petition by quashing the reassessment notices:HC BOM

Decision Summary

The ruling was delivered by the Division Bench of Bombay High Court comprising Justice K.R. Shriram and Justice Dr. Neela Gokhale.

Advocate Dr. Sunil Moti Lala with Advocate Dharan V. Gandhi appeared for the Assessee while the Revenue was represented by Mr. Suresh Kumar.

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

WRIT PETITION NO.3034 OF 2022
WITH
WRIT PETITION NO.3505 OF 2022

Diversey India Hygiene Private Limited ...Petitioner
Versus

The Assistant Commissioner of Income Tax
Circle 3(2)1 and Ors. ...Respondents

Dr. Sunil Moti Lala with Mr. Dharan V. Gandhi for Petitioner.
Mr. Suresh Kumar for Respondent-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 8th November 2023

PC:-

1. Writ Petition No. 3034 of 2022 pertains to Assessment Year ("AY") 2016-17 and Writ Petition No.3505 of 2022 pertains to AY 2017-18. Both Petitions are filed by the same Petitioner and the issue is common.

2. Petitioner is impugning a notice dated 30th March 2021 issued under Section 148 of the Income Tax Act, 1961 ("Act") and notices dated 17th June 2021, 6th December 2021, 10th January 2022 and 4th February 2022 issued under Section 142(1) of the Act on the ground that all these notices have been issued to a non-existing entity. Petitioner's case is that noticee, i.e., Diversey India Private Limited ("DIPL") got amalgamated with Petitioner with effect from 1st April 2022.

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2015 and as held in *PCIT v. Maruti Suzuki India Ltd.*¹, a notice issued and an assessment order, if any, passed in the name of the amalgamating company which has lost its existence post amalgamation is without jurisdiction and bad in law and thus, liable to be set aside. It is also Petitioner's case that it is not a curable defect under Section 292(B) of the Act as the same constituted substantial illegality and was not merely a procedural violation. Counsel submitted that once a scheme of amalgamation is sanctioned, as held in *Saraswati Industrial Syndicate Ltd v. CIT*², the amalgamating company ceases to exist in the eyes of the law from the date amalgamation is made effective. In the facts of the present case, the scheme of amalgamation of the amalgamating company, i.e., DIPL with Petitioner has been approved by the Company Court with effect from 1st April 2015 and thus, DIPL ceased to exist with effect from that date.

3. It is also Petitioner's case that letter dated 12th May 2016 was addressed to the Assessing Officer ("AO") of DIPL and Principal Commissioner intimating about the amalgamation and an assessment order dated 1st March 2019 for AY 2016-17 under Section 143(3) r/w Section 147 of the Act in the case of Petitioner has been passed where the amalgamation has been referred to and discussed.

1 416 ITR 163

2 186 ITR 278 (SC)

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Counsel, therefore, submitted that all the notices impugned have to be quashed and set aside.

4. In the affidavit in reply filed on behalf of Respondents by one Abhay Y. Marathe, affirmed on 5th May 2022, it is admitted, amalgamation of noticee with Petitioner has been admitted and that the amalgamation was also intimated to the Department on 12th May 2016. But the defence taken is for AY 2012-13 and AY 2013-14 when the notices under Section 148 of the Act were served, Petitioner did not protest and participated in the re-assessment proceedings. It is also stated that the PAN of the noticee was not deactivated.

5. In our view, this defence of Respondent will be of no assistance in-as-much as Commissioner of Income Tax (Appeals) [CIT(A)] has passed orders on 28th March 2022, as stated in the affidavit in rejoinder dated 10th July 2022 setting aside re-assessment orders for AY 2012-13 and 2013-14 on the ground that the assessment order has been passed in the name of non-existing person, i.e., DIPL. In fact, we find it objectionable that this defence has been taken in the affidavit in reply because order of the CIT(A) was passed on 28th March 2022 whereas affidavit in reply is affirmed on 5th May 2022 and, therefore, the affiant should have been aware of the order passed. We would have expected affiant to be truthful and disclose this fact in his reply.

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6. The fact that PAN was not deactivated would not help the Revenue because there could be cases relating to various years when the company was in existence and it is possible those PAN numbers are picked up for scrutiny or for issuance of refund. That in our view, will not be a sanction for Department to issue notices to a non-existing entity, particularly, when they were aware that the entity was not in existence.

7. In the circumstances, Petitions stand disposed in terms of prayer clause (i) respectively which reads as under:

Writ Petition No.3034 of 2022

"i. that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the notice under section 148 of the Act dated 30 March 2021 ("Exhibit H") and notices under section 142(1) of the Act dated 21 June 2021 ("Exhibit J"), 06 December 2021 ("Exhibit L"), 10th January 2022 ("Exhibit O") and notice dated 02 February 2022 ("Exhibit S").

Writ Petition No.3505 of 2022

"i. that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the notice under section 148 of the Act dated 30 March 2021 ("Exhibit H") and notices under section 142(1) of

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the Act dated 17 June 2021 ("Exhibit J"), 06 December 2021 ("Exhibit L"), 10th January 2022 ("Exhibit O") and notice dated 04 February 2022 ("Exhibit S")."

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

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