



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2033 OF 2022

Erangal Comtrade and Consultancy LLP
(as successor in interest of
Erangal Comtrade and Consultancy
Private Limited)

.. Petitioner

Versus

1. Assistant Commissioner of Income Tax,
Circle 2(1) (1), Mumbai,
Room No.561, 5th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai – 400 020
2. Joint Commissioner of Income Tax,
Range 2(1), Mumbai,
Aayakar Bhavan, Maharishi Karve Road,
Mumbai – 400 020
3. National Faceless Assessment Centre,
New Delhi

.. Respondents

***Mr.P. J. Pardiwalla, Senior Advocate a/w Mr. Nitesh Joshi
i/b. Mr. Atul K. Jasani, Advocates for the Petitioner.***

Mr. Abhishek R. Mishra, Advocates for the Respondents/Revenue.

**CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**
DATE : NOVEMBER 3, 2025

ORAL JUDGMENT :- [Per B. P. Colabawalla, J.]

1. Rule. Respondents waive service. With the consent parties, Rule made returnable forthwith and heard finally.

2. The present Petition challenges the notice dated 30th March 2021 issued under section 148 of the Income Tax Act, 1961 [**“IT Act”**]. This notice was issued to a company called *“Erangal Comtrade and Consultancy Private Limited”* [hereinafter referred to as the **“erstwhile company”**], which ceased to exist with effect from 17th March 2016 after its conversion into the Petitioner LLP [*Erangal Comtrade and Consultancy LLP*]. The impugned notice issued under section 148 seeks to reassess the income of the erstwhile company for A. Y. 2017-18. After the issuance of the section 148 notice, a draft assessment order dated 29th March 2022, and a final assessment order dated 30th March 2022 are also passed by the Assessing Officer against the erstwhile company. The said section 148 notice as well as the final assessment order dated 30th March 2022 are challenged in the present Petition.

3. The basic grounds on which the challenge is laid are that:

- (a) The impugned action has been taken against a non-existent entity rendering the same to be illegal and bad-

in-law;

- (b) That in any event, the final assessment order has been passed without first disposing of the objections filed by the Petitioner to the reasons for reopening the assessment;
- (c) Even otherwise, the income which the Assessing Officer alleges has escaped assessment, has already been brought to tax by the Petitioner LLP in A.Y. 2017-18, and therefore, the Assessing Officer could never have had reason to believe that income had escaped assessment.

4. The concise undisputed facts to decide the present controversy are that originally there was a company called *Erangal Comtrade and Consultancy Private Limited* (the erstwhile company), which inter alia carried on the business of trading in commodities, holding of investments and earning income by way of dividends and interest thereon, and gains on the disposal thereof, and earning of rental income. The erstwhile company filed an application on 3rd March 2016 with the Registrar of Companies in LLP form No.2 and LLP Form No.18 in terms of the Limited Liability Partnership Rules,

2009 read with the Limited Liability Partnership Act, 2008, seeking its conversion into an LLP.

5. Pursuant to the aforesaid application filed by the erstwhile company, the Registrar granted a certificate of registration in Form No.19 in terms of Rule 32(1) of the LLP Rules read with section 58(1) of the LLP Act, certifying the conversion of the erstwhile company into the Petitioner LLP with effect from 17th March 2016. Pursuant to the grant of such certificate of conversion, the erstwhile company ceased to exist and the Petitioner LLP stood incorporated on 17th March 2016.

6. For A.Y. 2016-17, the erstwhile company filed its return of income offering to tax, income relating to the period from 1st April 2015 to 16th March 2016. The Petitioner LLP filed its return of income offering to tax, income arising during the period from 17th March 2016 to 31st March 2016. This position is not disputed and is accepted by the revenue.

7. Thereafter, on 25th October 2017, the Petitioner LLP filed its return of income for A.Y. 2017-18, inter alia, offering to tax interest income arising from the Fixed Deposits vested in the Petitioner LLP [from the erstwhile company upon its conversion into an LLP], including income arising

on renewal of the said Fixed Deposits.

8. The aforesaid return of income filed by the Petitioner LLP was selected for scrutiny. In the course of the scrutiny assessment proceedings, the facts relating to conversion of the erstwhile company, and transfer and vesting of its assets into the Petitioner LLP, were brought to the notice of the Assessing Officer. Information was also provided with respect to the said FDs including the renewals thereof. The Petitioner LLP also filed a copy of the bank statement of HDFC Bank Ltd. for the period 1st April 2016 to 31st March 2017. After this information was provided by the Petitioner LLP, an assessment order dated 4th December 2019 was passed under section 143(3) [for A.Y. 2017-18] inter alia, assessing income from interest on the said FDs at Rs.50,34,979/-. However, TDS credit of Rs.5,04,371/- was denied to the Petitioner. This was because the PAN of the erstwhile company was used by the banks and the credit did not appear in the Petitioner LLP's Form 26AS.

9. Accordingly, the Petitioner LLP filed a rectification application with the Assessing Officer explaining the facts relating to the conversion and claiming the said TDS credit. This rectification application is still pending. Apart from the rectification application, the Petitioner also filed an Appeal from the assessment order dated 4th December 2019 and the same is also

pending before the CIT (Appeals).

10. Be that as it may, on 30th March 2021, the 1st Respondent (the Assessing Officer) issued the impugned notice under section 148 seeking to reassess the income of the erstwhile company for A.Y. 2017-18. In response to this notice, the Petitioner LLP informed the 1st Respondent that the erstwhile company was no longer in existence as it was converted into the Petitioner LLP. In the said letter it was specifically mentioned that with effect from 17th March 2016, the erstwhile company was no longer in existence, and the Petitioner LLP was incorporated. Despite this, on 3rd November 2021, the erstwhile company was served with the reasons recorded for reopening the assessment. In the reasons, a reference was made to placing of FDs of Rs.22,11,00,000/- and interest thereon of Rs.50,34,979/-, on which tax had been deducted at source under section 194A of the Income Tax Act, 1961. It was alleged in the reasons that income had escaped assessment as the said erstwhile company had not filed its return of income for A.Y. 2017-18.

11. To the reasons given for reopening the assessment, the Petitioner LLP filed its objections on 20th January 2022 and 29th January 2022. In the said objections it was inter alia also pointed out that the notice under section 148 was issued against a non-existent entity. It was also pointed out that the

interest of Rs.50,34,979/- also stood reflected in the return of income filed by the Petitioner LLP, and which was assessed to tax in the assessment order dated 4th December 2019 passed under section 143(3) of the IT Act. Therefore, there could be no case of income escaping assessment, was the case of the Petitioner.

12. It appears that thereafter, notices were issued under section 142(1), and finally, the impugned assessment order dated 30th March 2022 was passed against the erstwhile company assessing the amount of Rs.22,11,00,000/- as unexplained investment under section 69 and interest of Rs.50,34,979/- as undisclosed income arising thereon. Consequently, a notice of demand of Rs.16,57,21,500/- was also issued to the erstwhile company.

13. In this factual backdrop, we have heard Mr. Pardiwalla, the learned Senior Counsel appearing on behalf of the Petitioner, as well as Mr. Mishra, the learned counsel appearing on behalf of the Revenue. As mentioned earlier, the first challenge to the notice issued under section 148 is that the same is issued against a non-existent entity rendering the same illegal and bad-in-law. As far as this issue is concerned, we find that from the facts of the present case, the erstwhile company ceased to exist with effect from 17th March 2016. This is an undisputed position. Yet the notice under section 148 has been

issued to the erstwhile company, and that too for A.Y. 2017-18, when the said company was not in existence. The only ground on which the reassessment proceedings are sought to be initiated against the erstwhile company is that it failed to file its return of income. We fail to understand how a company, which was not in existence in A.Y. 2017-18, can file its return of income for the said assessment year.

14. Be that as it may, we find that the issue regarding the invalidity of a notice issued to a non-existent entity is no longer *res-integra* and is covered by the decision of the Hon'ble Supreme Court in the case of ***Principal Commissioner Income Tax Vs. Maruti Suzuki India Ltd. [(2020) 18 SCC 331 : (2019) 416 ITR 613 (SC)]***. The Supreme Court, after considering the law on the subject (in the SCC report), held as under :

“**36.** In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, 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 field in view of the judgment of a coordinate Bench of two learned Judges which dismissed the appeal of the Revenue in *Spice Entertainment [CIT v. Spice Entertainment Ltd., (2020) 18 SCC 353]* on 2-11-2017. The decision in *Spice Entertainment [CIT v. Spice Entertainment Ltd., (2020) 18 SCC 353]* has been followed in the case of the respondent while dismissing the special leave petition for AY 2011-2012. In doing so, this Court has relied on the decision in *Spice Entertainment [CIT v. Spice Entertainment Ltd., (2020) 18 SCC 353]* .

37. We find no reason to take a different view. There is a value which the Court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-2012 must, in our view be adopted in respect of the present appeal which relates to AY 2012-2013. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.”

15. Following the decision of the Hon'ble Supreme Court in *Maruti Suzuki India Ltd. (supra)*, this Court in the case of ***Diversey India Hygiene Private Limited Vs. The Assistant Commissioner of Income Tax, Circle 3(2) and Ors.*** [Writ Petition No.3034 of 2022 with Writ Petition No.3505 of 2022, decided on 8th November 2023] also quashed the notices issued under section 148 to a non-existent entity.

16. Considering the law laid down as discussed above, we are clearly of the view that in the present case, the notice issued under section 148 to the erstwhile company, namely, *Erangal Comtrade and Consultancy Private Limited*, cannot be allowed to stand and is hereby quashed and set aside. Once we have quashed the notice issued under section 148, then naturally the impugned assessment order dated 30th March 2022 also cannot be allowed to stand and is hereby quashed and set aside. This is for the simple reason that the said assessment order emanates from the notice issued under section 148.

17. Considering the finding given by us in the present order, we need not burden this judgement with the other issues canvassed on behalf of the Petitioner viz. (a) that the final impugned assessment order could not have been passed without first disposing of the objections filed by the Petitioner to the reasons for reopening the assessment, or (b) that in the facts of the present case, there was no escapement of income.

18. Mr. Pardiwalla, the learned Senior Counsel appearing on behalf of the Petitioner, has stated that the Petitioner has also filed an Appeal before the CIT (Appeals) challenging the impugned assessment order dated 30th March 2022. In light of the judgment passed today, Mr. Pardiwalla undertakes that the Appeal filed by the Petitioner before the CIT Appeals (in relation to the impugned assessment order dated 30th March 2022), shall be withdrawn within a period of two weeks from today. The said statement is hereby accepted as an undertaking given to the Court.

19. If for any reason the Revenue chooses to challenge this order and the same is set aside by the Hon'ble Supreme Court, in such an event, the Appeal filed by the Petitioner (in relation to the impugned assessment order dated 30th March 2022) before the CIT (Appeals), shall be restored to file and

then decided on its own merits and in accordance with law.

20. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, in the facts and circumstances of the present case, there shall be no order as to costs.

21. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.]

[B. P. COLABAWALLA, J.]