IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved On 23.07.2020	Judgment Pronounced On 30.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal Nos.534 & 535 of 2020
and
C.M.P.Nos.7763, 7764, 7767 & 7768 of 2020

M/s.Oasys Green Tech Private Limited,
Rep., by its Authorised Signatory,
Mr.E.Venkatakrishniah,
No.7, Alli Salai, Annamalai Nagar,
Trichy-620 018. .. Appellant/Petitioner in both W.As.

-vs-

Income Tax Officer,
Corporate Ward – 5(1),
Room No.412, 4th Floor, Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. .. Respondent/Respondent in both W.As.

APPEALS under Clause 15 of the Letters Patent to set aside the common order dated 21.01.2020 made in W.P.Nos.1759 and 21858 of 2018 passed by this Court.

For Appellant (In both Appeals)	:	Ms.Suhrith Parthasarathy
For Respondent (In both Appeals)	:	Ms.Hema Muralikrishnan, Senior Standing Counsel

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COMMON JUDGMENT

T.S.Sivagnanam, J.

These appeals are directed against the common order passed in W.P.Nos.1759 and 21858 of 2018 filed by the appellant to quash the order passed by the respondent dated 28.06.2018 levying penalty under Section 271(1)(c) of the Income Tax Act, 1961 (for brevity "the Act"), and the assessment order dated 30.12.2017, passed under Section 144 read with Section 147 of the Act.

2.The assessee challenged the impugned orders that the company M/s.OAS Digital Infrastructures Private Limited, to whom, notice under Section 148 of the Act was issued and based upon which the impugned order has been passed, did not exist at the time of issuance of notice and before passing the impugned order. In other words, the notice has been issued to a company, which is non-existent on the date as it stood amalgamated with the appellant/petitioner – M/s.Oasys Green Tech Private Limited.

3.The appellant relied upon the decisions of the Hon'ble Supreme Court in the case of ***Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Limited [(2019) 416 ITR 613 (SC)]; Spice Entertainment Ltd. vs. Commissioner of Service Tax [(2012) 280 ELT 43]; M/s.Rustagi Engineering Udyog Pvt. Ltd. vs. Assistant Commissioner of Income Tax [W.P.(C) No.2712 of 2016 dated 26.07.2017]; BDR Builders & Developers Pvt. Ltd. vs. Assistant Commissioner of Income Tax [W.P.(C) No.2712 of 2016 dated 26.07.2017];*** and ***Alamelu Veerappan vs. The Income Tax Officer, Non Corporate Ward 2(2) [304 CTR 512].***

4.The respondent/Revenue resisted the prayer sought for in the writ petitions stating that the Assessing Officer was not aware of the amalgamation of the company moreover, the return of income for the assessment year 2014-15 had been filed on 07.03.2016 in the name of OAS by the appellant confirming the position that OAS was a functioning entity. Further, income tax refund issued by the Department in favour of OAS has been duly received and encashed by the appellant. Therefore, the Revenue contended that the appellant cannot canvass the point that OAS was non-existent and the proceedings initiated in its name would be bad in law.

5.The decisions relied on by the appellant were sought to be distinguished. The learned Single Bench after consideration of the factual position, noted the conduct of the appellant in not bringing to the notice of the Revenue about the amalgamation, its conduct of filing return of income in the name of OAS after the amalgamation and obtained refunds issued in the name of OAS, which will all go to show that M/s.OAS continued to exist even after amalgamation. Therefore, the learned Single Bench concluded that by the very conduct, the appellant had led the Department to believe that OAS, as an entity, existent. The Court then proceeded to consider each one of the decisions cited by the learned counsel for the appellant before it and pointed out as to how those decisions are not applicable to the facts and circumstances of the case.

6.We have heard Mr.Suhrith Parthasarathy, learned counsel for the appellant and Ms.Hema Muralikrishnan, learned counsel for the respondent.

7.The facts, as culled out by the learned Single Bench, clearly demonstrate the conduct of the appellant. We fully agree with the reasons assigned by the learned Single Bench to throw out the writ petitions. One more reason as to why the appellant is not entitled to any relief is that what were impugned in both the writ petitions were order of assessment and order imposing penalty and a writ petition against such an order is not maintainable on account of the availability of the effective and efficacious alternate remedy. This is one more ground on which the writ petitions should have been dismissed.

8.With regard to the case law relied on by the learned counsel appearing for the appellant, the learned Single Bench has rightly noted the factual position in each of those decisions more particularly, in the case of

Maruti Suzuki India Limited (supra), wherein the Hon'ble Supreme Court found an admitted fact that the Assessing Officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, yet the notice was issued only in its name. The factual position in the case on hand is otherwise. We also agree with the reasons given by the learned Single Bench with regard to the other decisions as well.

9.Recently, we had an occasion to consider a more or less similar contention in the case of ***Commissioner of Income Tax vs. M/s.Tarachanthini Services Pvt. Ltd. [T.C.A.Nos.839 & 840 of 2019 dated 20.07.2020].*** The challenge to the assessment order was on the ground that it is a nullity, as it has been passed against a defunct company, as the company was struck off from the Register of Companies. The assessee in the said case placed reliance on the decision in ***Maruti Suzuki India Limited*** (supra). The said decision was held to be not applicable to the case of the assessee and the Revenue's appeals were allowed with the following finding:-

*"7. In support of his contention, Mr.G.Baskar, learned counsel for the respondent / assessee referred to the decision of the Hon'ble Supreme Court of India in the case of **the Principal Commissioner of Income Tax Vs. Maruti Suzuki India Limited (2019 (416) ITR 0613 [SC]).** The said decision was relied on to support the contention that framing of an assessment against the non existing entities / persons is a jurisdictional defect and the Assessment Order is liable to be quashed.*

8. Admittedly the assessment year is 2000-01, when the assessee Company was carrying on business. It is not in dispute that the assessee Company filed its Return of Income for the said assessment year. This was processed and an intimation was issued under Section 143(1) of the Act on 15.01.2002. When the assessment was reopened under Section 147 of the Act by issuing notice dated 20.03.2007 under Section 148 of the Act, the assessee Company was carrying on business. The assessee fully cooperated in the reassessment proceedings and we have mentioned about the various hearing dates on which the Assessing Officer heard the assessee. At no point of time, the assessee informed the Assessing Officer that the Company has been struck off from the Register of

Companies on 25.05.2007. Thus there was no occasion for the Assessing Officer to know about the said fact as the assessee failed to bring it to the notice of the Assessing Officer. That apart, the assessee continued to remain as an assessee on the file of the Income Tax Department and the PAN number was valid and not cancelled. The assessee took no steps to inform the Department about the striking off the name of the Company from the Register of Companies. The assessee did not file any documents before the Assessing Officer stating that their PAN number has to be revoked and their Income Tax account has to be closed.

9. The decision in the case of Maruthi Suzuki would not render assistance to the case of the assessee because in the said case, the amalgamation was intimated to the Assessing Officer and despite the fact that the amalgamating Company ceased to exist as a result of an approved scheme of amalgamation, making an assessment in the name of non existing Company would render assessment invalid. ***While*** *the facts of the present case as mentioned above are totally different, it cannot be applied to the case on hand. As mentioned earlier, the assessment is for the year 2000-01 which was reopened and striking off the name of the assessee Company from the Register of*

Companies occurred only on 21.05.2007, can in no manner impact the assessment for the year 2000-01."

10.For all the above reasons, we find no good ground to interfere with the orders passed in the writ petitions.

11.Accordingly, the writ appeals fail and they are dismissed. The time lines fixed by the learned Single Bench in paragraph 16, stands extended by four weeks' from the date of receipt of a copy of this judgment instead of two weeks' for filing the return and re-assessment proceedings be completed within eight weeks' from the date of filing the return. No costs. Consequently, connected miscellaneous petitions are closed.

(T.S.S., J.) (V.B.S., J.)
30.07.2020

Index : Yes/No
Speaking Order/Non-Speaking Order

abr

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

(abr)

To

The Income Tax Officer,
Corporate Ward – 5(1),
Room No.412, 4th Floor, Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

Pre-delivery Common Judgment made in
W.A.Nos.534 & 535 of 2020

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