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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6900/2022 & C.M.Nos.21028-21029/2022**

JINDAL EXPORTS AND IMPORTS PRIVATE LIMITED
SUCCESSOR TO JINDAL MENTHOL AND INVESTMENT
PRIVATE LIMITED Petitioner

Through: Mr.Ved Kumar Jain with Mr.Nischay
Kantoor, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 13-1 &
ORS. Respondents

Through: Mr.Sunil Agarwal, senior standing
counsel for the Revenue.

+ **W.P.(C) 6916/2022 & C.M.Nos.21089-21090/2022**

JINDAL EXPORT AND IMPORT PRIVATE LIMITED
(SUCCESSOR TO JINDAL MENTHOL AND INVESTMENT
PRIVATE LIMITED) Petitioner

Through: Mr.Ved Kumar Jain with Mr.Nischay
Kantoor, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 13-1 &
ORS. Respondents

Through: Mr.Sunil Agarwal, senior standing
counsel for the Revenue.

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Date of Decision: 02nd May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petitions have been filed challenging the reassessment notices dated 27th March, 2021 and 28th March, 2021 issued under Section 148 of the Income Tax Act, 1961 ['the Act'] for the assessment years 2014-15 and 2015-16 as well as the assessment orders dated 30th March, 2022 passed under Section 147 read with Section 143(3) of the Act.
2. Learned counsel for the Petitioner states that the impugned notices as well as the orders are *void ab initio* as they have been issued in the name of 'Jindal Menthol & Investment Pvt. Ltd.', a non-existing entity as it had merged with the Petitioner company with effect from 1st April, 2013 vide order dated 6th August, 2014 passed by this court under Section 394 of the Companies Act, 1956. He relies on the decision of the Supreme Court in ***Pr. Commissioner of Income Tax v. Maruti Suzuki India Limited, (2019) 416 ITR 613 (SC)*** wherein it has been held that the issuance of a notice to the non-existing company is a substantive illegality and not a procedural violation.
3. Learned counsel for the Petitioner states that the income, alleged to have escaped assessment, has been offered to tax in the hands of the amalgamated entity and assessment orders dated 29th December, 2016 and 16th December, 2017 have been passed accepting the same.

4. Learned counsel for the Petitioner further states that the impugned assessment order has been issued in violation of the principle of natural justice as the Petitioner was not given adequate opportunity of being heard. He points out that the Petitioner had not even been granted a day's time to respond to the show cause notice dated 30th March, 2022. In support of his submission, he relies on the decision of this Court in the case of ***Nidhi Agrawal v. ITO W.P.(C) 6259/2022*** where under similar circumstances i.e. the time granted for replying to show cause notice was less than one day, this Court had set aside the assessment order.

5. Issue notice.

6. Mr.Sunil Agarwal, senior standing counsel accepts notice on behalf of the Respondents. He states that in the present case, the impugned assessment orders have been passed in the name of 'Jindal Exports and Imports Private Limited' (Successor to Jindal Menthol & Investment Private Limited) i.e. the amalgamated entity. He also states that the issue as to whether income has escaped assessment or not is a question of fact which the petitioner can agitate in appeal proceedings.

7. Having heard learned counsel for the parties, this Court is of the view that even if the submission of learned counsel for the Respondents is accepted, then also the impugned assessment orders are liable to be set aside as the Petitioner was not given adequate opportunity to file response to the said show cause notice-cum-draft assessment orders. Consequently, as there has been a violation of principle of natural justice, the impugned assessment orders as well as demand and penalty notices dated 31st March, 2022 are set aside and the matter is remanded back to the Assessing Officer for fresh adjudication.

8. The petitioner shall file its response to the show cause notices dated 30th March, 2022 within two weeks. The Assessing Officer is directed to fix the date of hearing after four weeks and decide the same by way of a reasoned order in accordance with law after giving an opportunity of hearing to the petitioner. The rights and contentions of all the parties are left open.

9. In view of the above, present writ petitions and applications stand disposed of.

MANMOHAN, J

DINESH KUMAR SHARMA, J

**MAY 02, 2022
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