

INCOME TAX : Where a company 'M' was amalgamated with assessee-company, Tax Recovery Officer could not seek recovery of taxes due of 'M' arising out of order of reassessment from assessee-company inasmuch as assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings

■ ■ ■

[2019] 109 taxmann.com 465 (Bombay)

HIGH COURT OF BOMBAY

Hinal Estates (P.) Ltd.

v.

Union of India*

AKIL KURESHI AND S.J. KATHAWALLA, JJ.

WRIT PETITION NO. 878 OF 2019

JUNE 24, 2019

Section [222](#) of the Income-tax Act, 1961 - Collection and recovery of tax - Certificate proceedings (Companies, in case of) - Assessment year 2010-11 - A company 'M' was amalgamated with assessee-company - Thereafter Assessing Officer had reopened assessment of company 'M' and passed assessment order on raising tax demand upon it - Subsequently Tax Recovery Officer issued on assessee-company a notice to recover tax dues of company 'M' and on failure of assessee to pay tax dues of company 'M' had attached bank accounts of assessee - Whether Tax Recovery Officer could not seek recovery of taxes due of 'M' arising out of order of reassessment from assessee-company inasmuch as assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings - Held, yes - Whether, therefore impugned notice of recovery deserved to be set aside and attachment of assessee's bank accounts required to be lifted - Held, yes [Para 5][In favour of assessee]

FACTS

- A company 'M' amalgamated with the assessee-company by an order of the High Court dated 14-9-2012 with effect from 1-4-2011.
- For the assessment year 2010-11, the Assessing Officer had reopened the assessment of the company 'M' by way of issuing notice dated 17-3-2015 and passed assessment order under section 143 read with section 147 on 25-1-2016 and raised tax demand upon it.
- Against the order of assessment dated 25-1-2016, the company 'M' had filed an appeal before the Commissioner (Appeals), which was still pending.
- The Tax Recovery Officer issued on the assessee-company a notice dated 12-3-2018 to recover the tax dues of the company 'M' (amalgamating company) and further on failure of the assessee to pay the tax dues of company 'M' *vide* order dated 20-3-2018 had attached the bank accounts of the assessee-company.
- The assessee filed a writ petition challenging the recovery notice dated 12-3-2018

and consequential order dated 20-3-2018 attaching the bank accounts.

HELD

- In plain terms, the entire assessment concerns the amalgamating company. When the notice of reopening of assessment was issued, the said company had already merged with the assessee-company. The assessee-company neither had been served with the notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings. Obviously, therefore, the order of assessment that came to be passed pursuant to such notice was not against the assessee. That being the position, the revenue cannot seek recovery of the taxes arising out of the order of assessment.
- The revenue, however, submitted that as per the scheme of amalgamation the assessee had undertaken to discharge the liability of the amalgamating company. Had the order of assessment been passed prior to amalgamation, this clause under the scheme of amalgamation could have been activated. This is not the position in the instant case. Under the circumstances, the impugned notice of recovery dated 12-3-2018 deserved to be set aside. Consequently attachment of the assessee's bank accounts is lifted. [Para 5]

Naresh Jain and **Ms. Neha Anchlia** *for the Petitioner.* **Sham V. Walve** *for the Respondent.*

ORDER

1. Petitioner has challenged a recovery notice dated 12th March, 2018 as at annexure-A to the petition issued by the Income Tax Officer, Mumbai-Respondent No.2 herein.

2. Briefly stated, the facts are that:—

For the assessment year 2010-11, one M/s Mahadev Floorings (India) Private Limited had filed the return of income. This company amalgamated with the petitioner-Hinal Estates Private Limited under an order dated 14th September, 2012 passed by this Court, the effective date of amalgamation being 1st April, 2011.

3. The case of the petitioner is that the assessment for the said assessment year was reopened by the Assessing Officer under notice dated 17th March, 2015, which resulted into an order dated 25th January, 2016 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 ("the Act" for short).

4. It appears that on behalf of the Predecessor company an appeal has been filed against the order of assessment before the Commissioner of Appeal which is pending. The present petitioner, however, not being a noticee of reopening of assessment or being an assessee against whom the order of assessment was passed did not have any occasion to challenge the said order. The Department, however, subsequently coming to know of the factum of the amalgamation, sought to recover the tax dues of the amalgamating company arising out of the order of assessment dated 25th January, 2016. Recovery notices came to be issued. The bank accounts were attached since the petitioner did not pay the tax dues. It is in this background that the petitioner has challenged the recovery notice dated 12th March, 2018 and consequential order dated 20th March, 2018 attaching the petitioner's bank accounts.

5. Having heard learned counsel for the parties and having perused the documents on record, we cannot uphold the action of the Department. In plain terms, the entire assessment concerns the amalgamating company. When the notice of reopening of assessment was issued, the said company had already

merged with the petitioner company. The petitioner company neither had been served with the notice of reopening of assessment, nor had any occasion to participate in such re-assessment proceedings. Obviously, therefore, the order of assessment that came to be passed pursuant to such notice, was not against the petitioner. That being the position, the Department cannot seek recovery of the taxes arising out of the order of assessment. Learned counsel for the Department however submitted that as per the scheme of amalgamation the petitioner had undertaken to discharge the liability of the amalgamating company. Had the order of assessment been passed prior to amalgamation, this clause under the scheme of amalgamation could have been activated. This is not the position in the present case. Under the circumstances, impugned notice of recovery dated 12th March, 2018 is set aside. Consequently, attachment of the petitioner's bank accounts is lifted. Petition is disposed of accordingly.

SK Jain

*In favour of assessee.