IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.25529 of 2015
& M.P.No.1 of 2015

The Principal Officer,
M/s.Vedanta Limited,
[Formerly known as M/s.Sterlite Industries (India) Ltd.,]
Rep. By its Manager-Finance,
Sri Rajkumar Basak, S/o. Krishna Chandra Basak,
Sterlite Copper, SIPCOT Industrial Complex,
Madurai By Pass Road,
Thoothukudi, Tamilnadu 628 002. ..Petitioner

Vs.

Deputy Commissioner of Income-Tax,
Corporate Circle 6 (2),
Room No.705, 7th Floor, New Block,
Aayakar Bhawan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034. ..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in communication bearing No.376/CORP CIR-6(2)/2015-16 dated 06.08.2015 on the file of the Respondent for the A.Y. 2008-09 and quash the same.

For Petitioner : Mr.R.V.Easwar, (Senior Counsel)
for Mr.G.Baskar
and Mr.M.P.Senthil Kumar

For Respondent : Mr.A.P.Srinivas
(Senior Standing Counsel for IT)

ORDER

The writ on hand is filed questioning the legal validity of the notice issued under Section 148 of the Income Tax Act, 1961 (hereinafter, referred to as, 'the Act') and the consequential proceedings issued by the Deputy Commissioner of the Income Tax, in proceedings dated 06.08.2015, is also questioned mainly on the ground that the initiation was not made against any 'person', as contemplated under the provisions of the Act.

2.Presently, in the Writ Petition, the petitioner is Vedanta Limited, formerly known as M/s.Sterlite Industries (India) Limited (for short M/s.SIIL). The learned Senior Counsel appearing on behalf of the writ petitioner, in nut shell, narrated the background stating that on 25.06.1965, M/s.Sterlite Industries (India) Limited (SIIL) was incorporated. The said

Company filed Return of Income on 29.09.2008, for the Assessment Year 2008-2009. M/s.Sterlite Industries (India) Limited has merged with M/s.Sesa Goa Limited, with effect from 17.08.2013. In terms of the scheme of amalgamation and the arrangement inter-alia between M/s.Sesa Goa Limited and M/s.Sterlite Industries (India) Limited, as sanctioned by the Hon'ble Bombay High Court, Goa Bench and Hon'ble Madras High Court, vide orders dated 03.05.2013 and 25.07.2013. Thereafter, the said Company namely, M/s.Sesa Goa Limited, was amalgamated with M/s.Vedanta Limited, the petitioner in the present Writ Petition, with effect from 21.04.2015. In this back drop, the learned Senior Counsel raised a question that whether the notice, issued under Section 148 of the Income Tax Act to a non-existing person, be validated. Admittedly, Section 148 notice was issued to the principal officer M/s.Sesa Sterlite Industries (India) Limited. No such company was in existence during the relevant point of time and at any point of time. Thus, the notice was issued by the respondent to a non-existing person and all further proceedings became invalid and thus, the initiation of reopening proceedings itself is untenable. Secondly, the learned Senior Counsel urged this Court that the notice was issued on the last date

on 31.03.2015 i.e., the expiry date and the said notice under Section 148 was communicated beyond the expiry date and was received by the petitioner only on 04.04.2015 and on 06.04.2015. In this context, it is contended that mere issuance of notice on the last date would not validate the notice, but the said notice issued must be despatched on the same day, then alone it can be validated and in the present case, the notice was acknowledged by the petitioner on 04.04.2015 and it was franked by the postal department on 01.04.2015. Thus, the very issuance of notice is beyond the period of limitation and on that ground also, the notice itself is to be set aside. Even the subsequent communications sent by the respondent were in the name of a Company, which was no longer in existence. Therefore, for the purpose of the provisions of the Income Tax Act, no valid notice was issued to the petitioner and thus, all further proceedings, including the assessment order passed under Section 143(3) are invalid and non-est in law.

3.To substantiate the said grounds raised on behalf of the petitioner, the learned Senior Counsel solicited the attention of this Court

with reference to the judgment of the Hon'ble Supreme Court of India in the case of ***Principal Commissioner of Income Tax Vs. Maruti Suzuki India Limited***, reported in ***[2019] 416 ITR 613 (SC)***. The learned Senior Counsel made a comparison of the facts considered by the Hon'ble Supreme Court of India in the case cited supra. It was an appeal filed by the revenue, questioning the order passed by the High Court. In the said case, the following facts are considered:

> *"**11**.MSIL participated in the assessment proceedings of the erstwhile amalgamating entity, SPIL, through its authorized representatives and officers. This is evident from the copies of the order sheets of the assessment proceedings before the assessing officer for AY 2012-13. Post amalgamation, on 30 September 2013, the Chartered Accountants addressed a communication to the Commissioner of Income Tax, Circle 9(1), pursuant to the notice under Section 143(2) for an adjournment of the assessment proceedings for AY 2012-13 until the assessment proceedings for AY 2010-11 and AY 2011-12 were completed. On 27 October 2014, the Deputy Commissioner of Income Tax Circle 9 (1) addressed a communication to the Principal Officer, SPIL seeking a response to a detailed questionnaire. Thereafter, on 4 September 2015, the Deputy Commissioner of Income Tax Circle 16(1) called for disclosure of information in the course*

of the assessment for AY 2012-13. The communication was addressed to:

"The Principal Officer

M/s Suzuki Power Train India Limited

(Now known as M/s Maruti Suzuki India Limited)."

4.The Hon'ble Apex Court of India made an observation that the final assessment order was passed on 31st October, 2016, in the name of SPIL (amalgamated with MSIL) and considered the fact that the final assessment order was also issued in the name of a non-existing entity. The Hon'ble Supreme Court considered the arguments as advanced on behalf of the assessee and made a finding as follows:

*"**31**.Mr Zoheb Hossain, learned Counsel appearing on behalf of the Revenue urged during the course of his submissions that the notice that was in issue in Skylight Hospitality Pvt. Ltd. was under Sections 147 and 148. Hence, he urged that despite the fact that the notice is of a jurisdictional nature for reopening an assessment, this Court did not find any infirmity in the decision of the Delhi High Court holding that the issuance of a notice to an erstwhile private limited company which had since been dissolved was only a mistake curable under Section 292B. A close reading of the order of this Court dated 6 April 2018, however indicates that what weighed in the dismissal of the Special Leave Petition were the*

peculiar facts of the case. Those facts have been noted above. What had weighed with the Delhi High Court was that though the notice to reopen had been issued in the name of the erstwhile entity, all the material on record including the tax evasion report suggested that there was no manner of doubt that the notice was always intended to be issued to the successor entity. Hence, while dismissing the Special Leave Petition this Court observed that it was the peculiar facts of the case which led the court to accept the finding that the wrong name given in the notice was merely a technical error which could be corrected under Section 292B. Thus, there is no conflict between the decisions in Spice Enfotainment (supra) on the one hand and Skylight Hospitality LLP (supra) on the other hand.

It is of relevance to refer to Section 292B of the Income Tax Act which reads as follows:

> "292B. No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the

amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:

> "170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—
>
> (a) the predecessor shall be assesseed in respect of the income of the previous year in which the succession took place up to the date of succession;
>
> (b) the successor shall be assesseed in respect of the income of the previous year after the date of succession.
>
> (2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assesseed on the predecessor, cannot be recovered from him, the 99[Assessing] Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assesseed and recovered in the manner provided in section 171, but without prejudice to the provisions of this section. Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession".

Now, in the present case, learned Counsel appearing on behalf of the respondent submitted that SPIL ceased to be an eligible assessee

in terms of the provisions of Section 144C read with clause (b) of sub section 15. Moreover, it has been urged that in consequence, the final assessment order dated 31 October 2016 was beyond limitation in terms of Section 153(1) read with Section 153 (4). For the purposes of the present proceeding, we do not consider it necessary to delve into that aspect of the matter having regard to the reasons which have weighed us in the earlier part of this judgment.

.....

33.*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 co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on 2 November 2017. The decision in Spice Enfotainment 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 Enfotainment. ”*

5.In the said case also, 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 also issued only in its name. In the present case, it is contended that the petitioner, vide letter dated 23rd September, 2013, sent an information to the Assistant Commissioner of Income Tax, Circle, Chennai – 64, stating that the M/s.Sterlite Industries (India) Limited has merged with M/s.Sesa Goa Limited, with effect from 17.08.2013, in terms of the scheme of amalgamation. Therefore, the Assessing Officer was informed about the amalgamation and the said merger, pursuant to the orders of the Bombay High Court and Madras High Court. In spite of the fact that the information regarding the amalgamation was communicated to the competent authorities, again they sent the proceedings to a non-existing person and therefore, the very initiation and continuance in the name of a non-existing person is invalid. The notice itself would reveal that the Company addressed was not existing on the date of issuance and during the year 2015, the Company was named as M/s.Vedanta Limited.

6.The learned Senior Counsel reiterated, by stating that once the notice issued under Section 148 of the Income Tax Act is invalid in eye of

law, then all further proceedings consequentially became invalid. Since, in the present case, the notice itself is not valid with reference to the provisions of the Income Tax Act, as it was communicated to a non-existing person and even after the communication of the petitioner, the mistake was not corrected as such a mistake is substantive, the error cannot be fit in with the provisions of Section 292 B of the Act. The scope of Section 292 B of the Act is to be confined only to correct the mistakes. However, in the present case, the notice was issued addressing to a non-existing person and the petitioner is no way connected with the notice and therefore, such a substantive error committed cannot be cured under the provisions of Section 292 B of the Act. The corrigendum issued under Section 292 B of the Act cannot stand on its legs in view of the fact that it was not a mere error or typographical mistake that the notice was issued to a non-existing person repeatedly and at no point of time, the respondent has initiated steps to issue proper proceedings.

7.The learned Senior Standing Counsel appearing on behalf of the respondent seriously raised an objection with reference to the contentions

raised by the petitioner by holding that the final assessment order has been passed in this case. Once a final assessment order is passed, the petitioner has to exhaust the statutory appeal remedies as contemplated under the Income Tax Act. Instead of raising all these grounds before the appellate authority, the Writ Petition is filed and therefore, the Writ Petition itself is not entertainable. The learned Senior Standing Counsel relied on Section 170 of the Act, by stating that once the Company is amalgamated and the name is changed, thereafter, the liability also is to be shifted to the amalgamated Company and the notice sent to the erst-while Company cannot be invalidated merely on the ground that there was an error which was corrected subsequently by the department through subsequent letters and therefore, the mistakes/error/typographical errors are rectifiable under Section 292 B of the Act. Therefore, in the present case, the ingredients under Section 170 as well as Section 292 B would be squarely applicable and the Writ Petition is liable to be rejected.

8.The learned Senior Standing Counsel further made a submission that in the present case, the petitioner was frequently changing their name

on many occasions and the place of the registered office, that is to say, from Tuticorin, Chennai, Goa and to Delhi. Therefore, the Income Tax department found it very difficult to serve the notices on some occasions and therefore, such mistakes if at all any, cannot be a ground to invalidate the entire reopening proceedings, which would otherwise cause greater injury to the revenue. It is pertinent to note that while changing the registered office, the name of the Company is also changed on several occasions. The learned Senior Counsel appearing on behalf of the petitioner, in reply, contended that Section 170 is not applicable with reference to the facts and circumstances of the case on hand. If a notice was issued to an erst-while Company, the subsequent Company which has taken over the Company can be made liable and in the present case, the point raised is that the notice impugned was issued to a non-existing person and therefore, application of Section 170 is improper.

9.Considering the arguments as advanced by the respective learned Senior Counsel for the petitioner and the learned Senior Standing Counsel for the respondent, this Court is of the considered opinion that the

purpose and object of the Act plays a pivotal role in the matter of interpreting certain provisions of the Income Tax Act. Mere procedural mistakes which is corrected or errors, which all are rectifiable, cannot be a ground to vitiate the entire proceedings which would undoubtedly and certainly defeat the very purpose and object of the Taxation law. Let us now consider the scope of Section 292 B, which contemplates Return of Income, etc., not to be invalid on certain grounds. The very provision is intended to validate the Return of Income, etc., wherein certain mistakes or errors are committed. The Section stipulates "No Return of Income, assessment, notice, summons or other proceedings, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid, merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceedings, if such return of income, assessment, notice, summons or other proceedings is in substance and effect in conformity with or according to the intent or purpose of this Act". The provision stipulates that the intent and purpose of the Act is also to be taken note of. The mistake, defect or omission in such return of

income, assessment, notice, summons or other proceedings is also not a ground. Therefore, this Court has to consider whether the address stated in the impugned notice in this Writ Petition can be considered as a mistake or otherwise. Admittedly, the petitioner has changed their names frequently, so also the place of registered office. In this context, there is a possibility of error, even if a letter is communicated to the respondent, by the petitioner, regarding change of name and amalgamation. The impugned notice is addressed to the Principal Officer, M/s. Sesa Sterlite Industries Limited. However, the name of the petitioner Company, prior to 2013, was M/s.Sterlite Industries (India) Limited and subsequently, it was merged with M/s.Sesa Sterlite Limited. On close reading of the names, it was originally M/s.Sterlite Industries (India) Limited and subsequently, it was M/s.Sesa Goa Limited and thereafter, M/s.Sesa Sterlite Limited and finally, M/s.Vedanta Limited. Considering the first three names, the words are relatively closer and the respondent has erroneously stated as M/s.Sesa Sterlite Industries (India) Limited, instead of M/s.Sterlite Industries (India) Limited. The subsequent name of 'Sesa' was added by mistake. Further the word 'Sesa' is not alien to the petitioner Company. The word 'Sesa' is used

while changing the name of the Company. As pointed out earlier, M/s.Sterlite Industries (India) Limited was merged and renamed as M/s.Sesa Goa Limited and thereafter, M/s.Sesa Sterlite Limited. As the name 'Sesa' was not alien to the petitioner Company, it is to be construed that it is a bonofide mistake committed by the Assessing Officer, while printing the address of the petitioner Company. However, as rightly pointed out by the respondent, the Personal Account Number was one and the same. The Personal Account Number was accepted by the petitioner Company. They have responded to all those letters and the corrigendum was issued and finally, the Assessing Officer found that due to the frequent change, the department also committed certain mistakes in addressing the petitioner and finally, it was corrected and proceedings were continued. In letter dated 06.08.2015, the Deputy Commissioner of Income Tax has considered all these mistakes and made a finding that the name of the Company changed many times, but Permanent Account Number issued has not been changed and the same is admitted by the petitioner. On merger, it is the responsibility of the new Company to address any tax arrears or other litigation existing in the name of the previous Company. The taxation department and the

authorized signatory of the Company would be well aware of the facts that it is their Personal Account Number and the name of the addressee as per Personal Account Number is M/s.Sterlite Industries (India) Limited. As the assessee has changed the name of the Company many times, there was confusion in the name of the assessee, so the name of the Company was inadvertently quoted as M/s.Sesa Sterlite Industries (India) Limited in both notice under Section 148, dated 31.03.2015 and in corrigendum, dated 01.04.2013.

10.This Court has to consider the possible mistakes which would not affect the purpose and object of the proceedings, more specifically, under the provisions of the Income Tax Act, as the department is normally dealing with large number of files. Human error is common. However, such error affecting the very provision or otherwise alone is to be invalidated and every mistake or certain omissions cannot be construed as invalid for the purpose of continuance of the proceedings under the Income Tax Act. In the present case, admittedly, the Personal Account Number, all along, was being mentioned correctly. Under these circumstances, yet another possibility is

also to be considered. The assessees, in view of change of names and registered office, probably would have filed the return of income in the changed name and the original name may be maintained in the PAN records. In other words, in the PAN records, sometimes, the original name is mentioned, as the assessee has to submit a separate application for change of name in the PAN records. However, if the Personal Account Number is correctly mentioned, then it indicates the person against whom such proceedings are initiated and thus, such errors are to be neglected and is to be corrected for the purpose of continuing the proceedings. This is happening on many occasions. Some time, the address in the Personal Account Number and the address in the return of income may vary on account of change of name and office. Under those circumstances, the Income Tax Department always verified the Personal Account Number and processed the return of income by following the procedures contemplated. These mistakes are quite common in the Income Tax Department. Thus, the verifications are done mostly with reference to the Permanent Account Number and in the event of no change in the Permanent Account Number, then it is to be construed that the notice was issued to the person to whom it

is intended to be issued. Issuance is one aspect of the matter and issued to whom it is intended to be issued is to be considered by the Court for the purpose of application of Section 292 B of the Income Tax Act. If the notice was communicated to an unknown person, who is alien to the assessee, then as rightly pointed out, the benefit of Section 292 B cannot be held in favour of the revenue. However, if the notice was intended to be issued to a person to whom it is to be issued and such person also acknowledged the Permanent Account Number, which is rightly mentioned, and responded to the letters and notices issued by the Income Tax Department, then there is no reason to disbelieve the contentions raised on behalf of the revenue, as the name mentioned wrongly is a mistake to be fit in with the provisions of Section 292 B of the Income Tax Act.

11.It is a settled principle that non-quoting of provision or mistake/error in address of a person to whom it is to be served, would not vitiate the entire proceedings in the eye of law. This being the settled principles, the nature of mistake committed as well as other mitigating factors, are to be taken into consideration for the purpose of considering the

ground raised by the petitioner.

12.With reference to the judgment of the Hon'ble Supreme Court of India, relied on by the petitioner, in the case of ***Principle Commissioner of Income Tax Vs. Maruti Suzuki India Limited***, this Court is of the considered opinion that the Hon'ble Supreme Court has specifically considered that "the assessment proceedings were continued in the name of the non-existing or SPIL and that the final assessment order, which was also issued in the name of non-existing entity". The Hon'ble Supreme Court further considered the scope of Section 292 B, regarding the scope of curability of the mistake. The Hon'ble Supreme Court, in the concluding paragraph, made the following observations:

> *" **33.**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.....”

13. As far as the present Writ Petition is concerned, admittedly, the notice under Section 148 was issued in a wrong name. However, close reading of the name of the Company would reveal that the first word 'Sesa' is not alien to the petitioner Company and the very same word is used by the petitioner subsequently. The said mistake was pointed out by the petitioner. The department issued a corrigendum, wherein again they have committed a mistake. The reason stated by the department is that the Company is having the habit of frequently changing their names as well as their registered office and the said conduct of the Company created confusion in the department and therefore, the mistake cannot be a ground to vitiate the entire proceedings. However, in the present case, the Assessing Officer has taken steps to correct the mistake and in letter dated 06.08.2015, the Deputy Commissioner of Income Tax, narrated the entire facts and circumstances for the mistake earlier committed by the department and thereafter, the proceedings were conducted in the correct name of the petitioner and the final assessment order was passed. The petitioner was provided with an

opportunity to defend their case in the manner prescribed and there is no dispute between the parties that the assessment order was passed by following the procedures contemplated. Therefore, the principles laid down by the Hon'ble Supreme Court in the case cited supra may not have any direct application with reference to certain facts which all are specifically established in the present case. Even the Hon'ble Apex Court in clear terms held that the application of Section 170 or 292 B must be applied with reference to the facts and circumstances of each case and therefore, the mistake whether can be fit in with the provisions or not is to be considered on facts.

14.This Court is of the considered opinion that, in the present case, the proceedings were continued and the assessment order has already been passed and subsequently, the Writ Petitions are filled, challenging the draft assessment order as well as the final assessment order. In view of the fact that the mistake crept in at the initial stage was identified by the department and subsequently corrected and the proceedings thereafter were continued in the name of the petitioner, there is no reason to interfere with

the process of reassessment already completed and it is for the petitioner to redress their grievances, if any exist, by preferring an appeal, in the manner prescribed under the Act. In fine, this Court do not find any infirmity or perversity as such, for the purpose of undoing the processes undertaken already, pursuant to the impugned notices issued under Section 148 of the Act and consequently, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.07.2021

gsa
Index : Yes
Speaking Order : Yes

To

The Deputy Commissioner of Income-Tax,
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Room No.705, 7th Floor, New Block,
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121, Mahatma Gandhi Road,
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Chennai 600 034.

S.M.SUBRAMANIAM, J.

gsa

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