



\$~51

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

% **Decision delivered on: 30.05.2023**

+ **W.P.(C) 7638/2023 & CM Nos.29615-16/2023**

BENTLEY SYSTEMS INDIA PRIVATE LIMITED..... Petitioner

Through: Ms Poonam Ahuja and Ms Monika Ghai, Advs.

versus

INCOME TAX OFFICER WARD 13(2)(1),
MUMBAI & ANR.

..... Respondents

Through: Mr Kunal Sharma, Sr Standing Counsel with Ms Zehra Khan, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.29616/2023

1. Allowed, subject to just exceptions.

W.P.(C) 7638/2023&CM No.29615/2023 [Application filed on behalf of the petitioner seeking interim relief]

2. Issue notice.

2.1 Mr Kunal Sharma, learned senior standing counsel accepts notice on behalf of the respondents/revenue.

3. Given the direction that we propose to pass, Mr Sharma says, that he does not wish to file a counter-affidavit, and he will argue the matter based



on the record presently available with the Court.

3.1 Therefore, with the consent of learned counsel for the parties, the matter is taken up for hearing and final disposal, at this stage itself.

4. This writ petition concerns Assessment Year (AY) 2019-20.

5. The principal grievance of the petitioner, at this juncture, is that the notice under Section 148A(b) and order passed under Section 148A(d), as also the consequent notice issued under Section 148 of the Income Tax Act, 1961 [in short, “Act”] relate to an entity i.e., S-Cube Futuretech Pvt. Ltd. [hereafter referred to as “S-Cube”] which stood amalgamated with it, pursuant to a scheme sanctioned by the National Company Law Tribunal (NCLT).

6. The record discloses, that the amalgamation took place *via* order dated 21.12.2018; the appointed date of amalgamation being 01.01.2018.

7. The record also discloses, that an order under Section 127 of the Act was passed on 03.03.2023, wherein this aspect has been noted by the respondents/revenue. However, the notice issued to the petitioner under Section 148A(b) of the Act is dated 02.03.2023.

8. It appears, that the petitioner filed a response to the said notice, which is dated 07.03.2023. In the response, the petitioner not only brought to the fore the fact, that the merger has taken place between S-Cube and the petitioner, but also the fact that the amalgamating company had filed its return for the period in issue i.e., AY 2019-20 with “merged numbers”.

8.1 Besides this, reference was also made to the order dated 03.03.2023 passed by the PCIT-5, Mumbai under Section 127(2) of the Act, transferring the jurisdiction from ITO 13(2)(1), to Circle-4(2), Delhi, having regard to the merger/amalgamation having taken place between S-Cube and the



petitioner.

9. The Assessing Officer (AO), however, passed the impugned order, wherein reference has been made to certain transactions, which according to him, are tagged to the Permanent Account Number (PAN) allocated to the erstwhile entity i.e., S-Cube.

10. The AO also appears to be of the view, that the transactions noted in the order have not been factored in by the petitioner.

11. Learned counsel for the petitioner says, that the reply dated 28.04.2023 was filed with the AO, along with a reconciliation statement.

12. It is the contention of the learned counsel for the petitioner, that each and every transaction has been factored in, while filing the return for AY 2019-20. Therefore, what we are left with is: whether, as indicated by the AO in the impugned order, the income amounting to Rs.76,41,016/-, which was otherwise taxable, had escaped assessment?

13. Although the petitioner's main focus in the writ petition is that the notices directed to S-Cube, which at the relevant point in time was not in existence, are flawed in law, in our view, the best way forward would be to set aside the impugned notices, with liberty to the AO to recommence the proceedings, as per law, having regard to the fact that S-Cube merged/amalgamated with the petitioner.

14. Mr Sharma says, that this perhaps may be the best way forward.

15. Accordingly, the impugned notice dated 02.03.2023 issued under Section 148A(b) and order dated 30.03.2023 passed under Section 148A(d) of the Act are set aside.

16. Consequently, the notice dated 31.03.2023 issued under Section 148 of the Act is also set aside.



17. As indicated above, liberty is given to the AO to recommence the proceedings, *albeit*, in accordance with the law.
18. In case the AO takes a decision to recommence the proceedings, she/he will issue a notice to the merged/amalgamated company i.e., the petitioner.
19. The writ petition is disposed of in the aforesaid terms.
20. Consequently, the pending application shall stand closed.
21. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 30, 2023

aj