

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.59 OF 2020

Nayara Energy Limited
(Successor on amalgamation to
Vadinar Power Co. Ltd.)

....Petitioner

V/s.

The Assistant Commissioner of Income
Tax Circle – 5 (3) (2) & Ors.

....Respondents

Mr. P.J. Pardiwalla, Senior Advocate a/w. Mr. Niraj Sheth i/b. Mr. Atul K. Jasani for petitioner.

Mr. Suresh Kumar for respondents.

**CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 13th DECEMBER 2021**

PC. :

1 Petitioner is impugning an order dated 4th December 2019 passed by respondent rejecting the objections raised by petitioner for Assessment Year 2014-2015 for the notice issued under Section 148 of the Income Tax Act, 1961 (the said Act).

2 One of the main ground of challenge to this notice apart from many others is that the notice under Section 148 of the said Act has been issued to a non existing company. Therefore, Mr. Pardiwalla states that as held by this Court as well as the Apex Court in various judgments, one of the most recent being Principal Commissioner of Income Tax, New Delhi V/s. Maruti Suzuki India Ltd. and in Writ Petition No.2828 of 2019 dated 11th August 2021 by this Court, the notice is bad in law.

3 Mr. Pardiwalla submitted that on 31st October 2018 the National Company Law Tribunal, Ahmedabad (NCLT) passed an order in a scheme of amalgamation between Vadinar Power Company Limited and petitioner, which was earlier called Essar Oil Limited. On 30th November 2018 Form No.INC-28 was filed with Registrar of Companies and on 10th December 2018 intimation was also given to respondent no.1. In the letter dated 10th December 2018, it is expressly mentioned “*Accordingly, the company has ceased to exist w.e.f. November 30, 2018, i.e., from the date of filing of e-form INC-28 with ROC*” and this letter has been issued by petitioner on behalf of merged entity “Vadinar Power Company Limited”. Even the letterhead shows “on behalf of merged company Vadinar Power Company Limited”.

4 On 3rd January 2019 petitioner informed Principal Commissioner of Income Tax-5 about the amalgamation. On 31st January 2019 respondent nos.1 and 2 were informed about the amalgamation. Notwithstanding that, on 31st March 2019 respondents issued a notice to Vadinar Power Company Limited under Section 148 of the said Act though the company had ceased to exist having been amalgamated with petitioner. On 14th May 2019 petitioner requested respondent to treat the return filed on 27th November 2014 as filed in compliance of the notice and sought reasons recorded under Section 148(2) of the said Act. In the

communication, petitioner has made it very clear that Vadinar Power Company Limited now merged with Nayara Energy Limited. On 28th September 2019 once again respondent issued notice to Vadinar Power Company Limited, a non existing company. Petitioner responded by a letter dated 14th October 2019 where once again it was mentioned “Nayara Energy Limited (on behalf of merged company) and also (on behalf of merged entity Vadinar Power Company Limited). On 18th October 2019, reasons recorded for reopening the assessment for Assessment Year 2014-2015 was provided again to Vadinar Power Company Limited, the non existing company. On 18th November 2019 petitioner objected to the validating of the reassessment proceedings and on the letterhead again it is mentioned Nayara Energy Limited (formerly known as Essar Oil Limited) (on behalf of merged company Vadinar Power Company Limited). Still the impugned order disposing of the objections dated 4th December 2019 was passed in the name of Vadinar Power Company Limited. In the entire order disposing of the objections, Mr. Pardiwalla submitted that there is no reference even made to any of the communications from petitioner that Vadinar Power Company Limited has ceased to exist having been amalgamated with petitioner.

5 In view of the above, the notice issued under Section 148 of the said Act to a non existing company is bad in law and therefore, even the

order disposing of the objections passed will also be bad in law.

6 In the circumstances, petition is allowed in terms of prayer clause – (a) which reads as under :

(a) to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof, quash and set aside the impugned notice dated 31st March 2019 (Exhibit M) issued by Respondent No.1 under Section 148 of the Act to reopen the assessment for the assessment year 2014-15 as well as the impugned order dated 4th December 2019 (Exhibit S) rejected the Petitioner's objections for the assessment year 2014-15.

7 The Principal Chief Commissioner is directed to hold an enquiry against the concerned officers as to why despite being brought to their notice that Vadinar Power Company Limited is a non existing entity having been amalgamated with petitioner notices were continued to be issued in the name of Vadinar Power Company Limited and even the order disposing of the objections came to be passed in the name of Vadinar Power Company Limited resulting in the notice under Section 148 of the said Act itself being quashed. The Principal Chief Commissioner, after holding an enquiry, may take such action as required against the erring officers, if found guilty. The enquiry shall be completed within six weeks from today.

8 A copy of this order be sent to the Principal Chief Commissioner, Mumbai and also sent to Chairman, CBDT and to the Law Minister (Government of India) for information and necessary action.

9 Petition disposed.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)