

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-5718/Del/2014
(Assessment Year: 2007-08)**

DCIT Circle 13(1), New Delhi.	vs	Oxigen Infovision Pvt. Ltd. G-4, Community Centre, C-Block, Naraina Vihar, Delhi. AAACO8071G
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&

**CO No.-166/Del/2015
(In ITA No. 5718/Del/2014)
(Assessment Year: 2007-08)**

Oxigen Infovision Pvt. Ltd. G-4, Community Centre, C-Block, Naraina Vihar, Delhi. AAACO8071G	vs	DCIT Circle 13(1), New Delhi.
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Assessee by	Sh. Satyam Sethi, Adv. Sh. A. Panda, Adv.
Revenue by	Sh. S.P. Gupta, Sr. DR

Date of Hearing	11.09.2017
Date of Pronouncement	19.09.2017

ORDER

PER SHRI K. NARSIMHA CHARY, J.M.

Revenue preferred this appeal challenging the order of the Ld. Commissioner of Income Tax (Appeals)-XVI, Delhi (hereinafter for short called as the "Ld. CIT (A)") on 24.07.2014 in appeal no.

244/2009-10, whereby the Ld. CIT (A) allowed the appeal of the assessee. The Revenue raised these grounds for adjudication:

1. *“On the facts and circumstances of the case and in law, the Ld.CIT (A) has erred in law in quashing the assessment proceedings by ignoring the fact that the notice u/s 143(2) was issued to assessee company on 23.09.2008 in the name of Oxigen Infovision Pvt. Ltd. prior to order of the Hon’ble High Court of Delhi dated 19.01.2009 and Mr. A.K. Mishra, CA was authorized by the Assessee M/s Oxigen Infovision Pvt. Ltd. to represent the case of the assessee before the Income Tax Department on 27.11.2009.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in quashing the assessment proceedings by ignoring the fact that during assessment proceedings the authorized CA of the company has never objected the assessment proceedings in the name of M/s Oxigen Infovision Pvt. Ltd. instead of Successor M/s Oxigen Services Pvt. Ltd. and the AR of the assessee company only intimated about the amalgamation of said company with Oxigen Services India Pvt. Ltd.*
3. *The appellant craves to be allowed to add any fresh ground of appeal and/or delete or amend any of the grounds of appeal.”*

2. Briefly stated facts are that the assessee i.e. Oxigen Infovision, the assessee company, falls under the umbrella of Oxigen group, and is providing telecom related Value Added Services. During the year, Content Sale to the tune of Rs. 2,45,000/- has been shown. The assessee company has further declared other income by way of dividend of Rs. 7,96,654/- (claimed as exempt), interest on FDR to the tune of Rs. 31,99,916/- and misc. income at Rs. 4,188/-. After debiting huge expenses in the profit and loss account, loss of Rs. 5.02 crore was

declared in the profit and loss account. On scrutiny of the return of Income tax filed on 31.10.2007 declaring the total loss of Rs. 5,31,11,293/- the AO by way of order dated 29.12.2009 made certain additions and returned loss of the assessee at 91,17,140/-. Before the Ld. CIT (A) the assessee had raised the plea that the assessee has been amalgamated with M/s Oxigen Services India Pvt. Ltd. w.e.f. 01.07.2008, pursuant to the orders of the Hon'ble High Court. On considering this plea, Ld. CIT (A) returned a finding that on amalgamation the assessee ceased to exist in the eye of law and assessment upon a dissolved company is impermissible since there is no provisions in Income Tax Act to make an assessment on a non-existent entity. On this premise, Ld. CIT (A) allowed the appeal of the assessee. Aggrieved by this impugned order the Revenue is in appeal before us, whereas supporting the order of the Ld. CIT (A) the assessee filed cross objection.

3. At the outset, assessee withdraws the cross objection and recording the same, we dismiss the cross objection as withdrawn.

4. It is the argument of the Ld. DR that the Ld. CIT (A) ignored the fact that the notice u/s 143(2) was issued to assessee company on 23.09.2008 in the name of Oxigen Services India Pvt. Ltd. prior to the order dated 19.01.2009 of the Hon'ble High Court of Delhi and there was representation before the Department on behalf of the assessee on 27.11.2009. He further argued that the Ld.CIT (A) further ignored the fact that during the assessment proceedings the Authorized Representative of the assessee never objected the assessment proceedings in the name of M/s Oxigen Services India Pvt. Ltd. instead of success of M/s Oxigen Services India Pvt. Ltd. except intimating the fact of amalgamation of the companies. Per contra, it is the argument of the Ld. AR that with the order dated 19.01.2009 passed by the Hon'ble Jurisdictional High Court the assessee company ceased to exist and the said fact was brought to the notice of the AO by letter dated 27.11.2009 but in spite of the same the assessment order came to be passed on 29.12.2009 and such an order is non-est in the eye of law. He placed reliance on the decisions reported in Spice Infotainment Ltd. vs. CIT (2012) 247 CTR 500 (Del), CIT vs. Dimension Apparels P. Ltd. (2015) 370 ITR 288 (Del), Rustagi Engineering Udyog P.

Ltd. vs. Dy. CIT (2016) 382 ITR 443 (Del) and CIT vs. Micra India (P) Ltd. (2015) 231 Taxman 809 (Del).

5. Facts are admitted and there is no dispute that pursuant to the orders dated 19.01.2009 the assessee company was amalgamated with M/s Oxigen Services India Pvt. Ltd. w.e.f. 01.07.2008 and the said fact was brought to the notice of the AO by letter dated 27.11.2009 by the assessee. In all the decisions relied upon by the assessee referred to supra its is consistently held that a company incorporated under the Indian Companies Act is a juristic person, takes its birth and gets life with incorporation and it dies with the dissolution as per the provision of the Companies Act, and a company ceases to exist in the eyes of the law. Thus, assessment upon a dissolved company is impermissible as there is no provision in Income Tax Act to make an assessment thereupon. In the light of this legal position, we do not find any illegality or irregularity in the impugned order, as such, we uphold the same.

6. In the result, both appeal and the CO are dismissed.

Order pronounced in the open court on 19.09.2017

Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER

Sd/-
(K. N. CHARY)
JUDICIAL MEMBER

Dated: 19.09.2017

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

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