

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 619/Kol/2013
Assessment Year: 1999-2000

Gestetner (India) Ltd. (Since merged with Richo India Ltd.) (PAN: AABCG1103A)	Vs.	Deputy Commissioner of Income-tax, Circle-1, Kolkata.
Appellant		Respondent

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I.T.A. No. 981/Kol/2013
Assessment Year: 1999-2000

Deputy Commissioner of Income-tax, Circle-1, Kolkata.	Vs.	Gestetner (India) Ltd. (Since merged with Richo India Ltd.)
Appellant		Respondent

Date of Hearing	10.08.2017
Date of Pronouncement	16.08.2017
For the Appellant	Shri Amit Patni, AR
For the Respondent	Shri Sallong Yaden, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

Both these cross appeals filed by the assessee and the revenue are against the order of Ld. CIT(A)-XX, Kolkata dated 03.01.2013 for AY 1999-2000. Since both these appeals have been heard together and for the sake of convenience, we dispose of the same by this consolidated order.

2. Ground nos. 1 and 2 of assessee's appeal is against the order of Ld. CIT(A) in not appreciating that the order passed by the AO under section 143(3)/147/254 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") was illegal, invalid and liable to be

quashed. In this appeal of assessee, the Ld. Counsel for the assessee has raised a plea that the assessment order passed on 31.12.2008 u/s. 143(3)/147/254 of the Act by the AO was passed on a non-existent company having amalgamated with RICOH India Ltd. w.e.f. 01.04.2004. Hence, according to the Ld. Counsel for the assessee the impugned order against the non-existing company does not stand in the eye of law. He also submitted that in AY 2003-04 and 2004-05 the assessment orders dated 15.03.2006 and 08.12.2006 were passed in the name of Gestetner India Limited and on appeal, the Tribunal has quashed the impugned orders. He also submitted that this issue is squarely covered by the Coordinate Bench decision dated 17.02.2016 in assessee's own case for AYs. 2003-04 and 2004-05. On query from the Bench, the Ld. Sr. DR fairly conceded the factual position and could not controvert the fact that assessments were framed on a non-existent company i.e. Gestetner (India) Ltd. and whereas no assessment was framed on RICOH India Ltd.

3. We have heard rival submissions and gone through the facts and circumstances of the case. We find that it is an undisputed fact that the assessment order passed u/s. 143(3)/147/254 of the Act by the AO was passed on a non-existent company having amalgamated with RICOH India Ltd. w.e.f. 01.04.2004. In view of the above facts, we find that this issue is squarely covered by the Coordinate Bench decision dated 17.02.2016 in assessee's own case for AYs. 2003-04 and 2004-05, wherein the Tribunal has held as under:

“4. We have heard rival contentions and gone through facts and circumstances of the case. The factual position is that for AY 2003-04 assessment was framed by the AO u/s. 143(3) of the Act vide order dated 15.03.2006 and for AY 2004-05 assessment was framed u/s. 143(3) vide order dated 08.12.2006 on a non-existent company. The AO was informed of this fact of amalgamation of the assessee with RICOH India Ltd. vide letter dated 25.01.2006, which is available in record of assessment. In view of the above facts, we find that this issue is covered by the decision of Hon'ble Delhi High Court in the case of Spice Entertainment Ltd., supra, wherein Hon'ble Delhi High Court has held as under:

*“10. [Section 481](#) of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in *M.H. Smith (Plant Hire) Ltd. Vs. D.L. Mainwaring (T/A Inshore)*, 1986 BCLC 342 (CA) that "once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of*

another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved".

11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exist w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said „dead person“. When notice under [Section 143](#) (2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.

12. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of [Section 292B](#) of the Act. [Section 292B](#) of the Act reads as under:-

"292B. No return of income assessment, notice, summons or other proceedings furnished or made or issue 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 reasons 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 proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act."

13. The Punjab & Haryana High Court stated the effect of this provision in CIT Vs. Norton Motors, 275 ITR 595 in the following manner:-

"A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, [Section 292B](#) can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to [Section 292B](#).

14. The issue again cropped up before the Court in CIT Vs. Harjinder Kaur (2009) 222 CTR 254 (P&H). That was a case where return in question filed by the assessee was

neither signed by the assessee nor verified in terms of the mandate of [Section 140](#) of the Act. The Court was of the opinion that such a return cannot be treated as return even a return filed by the assessee and this inherent defect could not be cured inspite of the deeming effect of [Section 292B](#) of the Act. Therefore, the return was absolutely invalid and assessment could not be made on a invalid return. In the process, the Court observed as under:-

"Having given our thoughtful consideration to the submission advanced by the learned Counsel for the appellant, we are of the view that the provisions of [Section 292B](#) of the 1961 Act do not authorize the AO to ignore a defect of a substantive nature and it is, therefore, that the aforesaid provision categorically records that a return would not be treated as invalid, if the same "in substance and effect is in conformity with or according to the intent and purpose of this Act". Insofar as the return under reference is concerned, in terms of [Section 140](#) of the 1961 Act, the same cannot be treated to be even a return filed by the respondent assessee, as the same does not even bear her signatures and had not even been verified by her. In the aforesaid view of the matter, it is not possible for us to accept that the return allegedly filed by the assessee was in substance and effect in conformity with or according to the intent and purpose of this Act. Thus viewed, it is not possible for us to accept the contention advanced by the learned Counsel for the appellant on the basis of [Section 292B](#) of the 1961 Act. The return under reference, which had been taken into consideration by the Revenue, was an absolutely invalid return as it had a glaring inherent defect which could not be cured in spite of the deeming effect of [Section 292B](#) of the 1961 Act."

15. Likewise, in the case of Sri Nath Suresh Chand Ram Naresh Vs. CIT (2006) 280 ITR 396, the Allahabad High Court held that the issue of notice under [Section 148](#) of the Income Tax Act is a condition precedent to the validity of any assessment order to be passed under [section 147](#) of the Act and when such a notice is not issued and assessment made, such a defect cannot be treated as cured under [Section 292B](#) of the Act. The Court observed that this provisions condones the invalidity which arises merely by mistake, defect or omission in a notice, if in substance and effect it is in conformity with or according to the intent and purpose of this Act. Since no valid notice was served on the assessee to reassess the income, all the consequent proceedings were null and void and it was not a case of irregularity. Therefore, [Section 292B](#) of the Act had no application.

16. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of [Section 292B](#) of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a „dead person“.

17. The order of the Tribunal is, therefore, clearly unsustainable. We, thus, decide the questions of law in favour of the assessee and against the Revenue and allow these appeals.”

5. In view of the above decision of Hon'ble Delhi High Court in the case of Spice Entertainment Ltd., supra, and the fact that the assessee company Gestetner (India) Ltd. got merged with RICOH India Ltd. w.e.f. 01.04.2005 by the orders of Hon'ble Calcutta High Court dated 22.06.2005 and Bombay High Court dated 30.06.2005, the assessments framed u/s. 143(3) for AY 2003-04 vide dated 15.03.2006 and for AY 2004-05 vide dated 08.12.2006 is on non-existent person and hence, quashed. This legal issue is decided in favour of the assessee.”

Respectfully following the aforesaid decision cited supra, we decide this legal issue in favour of the assessee

4. As we have decided the legal issue in favour of the assessee quashing the assessments framed for the impugned assessment year, we are not inclined to adjudicate other issues of assessee's appeals as well as revenue's appeals on merit because it is only academic.

5. In the result, appeal of assessee is allowed and that of the revenue is dismissed.

Order is pronounced in the open court on 16.08.2017

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 16th August, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Gestetner (India) Ltd. (Since merged with RICOH India Ltd.), Block GP, Sector-V, Salt Lake Electronic Complex, Kolkata-700 091.
- 2 Respondent – DCIT, circle-1, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary