

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

**BEFORE HON'BLE PRESIDENT, SHRI G.D. AGRAWAL  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.3054/Del./2014  
(ASSESSMENT YEAR : 2008-09)**

ACIT,  
Central Circle 17,  
New Delhi.

vs. M/s. Navbharat Gasflame Marketing,  
Co. Pvt. Ltd.,  
F – 90, Jagat Puri, Gali No.7,  
Krishna Nagar,  
New Delhi.

**(PAN : AABCN9065G)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri B.K. Dhingra, CA  
REVENUE BY : Shri Arun Kumar Yadav, Senior DR

Date of Hearing : 02.11.2017

Date of Order : 10.11.2017

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The Appellant, Assistant Commissioner of Income-tax, Central Circle 17, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 25.02.2014 passed by the Commissioner of Income-tax (Appeals)-XII, New Delhi qua the assessment year 2008-09 on the grounds inter alia that :-

***“1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in concluding that the assessment was not permissible, the assessee company being dissolved on the date of assessment proceeding.***

***2. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.76,73,888/- made by AO on account of unexplained purchases u/s 69 of the I.T. Act without examining and adjudicating upon merits of the case.***

***3 The Commissioner of Income Tax (Appeal) erred in law and on facts of the case in deleting the addition of Rs.4,21,853/- made by the AO on account of disallowance of 100% of expenditure claimed by the assessee.***

***4. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in allowing relief to the assessee w.r.t. rejection of books of account made by the AO.***

***5. (a) The order of the CIT (A) is erroneous and not tenable in law and on facts.***

***(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”***

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessing Officer noticed that during the year under assessment, the assessee company remained into the business of dealing in wholesale business of trading of fabrics and clothing and shown profit of Rs.8,368/- as against its reserves and surplus of Rs.1,10,96,700/-. AO further noticed that during the year under assessment, the assessee has supposedly made

purchases of Rs.76,73,888/- and net sales of Rs.77,58,252/-. On failure of the assessee to provide proper vouchers and bills or evidences, AO rejected the books of account u/s 175 of the Income-tax Act, 1961 (for short 'the Act') and consequently held the entire sale and administrative and other expenses are not genuine and added an amount of Rs.76,73,888/- as unexplained expenditure to the income of the assessee u/s 69C of the Act.

3. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has deleted the addition by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. DR for the Revenue relied upon the order passed by AO. However, on the other hand, Id. AR for the assessee by supporting order passed by Id. CIT (A) contended that since the assessee company was not in existence as on 31.12.2010, the AO was having no jurisdiction to make the assessment. Before going into the merit, we would like to decide the jurisdictional issued first.

6. Undisputedly, M/s. Navbharat Gasflame Marketing Co. Pvt. Ltd., the assessee company in this case has been assessed by the AO vide assessment order dated 31.12.2010. Perusal of *order dated 27.10.2017 passed by National Company Law Tribunal (NCLT), Principal Bench, New Delhi in CP No.9/2015 in case of M/s. Navbharat Gasflame Marketing Co. Pvt. Ltd.(assessee company in this case) vs. The Registrar of Companies*, available at pages 86 to 99 of the paper book, last para at page 88 goes to prove that name of the assessee company was struck off vide Notification dated 23.06.2007 published in the Official Gazette of India wherein the name of the assessee company was at Sl.No.10452 in the gazette notification. Petition before NCLT u/s 560 (6) of the Companies Act, 1956 was filed for revival of the company which was dismissed with cost.

7. So, when it is proved that the assessee company, which is a juristic person, was not in existence as on 31.12.2010, the date of passing of assessment order, having been dissolved/struck off by the Registrar of Companies, Delhi and Haryana, no assessment can be made. Ld. CIT (A) has categorically mentioned these facts at pages 37 & 38 of the impugned order and these facts were also brought to the notice of the AO by erstwhile Director, Shri Inder Dev Sharma vide letter dated 24.12.2010.

8. In view of what has been discussed above, without entering into the merits of the case, we are of the considered view that the assessment order passed in this case by the AO is without any jurisdiction as the assessee company was not in existence so finding no illegality or perversity in the impugned order, we hereby dismiss the appeal filed by the Revenue.

**Order pronounced in open court on this 10<sup>th</sup> day of November, 2017.**

**Sd/-  
(G.D. AGRAWAL)  
PRESIDENT**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 10<sup>th</sup> day of November, 2017  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**