

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1386/Kol/2015
Assessment Year:2002-03

DCIT, Circle-12(2), Aayakar Bhawan, P-7, 6 th Floor, Chowringhee Square, Kolkaata-69	बनाम / V/s.	M/s Philips India Ltd. (<i>successor on amalgamation to Philips Glass India Ltd</i>), 7, Justice Chandra Madhab Road, Kolkata-20 [PAN No.AABCP 9487 A]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri A. K. Tiwari, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	31-10-2017
घोषणा की तारीख/Date of Pronouncement	17-11-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-4, Kolkata dated 27.08.2015. Assessment was framed by ACIT, Circle-4 Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 28.03.2005 for assessment year 2002-03. The grounds raised by the assessee per its appeal are as under:-

2. At the time of hearing, we find that neither anybody appeared on behalf of assessee nor any application for adjournment was filed. However, we noticed that the Id. CIT(A) has passed the *ex-parte* order. Therefore, we decided to dispose of the appeal after considering the material available on records and in the absence of assessee/ his authorized representative.

3. At the outset, it was observed that the penalty order was passed by the Assessing Officer in the name of Philips Glass India Ltd (for short PGIL) vide order dated 30th March 2014 ignoring the fact that PGIL was amalgamated with the Philips India Ltd (for short PIL) by the judgments of Hon'ble Gujarat and Calcutta High Court. The amalgamation was made effective from 1st April 2002 and this fact was very much in the knowledge of the AO at the time of assessment proceedings which was framed under section 143(3) of the Act vide order dated 28.3.2005 as evident from page 5 of the order which reads as under:-

"I have carefully considered the above contention. However, as per the facts narrated earlier, the payments made to finance companies resulted, first in cessation of ownership right of two of the finance companies, thereafter obtaining lease at reduced rental and finally acquisition of assets through acquisition by Philips India Ltd, with whom, the assessee company merged. Here, it may be noted that even though the asset was acquired by Philips India Ltd., some time before the merger, no lease rent appears to be paid by the assessee company to Philips India Ltd., for the period before merger.

Despite the above facts known to the AO, the penalty order was passed in the name of PGIL in place of PIL vide order dated 30.3.2014. Thus, the penalty order was quashed by the Id. CIT(A) in his order dated 27.08.2015 by observing as under:

"... .. I find that there is a unanimity of the view that any order passed by an AO in the name of the amalgamating company, after amalgamation has become effective results in fundamental infirmity which is not curable u/s.292B. applying ratio laid down in these judgments to the facts of the assessee's case I have no hesitation in holding that at the material time when the AO passed the impugned order, the assessee company i.e. PGIL had long ceased to exist. Sufficient material was available in the AO's records which showed that even at the time of passing of assessment order u/s. 143(3) the AO was aware that PGIL had merged with PIL and therefore the amalgamating company did not legally exist. Despite such knowledge the AO for the reasons best known to him, did not at any stage implead PIL but issued notices of hearing as also passed the assessment order s also the impugned penalty order in the name of and against PIL. Applying the ratio laid down by the Calcutta, Delhi,

Karnataka and Gujarat High Court(s), I therefore hold that the impugned order of penalty u/s. 271(1)(c) suffered from fundamental infirmity and therefore it is liable to be declared as Authorities Below initio void. Accordingly the penalty order is quashed. Ground Nos. 1 to 3 re therefore allowed.”

The Revenue, being aggrieved, is in appeal before us.

4. The ld. DR before us has not brought anything on record contrary to the finding of ld. CIT(A). However the ld. DR relied on the order of AO.

5. After hearing ld. DR and perusal of the material available on record, we note that the penalty order has been made on the non-existing company which is not permissible in the eyes of law. In holding so, we find support & guidance from the judgment of the Hon’ble Calcutta High Court in the case of *I.K. Agencies Pvt. Ltd. Vs. CWT* reported in 20 taxmann.com 731 wherein it was held as under:

“Held that the initiation of the proceedings for reopening of assessment depends upon the service of a valid notice in terms of section 17 upon the assessee. A notice issued to a person who is not in existence at the time of issuing such notice cannot make it valid and the law permits the Assessing Officer to issue a fresh notice in conformity with the law.

The authorities below totally overlooked the fact that initiation of the proceedings for reassessment was vitiated for not giving notice under section 17 to the assessee and the notice issued upon 'A' which was not in existence at that time was insufficient to initiate proceedings against the assessee who had taken over the liability of 'A' earlier to the issue of such notice and such fact was also made known to the revenue. Thus, the reassessment proceedings were to be set aside on that ground alone.

Similarly, we also find support & guidance from the judgment of the Hon’ble Delhi High Court in the case of *CIT Vs. Micra India Pvt. Ltd.* reported in 57 taxmann.com 163 wherein it was held as under :

“In the instant case, no doubt there was participation during the course of assessment; however, the Assessing Officer, despite being told that the original company was no longer in existence, did not take remedial measures and did not transpose the transferee as the company which had to be assessed, instead, he resorted to a peculiar procedure of describing the original assessee as the one in existence; the order also mentioned the transferee's name below that of assessee's company. Now, that did not lead to the assessment being completed

in the name of the transferee-company. According to the Assessing Officer, the assessee-company was still in existence. Clearly, this was a case where the assessment was contrary to law, as having being completed against a non-existent company. The Tribunal's decision is, in the circumstances, justified and warranted”

In view of above, we do not find any defect in the order passed by Id. CIT(A). Therefore respectfully following the judgments as discussed above, we uphold the order of Ld. Consequently, the grounds of appeal of the Revenue is dismissed.

6. In the result, appeal of Revenue stands dismissed.

Order pronounced in open court on 17/11/2017

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 17/11/2017 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Circle-12(2), Aayakar Bhwan, P-7, 6th Floor, Chowringhee Square, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Philips India Ltd.7, Justice Chandra Mdhab Rd. Kolkata-20
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता