IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

Before Sh. N. K. Saini, AM and Smt. Beena A. Pillai, JM

ITA No. 254/Del/2015 : Asstt. Year : 2005-06

DCIT, Circle-11(2), New Delhi	Vs	M/s Shantikunj Investment Pvt. Ltd. (Known as M/s Hydel Constructions Pvt. Ltd.), C-287, Defence Colony, New Delhi-110024
(APPELLANT)		**(RESPONDENT)**
PAN No. AAACH3012Q		

Assessee by : Sh. Aloke Periwal, CA &
Sh. Nisehay Khandelwal, CA
Revenue by : Sh. Kaushlendra Tiwari, Sr. DR

Date of Hearing : 27.12.2017		**Date of Pronouncement : 02.01.2018**

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 05.09.2014 of ld. CIT(A)-XI, New Delhi

2. The only ground raised in this appeal reads as under:

"Whether on facts & circumstances of the case and in law, the ld. CIT(A) wrong in holding the assessment annulled ignoring the facts that the company was in existence relevant F.Y. 2004-05."

3. Facts of the case in brief are that a search and seizure operation was carried out at the residential and business premises of Sh. S. K. Jain and Sh. Virendra Kumar Jain on

14.09.2010. During the course of search proceedings, it was noticed that a number of companies were being managed from the residential as well as business addresses related to the aforesaid persons. The AO observed that all the books of accounts and other relevant paper of those companies were found from the residence of Sh. S. K. Jain and Sh. Virendra Kumar Jain and nothing was found at the other addresses which were mentioned in the statutory record of those companies. He further observed that detailed information about the accommodation entry being given by Sh. Surendra Kumar Jain and Sh. Virender Kumar Jain who controlled/managed the companies, was received from the directorate of Income Tax (Inv.), New Delhi. The AO made an addition of Rs.3,00,00,000/- in the returned income of the assessee at Rs.1,74,14,300/- by passing the assessment order dated 19.03.2013 u/s 147 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Being aggrieved the assessee carried the matter to the ld. CIT(A) and challenged the validity of the assessment framed on a non-existing company. It was submitted that on receiving the notice u/s 148 of the Act, the assessee vide its letter dated 16.04.2012 intimated the AO that the assessee company had amalgamated with M/s Hydel Constructions

Pvt. Ltd. and therefore, assessment in the hands of non-existing company was bad in law. The assessee also filed the copy of the order of the Hon'ble Delhi High Court dated 17.03.2008 in respect of merger of the assessee company with M/s Hydel Constructions Pvt. Ltd. The reliance was placed on the following case laws:

- *Saraswati Industrial Syndicate Ltd. Vs CIT (1990) 186 ITR 278*
- *ACIT Vs Micra India (P) Ltd. in ITA Nos. 1060 to 1065/Del/2012 dated 21.09.2012*
- *ACIT Vs SPN Milks Products Industries Pvt. Ltd. in ITA Nos. 565 to 570/Del/2012*
- *Satwant Exports Pvt. Ltd. Vs ACIT, Circle-21, New Delhi (2014) 46 Taxmann.com 236 (Del. ITAT)*

5. The ld. CIT(A) after considering the submissions of the assessee observed that the assessee company had already amalgamated with M/s Hydel Constructions Pvt. Ltd. and the Registrar of Companies updated on 02.06.2008, on the basis of order of the Hon'ble Delhi High Court in C.P. No. 297/2007 dated 17.03.2008 certifying the amalgamation of the assessee i.e. M/s Shantikuj Investment (P) Ltd. with M/s Hydel Constructions Pvt. Ltd. and those facts was brought to the notice of the AO. However, the AO had choosen to proceed further in the case knowing fully well that as on the date, the assessee company was non-existing. The ld.

CIT(A) annulled assessment by holding the same to be a nullity.

6. Now the department is in appeal. The ld. DR supported the order of the AO.

7. In his rival submissions, the ld. Counsel for the assessee reiterated the submission made before the authorities below and submitted that the assessment was framed on the non-existing company, therefore, the ld. CIT(A) was fully justified in holding the same to be a nuillity.

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the assessee M/s Heartland Delhi Transcription and Services Pvt. Ltd. (HDTS) amalgamated with M/s Heartland Information and Consultancy Pvt. Ltd. (HICS) in pursuant to the order of the Hon'ble Delhi High Court dated 25th July, 2008 and this fact was brought to the notice of the AO [(Income Tax Officer, Ward-12 (3)], Director of Income Tax, TP-1, New Delhi, Additional Commissioner of Income Tax-12 New Delhi and Commissioner of Income Tax - 4, New Delhi vide separate letters each dated 19th October, 2008 (copies of which are placed at page 900 to 907 of the assessee's paper book) and order of the Hon'ble Delhi High Court dated 25th July, 2008 for the aforesaid amalgamation is placed at

page no. 908 to 918 of the assesseeôs paper book. It is also noticed that the AO referred the matter u/s 92 CA of the Act of the amalgamated assessee company HDTS to the TPO who passed the order dated 25.10.2010 on the aforesaid entity. The AO also passed the assessment order dated 22.2.2011 u/s 144C / 143(3) of the Act on the aforesaid entity i.e. HDTS which amalgamated in HICS, therefore, it is crystal clear that the entity HDTS was not in existence when the TPO as well as the AO passed their respective order.

9. On a similar issue, the ITAT Delhi Bench I-1, New Delhi having the same combination passed a detailed order authored by the AM in the case of M/s Maruti Suzuki India Ltd. vs. Dy. CIT reported in (2016) 72 taxmann.com. 164. and the relevant findings have been given as under:

> *"10. We have considered the submissions of both the parties and carefully gone through the material le on the record. In the present case, it is an admitted fact that the amalgamating company M/s Powertrain India Ltd. amalgamated with M/s Maruti Suzuki India Ltd. w.e.f. 01.04.2012, as a of scheme of amalgamation duly approved by the Hon'ble Delhi High Court vide order dated 2013 and the assessment in this has been framed by the AO vide order dated 03.03.2015. Therefore, dear that when the assessment order was passed on 03.03.2015, M/s Suzuki Powertrain India Ltd. lot inexistence. It is also noticed that the aforesaid fact was in the knowledge of the department as the informed vide various letters mentioned in para 5 of the former part of this order which were to the various Tax Authorities.*

However, the AO in spite of knowing this fact that M/s Suzuki in India Ltd. amalgamated with M/s Maruti Suzuki India Ltd., made the reference to the TPO and - sued the notice dated 07.11.2014 to the non-existent entity i.e. M/s Suzuki Powertrain India Ltd.

11. A similar issue the Hon'ble Jurisdictional High Court in the case of Micra India (P.) Ltd. (supra) 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 Le 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; order also mentioned the transferee's name below that of assessee's company. Now, that did not to the assessment being completed in the name of the transferee-company. According to the sing Officer, the assesseecompany was still in existence. Clearly, this was a case where the assesssment was contrary to law, as having being completed against a non-existent company. The Tribunal's decision is, in the circumstances, justified and warranted."*

12. Similarly, the Hon'ble Jurisdictional High Court in the case of Spice Infotainment Ltd. v. CIT [IT Nos. 475 & 476 of 2011, dated 3-8-2011] held as under:

> *"No doubt, M/s Spice was an assessee and as an incorporated company and was in existence when it the returns in respect of two assessment years in question. However, before the case could be ted for scrutiny and assessment proceedings could be*

initiated, M/s Spice got amalgamated with M Corp Pvt. Ltd. It was the result of the scheme of the amalgamation filed before the Company Judge of this Court which was dully sanctioned vide orders dated 11th February, 2004. With this amalgamation made effective from 1st July, 2003, M/s Spice ceased to exist. That is the plain and le effect in law. The scheme of amalgamation itself provided for this consequence, inasmuch as simultaneous with the sanctioning of the scheme, M/s Spice was also stood dissolved by specific of this Court. With the dissolution of this company, its name was struck off from the rolls Companies maintained by the Registrar of Companies. A company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. In view of the aforesaid clinching position in law, it is difficult to digest the circuitious route adopted by the Tribunal holding that the assessment was in fact in the name of amalgamated company and there was only a procedural defect. After the sanction of the scheme on 11th April, 2004, the Spice ceased to exit 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 AO made the assessment in the name of M/s Spice which was nonexisting 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."

It has been further held as under:

"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. 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 per son'."

13. In the present case also as the assessment was framed in the name of non-existing entity i.e. M/s Suzuki Powertrain India Ltd. which amalgamated with M/s Maruti Suzuki India Ltd. and this irregularity was not curable. Therefore, the assessment order passed by the AO in the name of non- existing entity was void ab initio and deserves to be quashed, we order accordingly.

14. On the present case, the contention of the Id. CIT DR was that the assessment was rightly framed by the AO on the assessee who filed the return of income and when the income was earned, it was inexistence. This controversy has been settled by the Hon'ble Jurisdictional High Court in the case of CIT v. Dimension Apparels (P.) Ltd. [2015] 370 ITR 288/[2014] 52 taxmann.com 356 (Delhi) wherein it has been held as under:

"Section 170(2) of the Income-tax Act, 1961, makes it clear that in the case of amalgamation, the assessment

must be made on the successor (i.e., the amalgamated company). Section 176 which contains provisions pertaining to a discontinuation of business, does not apply to a case of amalgamation. The language of section 159 evidently only applies to natural persons and cannot be extended through a legal fiction, to the dissolution of companies. 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. Participation by the amalgamated company in assessment proceedings would not cure the defect because "there can be no estoppels against law."

15. In the present case also when the assessment was framed by the AO vide order dated 29.12.2015 in the name of M/s Suzuki Powertrain India Ltd., the said company had already amalgamated with M/s Maruti Suzuki India Ltd. and therefore, it was not inexistence. Moreover, it is clear from the provisions of Section 170(2) of the Act that in the case of amalgamation, the assessment must be made on the successor i.e. the amalgamated company and not on the predecessor i.e. amalgamating company. Therefore, in the present case, the assessment framed by the AO vide order dated 29.12.2015 on the amalgamating company i.e. M/s Suzuki Powertrain India Ltd. which was not inexistence on the date of passing the assessment order was not valid and as such the same is quashed. Since we have allowed ground No. 1 of the assessee and assessment order is quashed, therefore, no finding is given on the other issues raised by the assessee."

10. It is also relevant to point that the order of the ITAT in the case of Maruti Suzuki Pvt. Ltd. vs. DCIT, Circle 16(1), New Delhi (Supra) has been upheld by the Hon'ble Jurisdictional High Court vide order dated 4th September, 2017 in the case of Principal Commissioner of Income Tax, New Delhi vs. Maruti Suzuki Private Ltd., reported at (2017) 85.com 330 wherein it has been held as under:

> *"The revenue has repeatedly brought the issue before the Court in a large number of cases where, in more or less identical circumstances, the Assessing Officer had passed the assessment order in the name of the entity that had ceased to exist as on the date of the assessment order. In many of these cases, as in the present case, the Assessing Officer, after mentioning the name of the Amalgamating Company as the assessee, mentioned below it the name of the Amalgamated Company. The submission of revenue that under section 292B, the successor-interest is precluded from raising an objection if it has participated in the assessment proceedings was negatived in Spice Infotainment Ltd. v. CIT [2012] 247 CTR (Del.) 500 wherein it was held that once it was found that the assessment was framed in the name of a non-existent entity, it did not remain a procedural irregularity of the nature which could be cured by invoking the provisions of section 292-B. The legal position having been made abundantly clear, there is no hesitation in holding that impugned order passed by Tribunal does not require any interference The appeal is accordingly dismissed."*

11. Recently the Hon'ble Apex Court dismissed the SLP moved by the Department in the case of M/s Spice Enfotainment Ltd. which has been followed in the aforesaid referred case of M/s Maruti Suzuki Pvt. Ltd. vs. DCIT, vide order dated 2nd November, 2017.

12. In the present case also, as we have already pointed out that the assessment was framed by the AO on the non-existent amalgamated company, not on the amalgamating company, therefore, the assessment framed was void ab initio and the same was rightly quashed by the ld. CIT(A). Since, we have quashed the assessment framed by the AO therefore no separate finding is being given on the other issues raised in the Departmental appeal.

13. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 02/01/2018)

Sd/-	Sd/-
(Beena A. Pillai)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 02/01/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR