

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 92/Del/2014 to 96/Del/2014
Assessment Year: 2005-06 to 2009-10**

Seagram Distilleries Pvt. Ltd., (Now Pernod Ricard India Pvt. Ltd.), Building No. 8A, 4th Floor, DLF Phase II, Gurgaon-122002 (PAN: AAFCS3143N)	vs	ITO, Ward 4(1), New Delhi.
(Appellant)		(Respondent)

**ITA No. 6810/Del/2013 to 6814/Del/2013
Assessment Year: 2005-06 to 2009-10**

Asstt. Commissioner of Income Tax, Central Circle-19, New Delhi.	vs	Seagram Distilleries Pvt. Ltd., 104, Ashok Estate, Barakhamba Road, New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri Depak Chopra, Adv.
Ms Rashi Khanna, Adv.
Shri Yojit Pareek, Adv.
Shri Sudeep Rastogi, CA

Respondent by : Shri Vijay Varma, CIT DR

Date of Hearing: 25.04.2018

Date of Pronouncement: 08.05.2018

ORDER

PER BENCH

ITA Nos. 6810 to 6814/Del/2013 are the department's appeals for assessment years 2005-06 to 2009-10 whereas ITA

Nos. 92 to 96/Del/2014 are the assessee's cross appeals for the same assessment years.

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing Indian Made Foreign Liquor. A search u/s 132 of the Income Tax Act, 1961 (hereinafter called 'the Act') was conducted in the case of the assessee on 15.02.2011. Notices u/s 153A of the Act were issued on 3.12.2012 for all the captioned five assessment years. Earlier, the assessee company had amalgamated with its holding company Pernod Ricard India Private Limited w.e.f. 1.4.2009. These assessments under appeal were framed consequent to the search conducted in the case of the assessee.

3. The assessee has raised a legal ground in all the five appeals under consideration that without prejudice to other grounds of appeal, the assessments framed u/s 153A of the Act were bad in law since they were framed on a company not in existence as on the date of search i.e. 15.2.2011.

3.1 Both the parties agreed that since the legal issue was germane to the entire appellate proceedings, this legal ground may be taken up first and if need be, on grounds and arguments

on merits can be heard later. Therefore, we are proceeding to hear both the parties on the legal ground raised by the assessee in all the five years under appeal wherein the assessee has challenged the framing of the assessments u/s 153A of the Act on the ground that the company was not in existence as on the date of search.

4. The Ld. AR submitted that the Assessing Officer had been duly notified about the merger of the assessee into Pernod Ricard India Private Limited vide letter dated 22.03.2011. Our attention was drawn to the copy of the said letter which has been placed on record. The Ld. AR submitted that pursuant to the order of the Hon'ble Delhi High Court, vide order dated 8.10.2010, the assessee company got merged into Pernod Ricard India Private Limited and the appointed date for the merger was 1.4.2009. Our attention was also drawn to the order of the Hon'ble Delhi High Court and placed on record in this regard. The Ld. AR submitted that although this letter to the Assessing Officer was addressed post the date of search, the appointed date for amalgamation was 1.4.2009 and, accordingly, the notice u/s 153A was in the name of a company which was no longer in existence. The Ld. AR further submitted that the assessments

u/s 153A had been framed on a company which had amalgamated and, therefore, even though the company participated in the assessment proceedings, the assessments were invalid.

5. In response, the Ld. CIT DR vehemently argued that the notices u/s 153A were valid. It was submitted that the order of the Hon'ble Delhi High Court, dated 8.10.2010, approving the amalgamation was effective from assessment year 2010-11 only and, therefore, till assessment year 2009-10, the two companies had separate existence and, therefore, two separate assessments were required to be made for each assessment year till assessment year 2009-10. Ld. CIT DR also submitted that the notices u/s 153A dated 3.12.2012 were issued in the correct name of the entity mentioning that the assessee had merged with Pernod Ricard India Private Limited w.e.f. 1.4.2009. The Ld. CIT DR also submitted that section 139A (5)(d) casted a statutory obligation on the assessee to communicate any changes in the address on the basis of which PAN was allotted but neither the amalgamated company nor the amalgamating company had apparently discharged this statutory obligation. It was also submitted that even if the assessee's argument is accepted that

the assessee did not exist on the date of search, it does not negate the fact that Pernod Ricard India Private Limited, the successor company, existed on the date of search. It was submitted that the warrant was executed on it and the *Panchnama* was drawn in the name of Pernod Ricard India Private Limited though it mentions the name of the assessee also. It was further submitted that it was not a case of issue of notices or assessments in the case of a non-existing person as the assessee company did exist till assessment year 2009-10. The Ld. CIT DR submitted that the assessee's legal ground should be rejected and both the parties should be heard on the merits of the case.

6. We have heard the rival submissions and perused the material available on record. We find that the Hon'ble Jurisdictional High Court has considered an identical issue in the case of Spice Entertainment Ltd. vs. CIT in ITA No. 476/2011. The relevant portions of the order of the Hon'ble High Court are contained in Para 11 and 18 which are being reproduced herein under for a ready reference:-

"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 an 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."

XXXXX

"18. We may, however, point out that the returns were filed by M/s Spice on the day when it was in existence it would be permissible to carry out the assessment on the basis of those returns after taking the proceedings afresh from the stage of issuance of notice under Section 143(2) of the Act. In these circumstances, it would be incumbent upon the AO to first substitute the name of the appellant in place of M/s Spice and then issue notice to the appellant. However, such a course of action can be taken by the AO only if it is still permissible as per law and has not become time barred."

6.1 We find that in the case of the assessee, notices u/s 153 of the Act were issued on 3.12.2102 when, undisputedly, the assessee company was not in existence. As per the order of the Hon'ble Delhi High Court, the assessee company had ceased to exist w.e.f 1/4/2009 by virtue of it being amalgamated into Pernod Ricard India Pvt. Ltd. That the department was intimated of the amalgamation is also evident from the copy of communication dated 22.03.2011. The assessment orders were

passed vide a consolidated assessment order dated 6/9/2013 and these assessment orders have also been framed in the name of the assessee company which had ceased to exist. Therefore, in view of the judgment of the Hon'ble Delhi High Court in the case of Spice Entertainment (supra), we are unable to persuade ourselves to agree with the contentions raised by the department and we hold that the assessment orders passed in the name of the assessee i.e. M/s Seagram Distilleries Pvt. Ltd. for all the five assessment years are void as when these assessments were made, the assessee was a non-existing entity. Thus, on the facts and the circumstances of the case, we have no hesitation in holding that the framing of assessments against a non-existing entity/person goes to the very root of the matter and is a jurisdictional defect as there cannot be any assessment against a 'dead person'. Accordingly, the impugned assessments are bad in law and are liable to be quashed being void *ab initio*. We observe that the facts of the present case are quite similar to the facts of the case in Spice Entertainment (supra), wherein their Lordships have held that framing of assessment against non-existent entity/person goes to the root of the validity of the assessment which is not a procedural irregularity curable u/s 292B of the Act

or under any other provision of the Act but it is a jurisdictional defect because there cannot be framing of any assessment order against a dead person or entity which is non-existent on the date of framing/passing assessment order.

6.2 Respectfully following the ratio of the judgment of the Hon'ble High Court in the case of Spice Entertainment (supra), we are inclined to hold that the assessments in the name of non-existent amalgamating company being jurisdictional defect are not sustainable and, therefore, we quash the same.

6.3 Once we have quashed the assessment orders, the various additions made by the Assessing Officer do not survive having become academic in nature. Further, the grounds raised by the department in their appeals have become *in fructuous* and the same are dismissed. However, we may observe that the Assessing Officer is at liberty to take appropriate action in the case of appropriate entity in accordance with law subject to the time limit prescribed under the Act.

7. In the result, the five appeals of the assessee are allowed whereas five appeals of the department are dismissed.

This decision was pronounced in the Open Court on 8th May, 2018.

Sd/-

**(G.D. AGRAWAL)
PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 8th May, 2018

‘GS’

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

ASSISTANT REGISTRAR