

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “I-2”, NEW DELHI  
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.966/Del/2016  
Assessment Year : 2011-12**

Vertex Customer Management India Pvt. Ltd., First Floor, Tower A, First India Place, Mehrauli – Gurgaon Road, Sushant Lok Phase- I, Gurgaon.	<b>Vs.</b>	DCIT, Circle- 26(1), New Delhi.
<b>PAN : AADCU7256M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Nageshwar Rao, Adv.  
Shri Parth, Adv.  
Department by : Shri H. K. Choudhary, CIT-DR  
Date of hearing : 31-05-2018  
Date of pronouncement : 06-07-2018

**ORDER**

**PER R. K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 23.10.2015 passed u/s 143(3)/144C of the I.T. Act, 1961 for assessment year 2011-12.

2. Although a number of grounds have been raised by the assessee in the grounds of appeal, however, ld. counsel for the assessee confined his argument to ground of appeal no.2 which reads as under :-

“2. Based on the facts and circumstances of the case, the learned AO has erred in completing the assessment on the non-existing amalgamating entity (bearing PAN No.AAGCS0438M) instead of the amalgamated/ successor company. Hence, the assessment order passed under section 143(3) read with section 144C of the Act is void ab-initio and the same is liable to be quashed.”

3. Ld. counsel for the assessee referring to the draft assessment order dated 10.05.2015 submitted that the name of the assessee has been mentioned as M/s Vertex Customer Services India Pvt. Ltd.. Referring to the order of the DRP dated 21.09.2015, he submitted that the name of the assessee has been mentioned as under :-

*“M/s Vertex Customer Management India Limited (Formerly Vertex Customer Services Private Limited) (Now Merged with Vertex Customer Management India Private Limited).”*

4. Referring to the final assessment order passed by the Assessing Officer subsequent to the order of the DRP vide order u/s 143(3)/144 dated 23.10.2015, he submitted that the Assessing Officer has passed the order in the name of M/s Vertex Customer Services India Pvt. Ltd.. Referring to the sequence of events, ld. counsel for the assessee drew the attention of the Bench to the following dates :-

Sequence of Events

S. No	Date	Particulars	Document	Reference
1	26 March 2014	High Court Order in relation to amalgamation was passed (effective 1 April 2011) wherein 'Vertex Consumer Services India Pvt Ltd' ('original entity') was merged with 'Vertex Consumer Management India Pvt Ltd' ('merged/new entity')	Copy of High Court Order	Annexure 1 (Pg.1)

2	18 July 2014	Letter filed before the TPO informing the fact of amalgamation	Copy of Letter	Annexure 2 (Pg.40)
3	08 December 2014	Submission filed before the TPO informing the fact of amalgamation	Copy of Submission	Page 134 of Paperbook
4	21 January 2015	TP Order was passed in name of original entity	Order	Page 157 of Appeal Set
5	20 February 2015	Submission filed before the AO informing the fact of amalgamation	Copy of Submission	Page 226 of Paperbook
6	10 March 2015	Draft Assessment Order was passed in name of original entity	Order	Page 148 of Appeal Set
7	15 April 2015	Objections before Hon'ble Dispute Resolution Panel ('DRP') were filed in the name of merged/new entity	Form 35A	Page 38 of Appeal Set
8	21 September 2015	DRP Directions were passed in name of merged/new entity	Order	Page 8 of Appeal Set
9	23 October 2015	Final Assessment Order was passed in name of original entity	Order	Page 25 of Appeal Set
10	26 October 2015	Demand Notice was issued in name of original entity	Order	Page 24 of Appeal Set

5. Referring to the decision of Hon'ble Karnataka High Court in the case of CIT vs. Intel Technology India (P.) Ltd. reported in 380 ITR 372, he submitted that the Hon'ble High Court in the said decision has held that framing an assessment against a non-existent entity is not procedural irregularity but a jurisdictional defect which goes to the root of the matter. In the said decision while dismissing the appeal filed by the Revenue, it was further held that where the proceedings were initiated against a non-existent assessee company even after amalgamation with the successor company and, therefore, the assessment was not valid and the Revenue was not entitled to the benefit of provisions of section 292B of the I.T. Act. In coming to the above decision, the Hon'ble Karnataka High Court relied on the decision of the Hon'ble Delhi High Court in the case Spice Entertainment Ltd. vs. CIT reported in (2012) 247 CTR 500. He

submitted that following the above decisions of the Bangalore Bench of the Tribunal in the case of BMM Ispat Limited reported in 93 taxmann.com 76 has held that the order of assessment for assessment year 2007-08 dated 28.03.2013 is invalid and accordingly it was cancelled as the same was passed after the appointed date of 01.04.2007 on a non-existent entity. Since the Assessing Officer in the instant case has passed an order on a non-existent company, therefore, the assessment order has to be quashed.

6. Referring to the decision of the Hon'ble Delhi High Court in the case of Pr.CIT vs. Maruti Suzuki India Ltd. vide IT Appeal No.65 of 2017 order dated 07.09.2017, he drew the attention of the Bench to the question framed and admitted by the Hon'ble High Court which reads as under :-

*“Did the ITAT misapply the provisions of Section 170(2) of the Income tax Act in the circumstances of the case, while concluding that the assessment order was not tenable for having been framed in the name of the non-existence company.”*

7. Referring to the said order, he submitted that the Hon'ble High Court following the decision in the case of Spice Entertainment Ltd. (supra), decision of the Hon'ble Supreme Court in the case of Saraswati Industrial Syndicate Ltd. vs. CIT reported in 186 ITR 278 and various other decisions has dismissed the appeal filed by the Revenue and upheld the order of the Tribunal where the Tribunal has quashed the assessment on the ground that the same was passed in the name of the entity that ceased to exist on the date of assessment order. Since

in the instant case also the company M/s Vertex Customer Services India Pvt. Ltd. has ceased to exist since it was merged with Vertex Customer Management India Ltd., therefore, assessment order framed in the name of the non-existent company has to be quashed.

8. The ld. DR on the other hand strongly opposed the arguments advanced by the ld. counsel for the assessee. He submitted that the assessee had participated in the assessment proceedings. Therefore, it cannot be argued that the order has been passed on a non-existent company. He submitted that the provisions of section 292B will come to the rescue of the Department and this being a procedural irregularity is curable. He submitted that the matter may be restored to the file of the Assessing Officer/TPO with a direction to pass the order in the name of the merged company.

9. So far as the various decisions relied on by the ld. counsel for the assessee are concerned, he submitted that in none of the cases, the provisions of section 170(1) has been considered and all the decisions are based on the provisions of section 170(2) of the I.T. Act. He accordingly submitted that the entire order cannot be quashed and the matter should be restored to the file of the TPO/Assessing Officer with a direction to regularize the procedure.

10. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the Paper Book filed on behalf of the

assessee. We have also considered the various decisions cited before us. It is an admitted fact that the Hon'ble High Court's order in relation to amalgamation was passed effective on 01.04.2011 wherein Vertex Customer Services India Pvt. Ltd. i.e. original entity was merged with Vertex Customer Management India Private Limited i.e. the new entity. From the details filed by the assessee in the Paper Book, we find the assessee vide letter dated 18.07.2014 filed the fact of amalgamation before the TPO. Further from page 134 of the Paper Book, we find the assessee vide letter dated 08.12.2014 submitted before the TPO regarding the fact of amalgamation. However, we find from the order of the TPO that the TPO vide order dated 21.01.2015 has passed the order in the name of the assessee M/s Vertex Customer Services Private Limited. Further from page 2 to 26 of the Paper Book, we find the assessee vide letter dated 23.02.2015 has submitted before the Assessing Officer informing the fact of amalgamation. We find from page 148 of the Paper Book that the draft assessment order was passed on 10.03.2015 in the name of the original entity namely M/s Vertex Customer Services Private Limited. We find from page 38 of the appeal set that the assessee in his objection before the DRP has filed the same in the name of the merged/new entity i.e. Vertex Customer Management India Private Limited. We find the DRP vide order dated 21.09.2015 had passed the order in the name of M/s Vertex Customer Management India

Private Limited i.e. new entity. However, we find from the final assessment order dated 23.10.2015 that the order has been passed in the name of M/s Vertex Customer Services India Private Limited. The above sequence of events shows that despite the Assessing Officer being intimated/informed above fact of amalgamation still the Assessing Officer chooses to pass the assessment order in the name of the non-existent company. Therefore, we find merit in the argument of the Id. counsel for the assessee that since the order has been passed in the name of a non-existent company, therefore, the same has to be quashed and the provisions of section 292B will not come to the rescue of the Department.

11. We find the Hon'ble Delhi High Court in the case of Spice Entertainment Ltd. (supra) has observed as under :-

*"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.*

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.”*

12. We find the SLP filed by the Revenue in the case of Spice Entertainment Ltd. (supra) has been dismissed by the Hon'ble Supreme Court vide Civil Appeal No.285 of 2014 order dated 02.11.2017.

13. We find the Hon'ble Delhi High Court in the case of CIT vs. Dimension Apparels (P.) Ltd. reported in 370 ITR 288 following its earlier decision in the case of Spice Entertainment Ltd. (supra) has observed as under :-

*“19. The question of whether an assessment upon an amalgamated company is a mistake within the meaning of Section 292B was raised and answered by the Delhi High Court in Spice Entertainment Ltd. (supra). In that case, the Tribunal had held that*

*"the assessment in substance and effect has been made against amalgamated company in respect of assessment of income of amalgamating company for the period prior to amalgamation and mere omission to mention the name of amalgamated company alongwith the name of amalgamating company in the body of assessment against the item "name of the assessee" is not fatal to the validity of assessment but is a procedural defect covered by Section 292B of the Act." (Emphasis Supplied)*

**20.** This Court rejected this argument, holding that

*"it [becomes] incumbent upon the Income Tax Authorities to substitute the successor in place of the said 'dead person'. Such a defect cannot be treated as procedural defect... 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." (Emphasis Supplied)*

**21.** In *Spice Entertainment Ltd. (supra)* the reason for the inapplicability of Section 292-B was additionally premised on the decision of the Punjab & Haryana High Court in *CIT v. Norton Motor*, [2005] 275 ITR 595/146 Taxman 701, that while Section 292B can cure technical defects, it cannot cure a "jurisdictional defect in the assessment notice." In *Spice Entertainment Ltd. (supra)*, therefore, this Court expressly classified "the framing of assessment against a non-existing entity/person" as a jurisdictional defect. This has been a consistent position. As early as 1960, in *CIT v. Express Newspapers Ltd.* [1960] 40 ITR 38 (Mad), the Madras High Court held that

*"there cannot be an assessment of non-existent person. The assessment in the instant case was made long after the Free Press Company was struck off from the register of the companies, and it could not be valid." (Emphasis Supplied)*

**22.** On the last contention, i.e with respect to participation by the previous assessee, i.e the amalgamating company (which ceases to exist), again *Spice Entertainment Ltd. (supra)* is categorical; it was ruled on that occasion that such participation by the amalgamated company in proceedings did not cure the defect, because "there can be no estoppel in law." *Vived Marketing Servicing (P.) Ltd. (supra)* had also reached the same conclusion.

**23.** It is thus clear that all contentions sought to be urged by the revenue are in respect of familiar grounds, which have been ruled upon, against it, consistently in two decisions of this court. Therefore, no substantial question of law arises in this appeal.

**24.** Accordingly, there is no merit in the appeals; they are accordingly dismissed along with the pending applications without any order as to costs."

14. Since in the instant case also the assessment has been framed on a non-existent company, therefore, following the decisions of the Jurisdictional High Court cited (supra), we hold that such assessment is a nullity in the eyes of law. Therefore, the same is quashed. The ground raised by the assessee is accordingly allowed.

15. Since the assessee succeeds on this legal ground, the other grounds being academic in nature are not being adjudicated.

16. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 06<sup>th</sup> day of July, 2018.

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

**Sd/-**  
(R. K. PANDA)  
ACCOUNTANT MEMBER

Dated: 06-07-2018.

*Sujeet*

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The DRP-2, New Delhi
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar  
ITAT, New Delhi