

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 6299/Del/2016
Assessment Year: 2012-13**

Rudraksha Agencies Co. Ltd., C/o M/s. RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi. PAN- AADCR7562E (Appellant)	vs.	DCIT, Circle 21(2) New Delhi. (Respondent)
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Appellant by	Dr. Rakesh Gupta, Advocate & Sh. Somil Agarwal, Advocate
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	11.09.2018
Date of Pronouncement	25.10.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of ld. CIT(A)-36, New Delhi dated 21.10.2016 for the assessment year 2012-12 on the following grounds :

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction in passing the impugned assessment order and the assessment proceedings is bad in law and against the facts and circumstances of the case and more so when the entity in whose name assessment was framed u/s 143(3) did not exist.

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction and in passing the assessment order on the "non-existed entity" is bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 1,42,50,000/- on account of alleged unexplained advances u/s 68 of Income Tax Act, 1961.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs. 1,42,50,000/- on account of alleged unexplained advances u/s 68 is bad in law and against the facts and circumstances of the case."*

2. The brief facts of the case are that the assessee was engaged in the trading of building material, grocery and shares and securities. It filed its return of income on 20.09.2012 declaring total loss of Rs.56,75,773/-. In the assessment proceedings, the Assessing Officer noticed that the assessee had shown other current liabilities in its balance sheet. On being asked the assessee filed details, as mentioned in the assessment order, stating that the assessee received advances against sale of its shares from various persons, out of whom, the Assessing Officer considered the amount of Rs.1.425 crores received from four parties, viz., Sh. Brijbhan, PR Marketing, Anshu Aggarwal and Neelam as unexplained and added the same u/s. 68 of the Act to the total income of the assessee. The reasons for making this addition, as given by the Assessing Officer are that the amount received by the assessee as alleged advance against shares, were not utilized for that purpose but invested as advance given to other parties, as narrated in the assessment order. The reasons for addition are summarized by the Assessing Officer as under :

- All the advance received was for the purchase of shares of only one company i.e. Akriti Global which is an unlisted company and with no big name or credentials. It is surprising that 6 unrelated persons have given advance for the purchase of shares of only one company which is unlisted. This is unusual.
- Out of advance of Rs 1.56 Cr from 6 parties for purchase of shares, the amount of Rs 1.05 Cr was not utilized and the money was allegedly refunded back to them.
- The money received from the parties was received without any agreement or written document to that effect. This is extremely surprising and unusual.
- The advance received was not interest bearing. In case of Sh Brij Bhan Bhadana, P R Marketing, Ms Neelam, the amount was kept by the assessee for more than a year but no interest was paid. This amount was Rs 1.26 Cr. There is no evidence of any claim or resentment by the said persons against the assessee for keeping the money unutilized for such a long period of time.
- In the case of Sh Brij Mohan, as a reply to 133(6) issued, it has been stated that the said amount was a friendly loan and is expected to be received back in F Y 2015-16. This is in contradiction to the submission by the assessee that the amount has been already refunded.
- In earlier years and subsequent years there is no transaction with the said individuals suggesting any proper business relations .
- The assessee was requested to produce the said persons. However, he could not produce any of them.
- In its closing stock, the assessee has shown 4800 shares of Akriti Global Traders Ltd. However, the said shares were not allotted to any of the lenders who gave advance for purchasing those shares.

3. Being aggrieved, the assessee challenged the assessment order in appeal before the Id. CIT(A) both on legal ground challenging the jurisdiction of the Assessing Officer to pass the impugned assessment order on non-existent entity/amalgamated company as well as on merits of the addition. The Id. CIT(A), however, after considering the submissions of the assessee rejected

the jurisdictional challenge made by the assessee and sustained the addition on merits observing that no arguments were addressed on merits of addition. Aggrieved, the assessee is in appeal before the Tribunal.

4. During the course of hearing, the ld. AR of the assessee submitted that the AO has passed the impugned assessment order by assuming jurisdiction on an entity i.e. 'assessee company, which did not exist on the date of framing of such assessment, rather it stood amalgamated with other company, namely, M/s. SUCON INDIA LIMITED. As such the jurisdiction assumed and assessment order made on the dead person/amalgamated company, makes the assessment order a nullity and void ab initio. Reliance is placed on the following decisions, which were also relied by the assessee before the ld. CIT(A) :

- (i). Micra India Pvt. Ltd. (2015, Delhi High Court) 57 taxmann.com 163.
- (ii). Spice Infotainment Ltd. (2012)(Del.) 247 ITR 500.
- (iii). Intel Technology India (P) Ltd. (2015) (Karnataka High Court) 57 taxmann.com 159

The ld. Counsel for the assessee further stated that in the similar facts and circumstances, ITAT, New Delhi Bench-F in the case of assessee itself vide order dated 02.05. 2018 (ITA NO. 670/Del/2018 – A.Y. 2013-14), has decided this issue in favour of the assessee and against the Revenue.

5. On the other hand, the ld. DR relied on the orders of authorities below and submitted that the assessee was not bonafide to furnish proper intimation to the Assessing Officer regarding amalgamation of the assessee company. He has also filed a written synopsis wherein several decisions have been relied upon, which is placed on record.

6. Having considered the rival submissions and perused the entire material available on record, we find that the issue whether the assessment can be made on non-existent entity/dead person as in the present case, is squarely covered by the decision of co-ordinate Bench in the case of assessee itself for A.Y. 2013-14 (supra), wherein the Tribunal in the identical facts and circumstances has decided the issue in favour of the assessee as under :

8. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below and with the assistance of the ld. Counsel for the assessee, we have considered the relevant documentary evidences brought on record in the form of paper book in the light of Rule 18(6) of the ITAT Rules, 1962. It is true that vide order dated 22.08.2014, the Hon'ble High Court of Delhi has sanctioned the Scheme of Amalgamation in respect of 8 transferors companies in which the assessee company is also a party as transferor company No. 4. This order of the Hon'ble High Court is exhibited at pages 8 to 17 of the assessee's paper book. In the said order of the Hon'ble High Court, at clause No. 13, the Hon'ble High Court mentions that:

"The Regional Director states that despite notice, the Income tax authorities have not raised any objection with regard to the scheme."

9. Exhibit 7 is copy of letter filed by the assessee with the office of the Deputy Commissioner, Income tax, Circle 21(2) dated 17.06.2015 by which the assessee has brought to the notice of the Deputy 6 Commissioner that the assessee company has since merged with M/s Sucon India Ltd and copy of the order of the Hon'ble High Court and form No. INC-28 were filed alongwith.

10. We find that the first notice u/s 143(2) of the Act was served on the assessee on 05.09.2014 whereas the assessee company already amalgamated in M/s Sucon India Ltd as per the order of the Hon'ble Jurisdictional High Court of Delhi dated 22.08.2014.

11. The findings of the CIT(A) that the actions of the AO are covered by the provisions of section 292B of the Act do not hold any water as the Hon'ble Jurisdictional High Court of Delhi in the case of M/s Spice Infotainment Ltd Vs. CIT reported in 247 CTR 500 [DEL] has held that:

“Once it is found that assessment is framed in the name of nonexisting entity, it does not remain a procedural irregularity of ht nature which could be cured by invoking the provisions of section 292V of the Act.”

12. The Hon'ble High Court further held that 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.

13. The Co-ordinate Bench of the Tribunal in the case of M/s Images Credit and Portfolio [P] Ltd in ITA Nos. 5301 to 5306 and ITA No. 5418/DEL/2013 dated 19.12.2014 on identical set of facts has held as under:

“6.2. The ratio of the above decision would be squarely applicable to the case of the assessee because the facts are identical. In the above mentioned case notice under Section 143(2) of the Act was sent to the company which was not in existence on the date of the issue of notice. Similarly in the case of the assessee notice under Section 153C was issued in the name of M/s Image Credit and Portfolio Pvt. Ltd. on 10th September,2010 when this company was not in existence. Therefore, the ratio of the decision of Hon'ble Jurisdictional High Court in the case of M/s Spice Entertainment Ltd. (supra) would be squarely applicable to the issue of notice under Section 153C in the case of the assessee. Whether the assessee intimated about the amalgamation before the issue of notice under Section 153C or not would not be relevant for deciding the issue of validity of the notice under Section 153C of the Act. Whether the assessee intimated or not the fact remains that M/s Images Credit and Portfolio (P) Ltd. ceased to exist after the approval of amalgamation by the Hon'ble Jurisdictional High Court i.e. 25th day of May,2010. Whether it is in the knowledge of the Revenue or not any notice issued in the name of a non existent person is a nullity. Therefore, we hold that the issue of notice under Section 153C of the Act on 10th September,2010 was void. It may be pointed out that on 19th November,2010 the assessee intimated to the Assessing Officer with regard to amalgamation of the assessee company with M/s Sainath Associates Pvt. Ltd. and also furnished a copy of the order of the Hon'ble Jurisdictional High Court. At that time the Assessing Officer could have issued the notice under Section 153C in the name of the transferor company i.e. M/s Sainath Associates Pvt. Ltd. However, the Assessing Officer instead of issuing notice in the name of transferor company chose to complete the assessment in the name of the assessee by simply mentioning in the Cause Title of the assessment order the fact of amalgamation. Considering the totality of the above facts and respectfully following the decision of Hon'ble Jurisdictional High Court in the case of M/s Spice Entertainment Ltd. we hold that the issue of notice under Section 153C in the name of M/s Image Credit and Portfolio Pvt.Ltd. on 10th September,2010 is void. Accordingly the same is quashed.

Once the notice issued under Section 153C has been quashed the assessment completed in pursuance to such notice also cannot survive and the same is also quashed.”

14. On a thoughtful consideration of the facts of the case in hand and in the light of the judicial decisions discussed hereinabove, we have no hesitation to hold that the assessment has been framed on a non-existing entity and, therefore, the assessment order has to be quashed. We order accordingly and set aside the findings of the CIT(A) by quashing the assessment order.

15. Since the assessment order has been held to be a nullity, we do not find it necessary to dwell into the merits of the case. Accordingly, the grounds raised by the assessee are allowed.”

7. Respectfully following the above decision of CO-ordinate Bench in the attending facts and circumstances of the case, we are of the opinion that the assessment order passed by the Assessing Officer is a nullity, having been passed against the non-existent entity. In view of this, the other issues on merits of addition become academic in nature and need not to be adjudicated upon.

8. In the result, the appeal is allowed.

Order pronounced in the open court on 25th October, 2018.

Sd/-

(Bhavnes Saini)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 25th October, 2018

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Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*