

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.4286 to 4287/DEL/2013
Assessment Year: 2004-05 & 2005-06

ACIT Circle – 1 (1), Room No./390, C. R. Building, I. P Estate, New Delhi	Vs	K. N. Guruswamy Oil Mills (P) Ltd., Industries Dharwad Pvt. Ltd., B-1, Khaitan House, Defence Colony, New Delhi-110024 PAN AACCT0343A
(APPELLANT)		(RESPONDENT)

Appellant by	Smt. Naina Soin Kapil, Sr. DR
Respondent by	Sh. Salil Kapoor, Advocate Ms. Somya Singh, Advocate

Date of hearing:	02/01/2019
Date of Pronouncement:	03/01/2019

ORDER

PER N. K. BILLAIYA, AM:

ITA No.4286/Del/2013 and 4287/Del/2013 are appeals by revenue directed against the order of the CIT (A), Hubli dated 26.04.2013 pertaining to A. Y. 2004-05 and 2005-06.

2. Since, FAA has decided these appeals by a consolidated order both these appeals were heard together and are disposed of by this common order for the sake of convenience.

3. The common grievance in both these appeals relate to the deletion of the addition made by the Assessing Officer while framing the Assessing order u/s 143 (3) r/w 147 of the Act.

4. Vide application dated 13.12.2014 the assessee filed an application under Rule 27 and the same read as under :-

“In the above noted appeal which is filed by the Revenue, the Respondent desires to support the order of the CIT(A) as per the provisions of Rule 27 of Appellate Tribunal Rules 1963 by way of following grounds which were also taken before the CIT(A):-

1. *That the notice issued U/s 148 r.w.s. 147 issued by the Assessing Officer is illegal, bad in law and without jurisdiction as the same been issued in the name of the non-existing entity.*
2. *That the assessment order passed u/s 143 (3) r.w.s. 147 in the name of the non-existing entity is illegal, bad in law and without jurisdiction and is liable to be quashed.”*

5. Since the issues raised vide afore mentioned application go to the root of the matter. We decided to proceed with the application under Rule 27.

6. The DR strongly opposed to the application made by the assessee under Rule 27 stating that this application is not maintainable. In support of her contention the DR relied upon a view judicial decision in her written submission.

7. We have given a thoughtful consideration to the objection raised by the DR and have carefully considered the judicial decisions relied upon by her. At the very outset we have to state that all the decisions relied upon by the DR are misplaced in as much as they are not relevant for the facts under consideration.

8. Rule 27 read “the respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.”

9. We find that before the FAA the assessee has raised, interalia, following ground :-

“1. That on facts and in law, the DCIT, Circle 3(1), Hubli (“Learned AO”) erred in completing the assessment u/s 147 of the Income Tax Act, 1961 (“the Act”) against KNG which is amalgamated with TAIL w.e.f. April 1, 2007 and ceased to exist at the initiation and completion of the assessment proceedings u/s. 147/148. Accordingly, the appellant pleads that the assessment proceedings against the non-existent entity are invalid and the order of the learned AO is void for lack of jurisdiction.”

And the FAA decided the same as under :-

I have gone through the facts of the case, contents of the assessment order and written submission of the assessee. The fact of merger of KNG with TAIL was never brought to the knowledge of the Assessing Officer, prior to issue of notice u/s 148. This fact was brought to notice during reassessment proceedings as KNG was merged with TAIL w.e.f. 01.04.2007.

But the proceedings initiated are for the period 01.04.2007. But the proceedings initiated are for the period 01.04.2003 to 31.3.2004 and not for the year starting from 01.04.2007. The decisions of the ITAT quoted by the assessee company are with regard to the proceedings initiated by the department subsequent to the period of amalgamation. Hence, the facts are inapplicable to the present case under consideration. The reassessment proceedings are initiated for the previous year relevant to assessment year 2005-06, for which KNG exists and the income has to be assessed in the hand of KNG.

10. We are of the considered opinion that the assessee has validly invoked under Rule 27.

11. There is no dispute that pursuant to the order of the Hon'ble High Court of New Delhi dated 08.09.2008 and 25.09.2008 KNG stands merged with TAIL w.e.f. 01.04.2007 and as such KNG has ceased to exist w.e.f. that date. This means that after the sanction of scheme of merger w.e.f. 01.04.2007 the appellant company ceases to exist w.e.f. 01.04.2007. Even if the assessee 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 u/s 148 was sent, the appellant company appeared and brought this fact to the knowledge of the Assessing Officer. He however did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of KN Guruswamy Oil Mills Limited 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.

12. Once it was 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 292 B of the Act. Section 292 B of the Act reads as under :-

“292 B. 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, 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. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 292 B 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 procedural irregularity but a jurisdictional defect as there cannot be any assessment against a ‘dead person’,

15. The order being framed in the name of a non existing person the same deserves to be quashed. We accordingly do so. The application under Rule 27 stands allowed and the appeal of the revenue stands dismissed.

Order pronounced in the open court on 03.01.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date:- .01.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	02.02.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	03.1.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	