

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI L.P. SAHU, A.M.

ITA.No.6789/Del./2015
Assessment Year 2009-2010

Unitech Wireless (North) Pvt. Ltd., (Through Unitech Wireless (Tamilnadu) Pvt. Ltd., Amalgamated Company), The Master Piece Building, Golf Course Road, Sector-54, Gurgaon.PAN AAGCA5054M	vs.	The DCIT, Circle-27(1), Room No.193 C.R. Building, New Delhi.
(Appellant)		(Respondent)

ITA.No.6790/Del./2015
Assessment Year 2009-2010

Unitech Wireless (Mumbai) Pvt. Ltd., (Through Unitech Wireless (Tamilnadu) Pvt. Ltd., Amalgamated Company), The Master Piece Building, Golf Course Road, Sector-54, Gurgaon. PAN AACCU9187B	vs.	The DCIT, Circle-27(1), Room No.193 C.R. Building, New Delhi.
(Appellant)		(Respondent)

ITA.No.6791/Del./2015
Assessment Year 2009-2010

Unitech Wireless (West) Pvt. Ltd., (Through Unitech Wireless (Tamilnadu) Pvt. Ltd., Amalgamated Company), The Master Piece Building, Golf Course Road, Sector-54, Gurgaon. PAN AACCV5440L	vs.	The DCIT, Circle-27(1), Room No.193 C.R. Building, New Delhi.
(Appellant)		(Respondent)

ITA.No.6788/Del./2015
 Assessment Year 2009-2010

Unitech Wireless (South) Pvt. Ltd., (Through Unitech Wireless (Tamilnadu) Pvt. Ltd., Amalgamated Company), The Master Piece Building, Golf Course Road, Sector-54, Gurgaon. PAN AAGCA4924Q	vs.	The DCIT, Circle-27(1), Room No.193 C.R. Building, New Delhi.
(Appellant)		(Respondent)

ITA.No.6793/Del./2015
 Assessment Year 2009-2010

Unitech Wireless (Delhi) Pvt. Ltd., (Through Unitech Wireless (Tamilnadu) Pvt. Ltd., Amalgamated Company), The Master Piece Building, Golf Course Road, Sector-54, Gurgaon. PAN AABCH9073N	vs.	The DCIT, Circle-27(1), Room No.193 C.R. Building, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri K.M. Gupta, Advocate & Shri Sheetal Bhatia, C.A.
For Revenue :	Shri Amit Katoch, Sr. D.R.

Date of Hearing :	11.02.2019
Date of Pronouncement :	15.02.2019

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by different Assesseees are directed against the different Orders of the Ld. CIT(A)-22, New Delhi, Dated 29th/30th December, 2015 for the A.Y. 2009-2010.

2. We have heard the Learned Representatives of both the parties and perused the material on record.

3. Learned Representatives of both the parties mainly argued in ITA.No.6791/Del./2015 and have submitted that the issue is same in remaining appeals and Order in this case may be followed in other cases. Therefore, for the purpose of disposal of all the appeals, we decide ITA.No.6791/Del./2015 as under.

ITA.No.6791/Del./2015 –Unitech Wireless (West) Pvt. Ltd., Gurgaon.

4. The facts of the case are that the A.O. passed the assessment order dated 28th March, 2013 under section 143(3) of the Income-Tax Act, 1961, in the name of “M/s. *Unitech Wireless (West) Pvt. Ltd.*,” and made certain

additions. The Ld. CIT(A) partly allowed the Appeal of the assessee.

5. The assessee has filed an application for admission of the following additional grounds :

“8. That, on the facts and circumstances of the case and in law, the assessment order framed under section 143(3) of the Income Tax Act, 1961 ('the Act') passed by the Ld. AO dated 28.03.2013 is beyond jurisdiction, bad in law and void ab initio.

8.1. That, on the facts and circumstances of the case and in law, the Ld. AO has erred in framing the assessment on a non-existent entity namely Unitech Wireless (West) Private Limited which was merged with Unitech Wireless (Tamilnadu) Private Limited, w.e.f. 01.04.2009 vide Hon'ble Delhi High Court Order on Scheme of Amalgamation dated 27.09.2010"

6. Learned Counsel for the Assessee submitted that the above Additional Grounds are purely legal in nature and all the facts in this regard are available on record. He has

submitted that the additional grounds being legal in nature goes to the very root to the jurisdiction of the A.O. to complete the assessment under section 143(3) of the Income Tax Act, 1961, in respect of an entity which ceased to exist w.e.f. 1st April, 2009 by the Judgment of the Honorable Delhi High Court on the Scheme of Amalgamation approved on 27th September, 2010, copy of which, is already available on record. Accordingly, the assessment so completed vide Order dated 28th March, 2013 is beyond the jurisdiction, bad in law and *void ab initio* because the assessment have been framed in the name of the assessee which ceased to exist. He has submitted that on earlier occasions to seek comment from the A.O. on the additional grounds as well as facts of the case, The ACIT, Circle-27(1), New Delhi (A.O.) in his first report Dated 18th September 2017, has confirmed the fact of amalgamation on the request of the Ld. D.R. Copy of which is available on record. Ld. D.R. was also directed to produce record and in the alternative, remand report was called-for, for verification of the letter Dated 28th December, 2010 filed by the assessee along with the

assessment record for ascertaining the fact that whether the said intimation regarding amalgamation has been filed with the A.O. before conclusion of the assessment proceedings. Vide letter Dated 15th December, 2017, the ACIT, Circle-27(1), New Delhi submitted the report in which he has accepted that the letter Dated 28th December 2010 is available on record and information of the amalgamation is duly provided by the assessee in its letter Dated 28th December, 2010, filed on 1st February, 2011. Copy of the same is also available on record. Learned Counsel for the Assessee, therefore, submitted that it is undisputedly evident that as on that date, the assessee-company is non-existent and the assessment is framed on a non-existent entity. In this regard, he has relied upon the following decisions.

- (i) Pr. CIT vs. SC Johnson Products Pvt. Ltd., ITA.No.673/2016 (Del.) (HC).
- (ii) CIT vs. Micra India (P.) Ltd., (2015) 231 Taxman 809 (Del.) (HC).
- (iii) CIT vs. Dimension Apparels (P.) Ltd., (2014) 370 ITR 288 (Del.) (HC).

- (iv) Spice Entertainment Ltd., vs. CIT ITA.No.475 of 2011 (Del.) (HC).
- (v) CIT, New Delhi vs. Spice Infotainment Ltd., Civil Appeal No.285 of 2014 (SC).
- (vi) Pampasar Distillery Ltd., vs. Addl. CIT (2007) 15 SOT 331 (Kol.) (ITAT).
- (vii) Maruti Suzuki India Ltd., vs. DCIT (2016) 72 taxmann.com 164 (Delhi-ITAT).
- (viii) Maruti Suzuki India Ltd., vs. DCIT (2017) ITA.No.902/Del./2017 (Delhi-ITAT).
- (ix) Siemens Technology Services Private Limited vs. ACIT - ITA.No.6313/Mum./2012 (Mumbai-ITAT).
- (x) SC Johnson Products Pvt. Ltd., vs. DCIT ITA.No.501/Del./2010 (Delhi-ITAT).

6.1. Learned Counsel for the Assessee, therefore, submitted that since the assessee-company merged with United Wireless (Tamilnadu) Pvt., Ltd., w.e.f. 1st April, 2009 as per Judgment of the Hon'ble Delhi High Court on the Scheme of Amalgamation, therefore, the assessment framed in the name of assessee-company, is bad in law, illegal and

assessment is nullity. He has relied upon decision of the Honorable Supreme Court in the case of National Thermal Power Co. Ltd., vs., CIT 229 ITR 383 (SC) in which it was held that “the Tribunal has jurisdiction to examine the question of law which arose from the facts as found by the lower authorities and having a bearing on the tax liability of the assessee.

7. On the other hand, the Ld. D.R. submitted that nothing has prevented the assessee from raising the additional ground before Ld. CIT(A). The Scheme of Amalgamation was within the knowledge of assessee, therefore, he should have raise this point before the authorities below. Ld. D.R. relied upon the decision of the Hon’ble Supreme Court in the case of Addl. CIT vs. Gurjargravvres P. Ltd., (1978) 111 ITR 1 (SC) in which it was held as under :

“Held reversing the decision of the High Court, that, as neither was any claim made before the Income-tax Officer regarding the relief under section 84 nor was there any material on record in support thereof, and from the mere fact that such a claim had been allowed

in subsequent years it could not be assumed that the prescribed conditions justifying a claim for exemption under section 84 were also fulfilled, the Tribunal was not competent to hold that the Appellate Assistant Commissioner should have entertained the question of relief under section 84 or to direct the Income-tax Officer to allow the relief”.

8. We have considered the rival submissions. The additional grounds raised by the assessee goes to the root of the matter and all the facts are available on record. It is legal in nature and challenge the jurisdiction assumed by the A.O, in the case of assessee which was non-existent on the date of assessment order. Therefore, following the decision of the Honourable Supreme Court in the case of National Thermal Power Co. Ltd., (supra), we admit the additional grounds of appeal for disposal of the appeal.

9. In the present case, the A.O. passed the assessment order under section 143(3) Dated 28th March, 2013 in the name of assessee “*United Wireless (West) Pvt. Ltd.*” The assessee filed letter Dated 28th December, 2010 before A.O. intimating therein that pursuant to the Scheme

of Amalgamation sanctioned by the Honorable Delhi High Court vide its Order Dated 27th September, 2010, assessee United Wireless (West) Pvt. Ltd. has got amalgamated with Unitech Wireless (Tamilnadu) Pvt. Ltd., w.e.f. 1st April, 2009. It was also submitted that the Company has filed consolidated income-tax return of the amalgamated company and copy of the Judgment of the Hon'ble Delhi High Court was attached with the said letter. The report from the A.O. was called-for and the A.O. vide letter Dated 15th December, 2017 confirmed that the aforesaid letter of the assessee Dated 28th December, 2010 available on record. The A.O. in its further letter Dated 18th September, 2017 also intimated that all the above assesseees pursuant to the Scheme of Amalgamation approved by the Honorable Delhi High Court vide Judgment Dated 27th September, 2010 have merged with United Wireless (Tamilnadu) Pvt. Ltd., w.e.f. 1st April, 2009. These facts, therefore, clearly prove that assessee is a non-existent company on the date of assessment order and has intimated the A.O. about amalgamation with another Company. But, the A.O. just

framed the assessment order in the name of a non-existing entity i.e., Unitech Wireless (West) Pvt. Ltd. These facts, therefore, proves that the assessment in the present case was finalized in respect of non-existent entity. Originally assessee Unitech Wireless (West) Pvt. Ltd., pursuant to the Scheme of Amalgamation has ceased to exist and was amalgamated with Unitech Wireless West (West) Pvt. Ltd. The fact of the amalgamation was brought to the notice of the A.O. even prior to the finalisation of the assessment. Even then, the A.O. framed the assessment in the name of a non-existent entity. Nothing prevented the A.O. from substituting the original entity with the amalgamated company once the intimation to that effect was given to the assessee. The decisions relied upon by Learned Counsel for the Assessee squarely apply to the facts and circumstances of the case. We are, therefore, of the view that the assessment framed in the name of a non-existent entity is bad in law, illegal and assessment is nullity in the eye of Law. We, accordingly, set aside the Orders of the

authorities below and quash the impugned orders. Resultantly, all additions stand deleted.

10. In the result, ITA.No.6791/Del./2015 of the Assessee is allowed.

ITA.No.6789/Del./2015 & ITA.No.6790/Del./2015 :

ITA.No.6788/Del./2015 & ITA.No.6793/Del./2015 :

11. In the above appeals the issue is same. The Ld. D.R. however, contended that the letter of the assessee Dated 28th December, 2009 as given in the case of United Wireless (West) Pvt. Ltd., is not available in his record. But, it is a fact that the Scheme of Amalgamation as approved by the Honorable Delhi High Court was in respect of all the above Assesseees and that it is also a fact that the Judgment of the Hon'ble Delhi High Court was supplied to the A.O. along with letter Dated 28th December, 2010. Therefore, Department was aware of the fact that assesseees have got merged with other Company pursuant to the Amalgamation Scheme. The issue is, therefore, same as is considered in ITA.No.6791/Del./2015. Following the same order hereinabove, we hold that assessment orders in these cases

in the name of non-existent entities are bad in law, illegal and assessment orders are nullity. We, accordingly, set aside the orders of the authorities below and quash the assessments. Resultantly, all the additions in these appeals are stand deleted.

12. In the result, ITA.Nos.6789, 6790, 6788 & 6793/Del./2015 of the Assesseees are allowed.

13. To sum-up, all the appeals of different Assesseees are allowed.

Order pronounced in the open Court.

Sd/-
 (L.P. SAHU)
 ACCOUNTANT MEMBER

Sd/-
 (BHAVNESH SAINI)
 JUDICIAL MEMBER

Delhi, Dated 15th February, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "A" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.