

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 6255/Del/2015
(Assessment Year: 2007-08)**

ACIT, Central Circle- 15, New Delhi.	Vs.	M/s Mayank Traders Pvt. Ltd., A-9/20, 2 nd Floor, Vasant Vihar, Delhi-110057.
PAN No: AADCM3643D		
APPELLANT		RESPONDENT

Revenue by : Shri J.K. Mishra, CIT (DR)
Assessee by : Shri B.K. Dhingra, FCA

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-XXVI, New Delhi-110092, ["Ld. CIT(A)", for short] dated 28th September, 2015 for Assessment Year 2007-08. The grounds of appeal are as under:

- "1. *That the CIT(A) has erred in facts and in law in relying upon the decision of High Court in assessee's case for A.Y. 2002-03 to 2006-07 in holding that the order u/s 153A of the Act is invalid on the ground that no notice u/s 153A was issued to the amalgamating company without considering*

the fact that the amalgamation was not approved by the Hon'ble HC on the date when the notice u/s 153A was issued to the assessee company.

2. *That the CIT(A) has erred on facts and in law in holding that no order can be passed against an entity that had ceased to exist on the date of order even in a case where the jurisdiction was validity assumed prior to the amalgamation order by way of notice u/s 153A of Act.*
3. *That the CIT(A) has erred on facts and in law in allowing the appeal of the assessee without appreciating the factual position that the assessee company had filed its return in the name of Mayank Traders Pvt. Ltd. even after the amalgamation order of Hon'ble High Court.*
4. *That the CIT(A) has erred on facts and in law in allowing the appeal of the assessee without considering that assessee had continued to correspond with the AO in the name of Mayank Traders Pvt. Ltd. even after its amalgamation with OPRL vide Hon'ble HC order dated 18.10.2010.*
5. *That the CIT(A) has substantially erred in allowing the appeal of the assessee without independently verifying the facts of the instant case being a fact finding authority as mandated by the jurisdictional HC. [CIT vs. Chetandas Lachman Das & CIT vs. Jansampark Advertising Pvt. Ltd.]*
6. *That the CIT(A) has erred on facts and in law in allowing the appeal of the assessee without considering that the duly made additions/disallowance are to be brought to tax as per the provisions of the Act.*
7. *That without prejudice the CIT(A) has erred on facts and in law in allowing the appeal of the assessee without appreciating that the passing of assessment order in the name of assessee company was only a procedural defect and does not vitiate the assessment proceedings as a whole.*
8. *(a) The order of the CIT(A) is erroneous and not tenable in law and on facts.*
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

(2) The core issue in the present appeal before us is whether the Assessment Order passed by the Assessing Officer ("AO", for short) is valid in law. The Assessee Company was amalgamated with 'Optus Promoters Private Limited' vide order dated

08.10.2010 of Hon'ble High Court of Delhi, passed U/s 391 and 394 of the Companies Act, 1956. Intimation regarding the amalgamation was filed before the AO vide letter dated 22.11.2010. Once again another intimation was sent to the AO vide letter dated 02.12.2010, requesting the AO to note the amalgamation and to issue notices in the name of the transferee company. However, the AO passed Assessment Order dated 31.12.2010 in the case of M/s Mayank Traders Pvt. Ltd., although it had ceased to exist as a result of its amalgamation with 'Optus Promoters Private Limited'. The Assessee has disputed the validity of the Assessment Order passed in the case of M/s Mayank Traders Pvt. Ltd., which had ceased to exist on the date of the assessment order, as a result of its amalgamation with 'Optus Promoters Private Limited'.

(3) In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), the Assessee had filed written submissions, the relevant portions of which is reproduced as under:

"It informed to the AO on 22.11.2010, about the fact of the amalgamation that the Assessee Company was amalgamated with 'Optus Promoters Private Limited', vide Hon'ble High Court of Delhi's order dated 08.10.2010, u/s. 391 and 394 of the Companies Act, 1956 and filed the intimation dated 08.10.2010 (Page No. 1). It again informed to the AO about the fact of the amalgamation on 02.12.2010 (Pages Nos. 2 to 24) and requested to initiate the proceedings in the name of the transferee company.

In aforesaid connection, it is hereby brought to your kind notice that Hon'ble ITAT had already passed an order dated 28.11.2014, in favour of the assessee company, in ITA Nos. 5307, 5308/Del/2013 and 2356, 2357/Del/2014 (Pages Nos. 25 to 32).

The above-said decision of Hon'ble ITAT have already been upheld by Hon'ble High Court of Delhi vide order dated 20.08.2015 in ITA Nos. 466,467,470, 471 & 477/2015 (Pages Nos. 33 to 37).

"Held: Para 5: Recently this court has in an order dated 19th August, 2015 in ITA No. 582 of 2015 (PCIT vs. Images Credit and Portfolio Pvt. Ltd.) held that

proceedings under section 153C could not be initiated against an entity that has ceased to exist at the relevant time. Similarly, by order dated 3rd August, 2015 in ITA No. 475/2000 [Spice Entertainment Ltd. Vs. CIT] it was held by this court that the defect of passing an assessment order in respect of an entity that has ceased to exist on the date of such order, could not be treated as a mere procedural defect. The mere fact that the Respondent communicated to the AO, prior to the Assessment order and subsequent notice, in its name without disclosing the fact of amalgamation with OPPL, will not cure the fundamental defect of the assessment having been framed against an entity that had ceased to exist in the eye of law.

Para 6: Consequently, the impugned Common order of the ITAT following the decision of this Court in Vivid Marketing Services Pvt. Ltd. (supra) does not call for interference. No substantial question of law arises. The appeals are dismissed.”

The assessee company's submissions of amalgamation are covered in favour of assessee/respondent company of Hon'ble Delhi ITAT's decision.

- *In the case of 'Images Credit and Portfolio Pvt. Ltd. vs. ACIT, in ITA nos. 5301 to 5306/Del/2013 [order dated 19.12.2014] (**Pages Nos. 38 to 44**). This order already has been upheld by Hon'ble High Court of Delhi vide order dated 19.08.2015 (**Pages Nos. 45 to 50**).*
- *In the case of 'ACIT vs. Micra India Pvt. Ltd.', I.T.A. Nos. 1060 to 1065/Del/2012 (order dated 21.09.2012).*
- *In case of 'ACIT vs SPN Milk Products Industries Pvt. Ltd.', I.T.A. Nos. 565 to 570/Del/2012 (order dated 22.03.2013)*
- *In case of 'ACIT vs. Dimension Apparels Pvt. Ltd.', I.T.A. Nos. 571 to 576/Del/2012 (order dated 22.02.2013)*
- *In case of 'ACIT vs. Chanakaya Exports Pvt. Ltd.', ITA Nos. 539 to 544/Del/2012 (order dated 19.07.2013)*

Reliance is made on the following judgments:-

- *Delhi High Court's order in the case of '**CIT vs. Vivid Marketing Servicing Pvt. Ltd.**', ITA No. 273 of 2009 (Page No. 51).*
- *Delhi High Court's order in the case of '**Spice Entertainment Ltd. vs. CIT, ITA No. 475 of 2011**', dated 03.08.2011 (Pages Nos. 52 to 64).*

Hope above is found in order to dismiss the revenue's appeal.”

(3.1) The Assessee also filed a **Paper Book** containing following particulars:

- "1. *Copy of letter dated 22.11.2010, intimated by the assessee company that the assessee company stands amalgamated with 'Optus Promoters Private Limited', vide Hon'ble High Court of Delhi's order dated 08.10.2010.*
2. *Copy of letter dated 02.12.2010, intimated by the assessee company that the assessee company stands amalgamated with 'Optus Promoters Private Limited', vide Hon'ble High Court of Delhi's order dated 08.10.2010 (copy of order attached)*
3. *Copy of decision dated 28.11.2014 of ITAT, Delhi Benches, in the case of 'Mayank Traders Pvt. Ltd. vs. ACIT': ITA No. 5307.5308/Del/2013 & 2356 & 2357/Del/2014.*
4. *Copy of the decision dated 20.08. 2015 of High Court of Delhi, in the case of 'CIT vs. Mayank Traders Pvt. Ltd.' : ITA no. 466,467, 470, 471 and 477/2015*
5. *Copy of the decision dated 19.12.2014 of the ITAT, Delhi Benches, in the case of 'Images Credit and Portfolio Pvt. Ltd.': ITA No. 5301 to 5306/Del/2013*
6. *Copy of the decision dated 19.08.2015 of the Hon'ble High Court of Delhi, in the case of 'Pr. CIT vs Images Credit and Portfolio Pvt. Ltd.': ITA No 582,584, 431, 533, 432 & 433 of 2015*
7. *Copy of the decision of the Delhi High Court in the case of 'Spice Entertainment Ltd. v. CIT' ITA No. 475 of 2011 dated 03.08.2011. This decision of High Court of Delhi is upheld by Hon'ble Supreme Court of India."*

(4) At the time of hearing before us, the Ld. Counsel for assessee submitted, at the outset, that the issue in dispute is covered by order of Co-ordinate Bench of ITAT, Delhi in Assessee's own case vide order dated 28.11.2014 in ITA Nos. 5307, 5308/Del/2013 & 2356 & 2357/Del/2014 for Assessment Years 2005-06, 2006-07, 2003-04 & 2004-05 respectively. At paragraph no. 8 of the aforesaid order dated 28.11.2014 of Co-ordinate Bench of ITAT (Delhi), it was held, following the decision in the case of **CIT vs. Vived Marketing Services Pvt. Ltd. in ITA No. 273 of 2009** , that the Assessment Order passed on the amalgamated company is not amenable to assessment

proceedings. The Ld. Counsel for Assessee further submitted that the aforesaid order dated 28.11.2014 of Co-ordinate Bench of ITAT, Delhi has also been upheld by order of Hon'ble Delhi High Court copies whereof were already filed by assessee in the **Paper Book**. The Ld. CIT(DR) fairly conceded that the issue in dispute is covered in assessee's favour by the aforesaid orders of Co-ordinate Bench of ITAT, Delhi and Hon'ble High Court of Delhi in assessee's own case. Respectfully following these orders; we also decide the issue in assessee's favour and hold that the Assessment Order passed on the amalgamated company is not amenable to the assessment proceedings. Accordingly the Assessment Order framed by the AO is hereby annulled.

(5) In the result, appeal of Revenue is dismissed for statistical purposes.

Order pronounced in the open court on 27th day of February, 2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 27.02.2019
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	25/02/19
Date on which the typed draft is placed before the dictating Member	27 /02/19
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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	