

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 1637/Del/2018
Assessment Year 2008-09

Galaxy Technosys Pvt. Ltd. S-197, Greater Kailash Part-II, New Delhi - 110 048 PAN AADCG2817R	Vs.	ITO, Ward-10(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Ms. Sangeeta Singh, CA Ms. Kanishka Aggarwal, CA
Department by :	Shri S.L. Anuragi, Sr. DR
Date of Hearing	08/01/2019
Date of pronouncement	25/03/2019

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 7.12.2017, passed by Ld. CIT(Appeals) 35, New Delhi for the quantum of assessment passed u/s 147/143(3). In various grounds of appeal the assessee has challenged the assessment of reopening u/s 147 and addition of Rs. 5 lac made u/s. 68 by the AO.

2. The facts in brief are that Assessee Company was incorporated on 23.9.2006 and during the year it has received share application money from, M/s. Shalini Holding Ltd. for Rs. 5 lacs. The return of income was filed at nil income on 23.9.2009 which was duly processed u/s 143(1). Later on the basis of information received for DIT Investigation, New Delhi that assessee has taken a sum of Rs. 5 lacs

in share application money from Shalilni Holding Ltd. which belongs to Shri S.K.Jain group co- entry provider, accordingly, notice u/s 148 was issued on 11.9. 2014 addressed in the following manner :-

M/s. Galaxy Technosys Pvt. Ltd.

811, Naurang House, New Delhi – 110 001

2. Before us the Ld. Counsel for the assessee had stated that, firstly assessee has filed all the confirmation letter, bank statement, acknowledgment of ITR, balance sheets of the share applicant company and also requested the AO to cross examine, Shri S.K. Jain on the basis of which proceeding u/s 147 has been initiated. He also submitted that Ld. AO had not even provided the copy of “reasons to believe” except for Annexure –A, which was given, but that too was not approved by Addl. CIT. Apart from that, during the course of the assessment proceedings, Director of Shalini Holding Ltd. was produced before the AO, whose statement was recorded on 28.1.2015, but nowhere the AO and Ld. CIT (A) has even mentioned the same in the assessment order. This thing was again brought to the notice of the Ld. CIT (A) who again has not even referred to his statement. Another important fact brought on record by the Ld. Counsel was that, the assessee company had ceased to exist, w.e.f. 5.6.2013; and in support, assessee has duly filed the copy of master data wherein assessee’s name has been struck off. This was specifically communicated to the AO vide letter dated 21st March, 2016. However, AO despite such communication has passed assessment order in the name of non existing entity which is bad in law. Again this fact was reiterated before the Ld. CIT(A), who in the impugned order has even incorporated the said notices and undertaking made by the Registrar of the Company to the Income Tax Department. Thus, entire

assessment order is void ab initio and cannot be sustained. In support she relied upon following judgments:-

“1. Hari Prasad Jayantilal & Co. v. V.S. Gupta, Income Tax Officer SUPREME COURT OF INDIA [1966]59 ITR 794 (SC)

Held That:

Dissolution is a stage subsequent to the winding up or liquidation, the end of the existence of the company. Till dissolution, the corporate existence continues. It follows, per contra, that once a company is dissolved, its corporate existence comes to an end and is no longer in existence

2. Commissioner of Income Tax v. Express Newspaper Ltd. SUPREME COURT OF INDIA[1964]53 ITR 250 (SC)

Held That:

A company can be assessed so long as it exists. No assessment can be made on a company after its name is struck off register of companies.

3. Commissioner of Income Tax-III v. Dimension Apparels (P.) Ltd

HIGH COURT OF DELHI [2014]52 Taxmann.com 356 (Delhi)

Held That:

Section 292B of the Income-tax Act 1961 - Return of income not to be invalid on certain grounds (Assessment of non-existent entity) - Assessment years 2003-04 to 2008-09 - Whether assessment on a company which has been dissolved/amalgamated under sections 391 and 394 of Companies Act 1956 is invalid - Held, yes - Whether framing assessment on a non-existent entity is a jurisdictional defect which cannot be cured under section 292B - Held, yes - whether participation by amalgamated company in assessment proceedings would cure such defect - Held, no [Paras 16, 19 & 22] [In favour of assessee]

4. Impsat (P.) Ltd. v Income-tax Officer IN THE ITAT DELHI BENCH: 'A' (2004) 91 ITD 354 (DELHI)

Held that

Section 176 of the Income-tax Act, 1961, read with section 560 of the Companies Act 1956 -Business discontinued - Assessment year 2001-2002 - Whether when company itself is dissolved under section 560 of the Companies Act 1956 and became extinct it cannot be considered to be a case of 'discontinuance' of business and section 176 is, therefore, not attracted - Held, yes - Whether in absence of any provision in Act to assess a company that has been dissolved and, thus, ceased to exist, no assessment order can be made against it by Assessing Officer - Held, yes - Whether absence of a provision enabling Assessing Officer to do so cannot be supplied by assessee by merely filing a return and participating in proceedings - Held, yes

5. Commissioner of Income-tax v. Micron Steels (P.) Ltd.

HIGH COURT OF DELHI [2015} 59 taxmann.com 470 (Delhi)

Held that

Where subsequent to search Assessing Officer issued notice under section 153C to assessee-company as by that time assessee was already amalgamated into another company as completion of assessment in respect of a non-existent company was a nullity and also same could not be cured under section 292B.

6. Maruti Suzuki India Ltd. v DCIT Circle-16 (1), New Delhi

IN THE ITAT DELHI BENCH'1-1' [2016} 72 taxmann.com 164 (Delhi - Trib.)

Held that

Where a company had already amalgamated with assessee, assessment framed by Assessing Officer on said company which was not in existence on date of passing assessment order, was not valid.

7. Images Credit & Portfolio (P.) Ltd. v. Assistant Commissioner of Income-tax IN THE ITAT DELHI BENCH'C' [2015) 60 taxmann.com 308 (Delhi - Trib.)

Where assessee company ceased to exist after date of approval of its amalgamation with another company, issuance of notice under section 153C in name of non-existing company was void and, hence, same was to be quashed."

3. On the other hand Ld. DR submitted that, when at the relevant assessment year assessee has received share application money, Assessee Company was in existence and assessment order passed in the case of non existing company is mere procedural irregularities. Here in this case based on definite information, which was unearthed by the investigation wing during the course of search /survey in the case of Shri S.K. Jain Group, it was gathered that assessee was beneficiary of accommodation entry of share application money, and accordingly, assessee's case was reopened and assessment has been made accordingly. Therefore, such an assessment for reopening is not only valid and also addition made therein needs to be sustained.

4. I have considered the rival submissions and perused the relevant finding during the impugned order as well as material referred to before me. One of the main legal contention raised is, that the initiation of proceedings u/s 147 and consequently assessment order framed u/s 147/143(3) is void ab initio as the assessee company has ceased to exist since November, 2013 and therefore, any subsequent proceedings on such non existing company have no legal basis. On the perusal of material placed on record which is even borne out from the appellate order, specifically from pages 12 to 20, it is seen that Registrar of Company had issued a notice u/s 560(3) of the Companies Act on 27.6.2013, which was forwarded to the Chief Commissioner of Income Tax that the Company, 'M/s. Galaxy Technosys Private Limited' will be struck off from the register and such company will be dissolved. Another notice/undertaking was sent vide intimation dated 9.11.2013 by Registrar of Company to the Income Tax Department, specifically intimating that 'Galaxy Technosys Private Ltd.' has been struck off from the register and the said company is dissolved. Again this information was given to the AO

during the course of the assessment proceedings by the assessee vide letter dated 21st March, 2016 which reads as under :-

*“To,
The Income Tax Officer
Ward 10(1),
New Delhi.
Reg: M/s Galaxy Technosys Pvt. Ltd .
S-197, Greater Kailash, Part-II, New Delhi.
Assessment Year 2008-09 PAN AADCG2817R*

*Dear Sir,
That the case of above noted company for the A. Y. 2008-09 was selected for scrutiny u/s 148 on dated 20-08-2014. In this connection it is submitted that the company had already closed on 05-06-2013 and a communication in this regard dated 09.11.2013 is enclosed. The present status of the company as downloaded on 22-03-2016 shows that the company have been strike off on 09-11-2013. A photo state copy of both the letters are enclosed. No assessment of a closed company whose name have been strike off by registrar of company can be made. Any assessment made will be illegal.”*

5. Despite communications by the Registrar of the Company to the department and again by the Company before the AO and Ld. CIT (A), it is very surprising to see that none of the authorities have addressed this issue, as to how the assessment can be passed in the case of non existing entity which was dissolved much prior of initiation of provision u/s 147/148. Hon’ble Delhi High Court in the case of **Spice Infotainment Ltd. vs CIT reported in (2012) 247 CTR 500**, has held that assessment in the name of the company which has been amalgamated with another company and stood dissolved is null and

void and assessment framed in the name of a non existing entity is a jurisdictional defect and not merely a procedural irregularity of the nature which can be cured by invoking the provision of section 292B. Similarly this principle was reiterated in the subsequent judgment by the Delhi High Court in the case of **CIT vs. Dimension Apparels (P) Ltd. (2015) 370 ITR 288**, wherein the Hon'ble High Court held that order of assessment on a company which cease to exist is not a procedural irregularity which can be cured by section 292B. In another judgment in the case of **PCIT vs. BMA Capfin Ltd. (2018) 100 taxman.com 329 Delhi**, the Hon'ble Jurisdictional High Court, following the aforesaid judgments have quashed the assessment. This later judgment has also been affirmed by the Hon'ble Supreme Court by way of SLP, whereby the SLP has been dismissed vide order dated 19th November, 2018. Even in the judgments relied upon by the Ld. Counsel before me, which was also stated and relied upon before the Ld. CIT (A), similar preposition has been laid down. Thus, going by the principle and ratio laid down by the Hon'ble Delhi High Court, it is quite ostensible that assessment order cannot be passed in the case of non existing company especially when this has been brought to the knowledge of the department.

6. However there is one judgment of Hon'ble Delhi High Court in the case of **Sky Light Hospitality LLP vs. ACIT (2018) 405 ITR 296**, wherein Hon'ble High Court on the issue of notice u/s 148 which was addressed to an erstwhile Private Limited which has ceased to exist and was converted into LLP, it was observed that it will not invalidate the reassessment proceedings and the same was not a jurisdictional error but irregularity and procedural laps which could be cured u/s 292B. In the case before the Hon'ble Court the issue pertains to notice u/s 148 addressed to the erstwhile company. However, it was not a case that where the assessment order was passed in the case of the

non existing entity. This distinction has been made clear by the Hon'ble High Court in para 18 in the following manner:-

“18. Petitioner relies on Spice Infotainment Ltd. v. CIT [2012] 247 CTR 500 (Delhi). Spice Corp. Ltd., the company that had filed the return, had amalgamated with another company. After notice under Section 147/148 of the Act was issued and received in the name of Spice Corp. Ltd., the Assessing Officer was informed about amalgamation but the Assessment Order was passed in the name of the amalgamated company and not in the name of amalgamating company. In the said situation, the amalgamating company had filed an appeal and issue of validity of Assessment Order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Section 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal.”

7. Thus, here in this case assessment framed by the AO on company which was non existing on the date of the passing of the order is not valid assessment which deserves to be quashed.

8. In the result appeal of the assesee is allowed.

Order pronounced in the open court on 25th March, 2019.

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 25/03/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi