

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.487/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Vidharbha Konkan Gramin Bank,
(Successor to erstwhile Wainganga
Krishna Gramin Bank), Chandraprastha,
2nd and 3rd Floor, Plot No. 6, Deendayal Nagar,
Ring Road, Nagpur - 440022

PAN : AAAAW1419N

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle - 2, Solapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri C. Naresh
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 18-03-2019

घोषणा की तारीख / Date of Pronouncement : 03-06-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Pune dated 25-10-2016 for the assessment year 2011-12. The assessee in appeal has challenged the

validity of ex-parte assessment order dated 11-03-2014 made in the name of non-existent assessee.

2. Shri C. Naresh appearing on behalf of the assessee submitted that the assessee is a Co-operative Bank and is a successor to erstwhile 'Wainganga Krishna Gramin Bank'. Wainganga Krishna Gramin Bank filed return of income for the assessment year 2011-12 on 24-09-2011. During the pendency of assessment proceedings, Wainganga Krishna Gramin Bank merged with Vidharbha Konkan Gramin Bank. The notification in this regard was made by Ministry of Finance, Government of India on 28-02-2013. A copy of notification is at pages 3 to 6 of the paper book. An intimation was sent to the Assessing Officer regarding amalgamation of Wainganga Krishna Gramin Bank with Vidharbha Konkan Gramin Bank on 08-11-2013. The said communication is at page 7 of the paper book. Thereafter, notice u/s. 142(1) of the Act was issued by the Assessing Officer on 09-12-2013 in the name of Wainganga Krishna Gramin Bank. The assessee again vide communication dated 20-12-2013 informed the Assessing Officer that Wainganga Krishna Gramin Bank amalgamated with Vidharbha Konkan Gramin Bank. The said communication is at page 9 of the paper book. Vide same communication the assessee requested to transfer the case from Solapur to Nagpur as the head office of the bank was shifted to the Nagpur. However, no action whatsoever was taken on the request of the assessee and the Assessing Officer issued another notice u/s. 144 of the Act in the name of erstwhile Wainganga Krishna Gramin Bank. The said notice is at page 10 of the paper book. Finally, the Assessing Officer made assessment order u/s. 144 in the name of non-

existing assessee i.e. Wainganga Krishna Gramin Bank. The ld. AR submitted that the assessment order made in the name of non-existing assessee is bad in law and is unsustainable. To support his contentions the ld. AR placed reliance on the following decisions :

- i. Commissioner of Income Tax Vs. Dimension Apparels (P.) Ltd., 52 taxmann.com 356 (Delhi);
- ii. Sapiant Consulting Limited Vs. DCIT in ITA No. 1728/DEL/2014 for assessment year 2009-10 decided on 23-11-2015.

2.1 The ld. AR pointed that the assessee had challenged validity of assessment order in the name of non-existent assessee before Commissioner of Income Tax (Appeals). The First Appellate Authority without appreciating the facts/documents on record and the law laid down by Hon'ble Delhi High Court dismissed the contentions of assessee on legal issue.

3. On the other hand Shri Pankaj Garg representing the Department vehemently defended the impugned order. The ld. DR submitted that the return was filed in the name of Wainganga Krishna Gramin Bank and hence, the assessment was made in the name of aforesaid bank. The assessee failed to submit copy of notification vide which Wainganga Krishna Gramin Bank was merged with Vidharbha Konkan Gramin Bank. Therefore, the Assessing Officer was right in making assessment in the name of Wainganga Krishna Gramin Bank.

4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal has challenged the validity of assessment order on jurisdictional issue. The contention of the assessee is that the assessment has been made in the name of non-existing entity. The sequence of events that have emerged from the documents on record are tabulated hereunder :

Date	Events
24-09-2011	Wainganga Krishna Gramin Bank filed return of income.
28-02-2013	Wainganga Krishna Gramin Bank amalgamated with Vidharbha Konkan Gramin Bank by Ministry of Finance, Government of India notification.
08-11-2013	The assessee (Vidharbha Konkan Gramin Bank) informed the Assessing Officer that Wainganga Krishna Gramin Bank has been amalgamated with Vidharbha Konkan Gramin Bank, since, the headquarter of the assessee is located at Nagpur the case be shifted to Nagpur.
09-12-2013	Notice u/s. 142(1) issued to the assessee in the name of Wainganga Krishna Gramin Bank.
20-12-2013	The assessee again informed the Assessing Officer about amalgamation of erstwhile Wainganga Krishna Gramin Bank with Vidharbha Konkan Gramin Bank and also requested for shifting assessment to Nagpur.
05-03-2014	Notice u/s. 142(1) r.w.s. 144 issued by the Assessing Officer in the name of Wainganga Krishna Gramin Bank.
11-03-2014	Assessment order u/s. 144 passed by Assessing Officer in the name of Wainganga Krishna Gramin Bank.

5. It is a well settled law that the assessment cannot be made in the name of dead person or dissolved/amalgamated company. In the present case, the assessee had informed about amalgamation of Wainganga

Krishna Gramin Bank with Vidharbha Konkan Gramin Bank well before the passing of assessment order. Despite having information about amalgamation of Wainganga Krishna Gramin Bank with Vidharbha Konkan Gramin Bank, the Assessing Officer issued notice u/s. 142(1) in the name of non-existent entity. Thereafter, the Assessing Officer proceeded on to make assessment order in the name of non-existent entity by invoking the provisions of section 144 of the Act. The documents on record clearly indicate that the assessee had informed the Assessing Officer on two occasions i.e. first time on 08-11-2013 and again on 20-12-2013 regarding amalgamation of Wainganga Krishna Gramin Bank with Vidharbha Konkan Gramin Bank. The assessee had discharged its onus of intimating the Assessing Officer regarding fact of amalgamation. After the notification by Ministry of Finance on 28-02-2013 Wainganga Krishna Gramin Bank ceases to exist. However, the Assessing Officer completely ignored the communications from assessee and proceeded on to make assessment in the name of Wainganga Krishna Gramin Bank. Since, the assessment has been made in the name of non-existent entity, the same is invalid.

6. The Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Dimension Apparels (.) Ltd. (supra) has held that the assessment made on dissolved/amalgamated company is invalid. Even if amalgamating company participated in the assessment proceedings, the jurisdictional defect is incurable and the provisions of section 292B cannot validate the same. Thus, in view of the facts of the case and the well

settled law, we find merit in the contention of the assessee. Accordingly, the impugned order is set aside and the appeal of assessee is allowed.

7. Since, the assessee succeeds on legal issue, raised in grounds of appeal Nos. 1 and 2, the other ground Nos. 2 to 5 raised in appeal have become academic and hence, not deliberated upon.

8. In the result, the appeal of assessee is allowed.

Order pronounced on Monday, the 03rd day of June, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd June, 2019

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-7, Pune
4. The Pr. Commissioner of Income Tax-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune