IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI L.P. SAHU, ACCOUNTANT MEMBER

I.T.A. No.3643/DEL/2016
Assessment Year: 2007-08

V3S Infratech Ltd. (amalgamated Co. of Yogum Developers Pvt. Ltd.) A-20, Naraina Industrial Area, Phase-I, Naraina, New Delhi.	v.	ACIT, Central Circle-23 (Now CC-32), New Delhi.
TAN/PAN: AABCG 9474A		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjay Kumar, CA & Shri Ajay Kumar, CA		
Respondent by:	Shri N.K. Bansal, Sr.D.R.		
Date of hearing:	25	03	2019
Date of pronouncement:	21	05	2019

O R D E R

The aforesaid appeal has been filed by the assessee against impugned order dated 28.03.2016, passed by ld. CIT (Appeals)-30, New Delhi for the quantum of assessment under section 143(3)/147 for the assessment year 2007-08. The assessee has raised various grounds against the initiation of proceedings under section 147 and framing of assessment on a non-existing entity, non-issue of notice under section 143(2); and merits of addition.

2. In grounds of appeal no. 1 & 2, the assessee has raised a preliminary issue that the very initiation of proceedings under section 147 and framing of assessment in pursuance thereof in the name of 'M/s Yogum Developers Pvt. Ltd.', a non-existing entity is

void ab-initio which cannot be cured by the provisions of section 292BB of the Act.

4. Facts in brief qua the said issue are that company namely, M/s Yogum Developers Pvt. Ltd. was incorporated on 16.09.2004. Original return for the A.Y. 2007-08 was e-filed by this company on 31.10.2007. Pursuant to the judgment of Hon'ble Delhi High Court and Bombay High Court vide orders dated 21.10.2008 and 24.10.2008 respectively, M/s Yogum Developers Pvt. Ltd. was merged w.e.f. 01.04.2007 with M/s Gahoi Buildwell Ltd. (subsequently renamed as M/s V3S Infratech Ltd. w.e.f. 27.11.2009). Assessment in the case of M/s Yogum Developers Pvt. Ltd. was completed u/s 143(3) vide order dated 08.12.2009 at an income of Rs. 60,53,114/-; and again second time assessment was made u/s 153A r.w.s. 143(3) vide order dated 28.12.2010 on the same income. Thereafter, the assessment was reopened under section 147 of the Act and notice under section 148 of the Act dated 31.03.2014 was issued to "The Principle Officer, M/s Yogum Developers Pvt. Ltd. (now known as M/s V3S Infratech Ltd.).

4.1 As pointed out by the Ld. Counsel, during the course of original assessment proceedings, the merger of M/s Yogum Developers Pvt. Ltd. with M/s Gahoi Buildwell Ltd. (subsequently renamed as M/s V3S Infratech Ltd. w.e.f. 27.11.2009) was intimated to the Assessing Officer vide letter filed on 02.08.2010 (copy of intimation has been placed at pages 106-111 of the PB) and also once again in the reassessment proceedings vide letter filed on 07.05.2014 (pages 2-3 of PB). During the course of reassessment proceedings, objections to the reasons recorded and issue of notice under section 148 and other replies were filed.

Finally, the reassessment proceedings were concluded vide order dated 30.06.2014 in the name of M/s Yogum Developers Pvt. Ltd. passed under section 143(3)/147 of the Act by making addition of Rs. 48,55,728/-.

5. Being aggrieved, assessee preferred an appeal before the ld. CIT (A) both on validity of reassessment proceedings as well as on merits of the addition made. On merits, ld. CIT (A) allowed part relief to the assessee however had confirmed the addition to the extent of Rs. 10,00,000/-. In so far as the issue of framing of assessment in the name of M/s Yogum Developers Pvt. Ltd., Ld. CIT (A) held that it is a curable defect as per provisions of section 292BB of the Act. The relevant finding of the ld. CIT (A) is reproduced hereunder:-

> *I have carefully considered the assessment order, written submissions, case laws relied upon and oral arguments of Ld. AR. The objections/arguments of the appellant are as under:-*
>
> *(i) Vide hon'ble Delhi High Court and Bombay High Court orders dated 21.10.2008 and 24.10.2008 respectively, M/s. Yogum Developers Private Limited (incorporated on 16.9.2004), was merged w.e.f. 01.04.2007 with M/s. Gahoi Buildwell Ltd. Subsequently, M/s. Gahoi Buildwell Ltd. was renamed as* ***M/s. V3S Infratech Ltd. w.e.f. 27.11.2009****.*
>
> *(ii) In the case of the assessee, search action u/s 132 was carried on 19.01.2009 and the assessment order u/s 153A was passed on 28.12.2010.*
>
> *(iii) Subsequently, notice u/s 148 was issued on 31.03.2014, in the name of 'The Principal Officer, M/s. Yogum Developers Private Limited (now known as M/s. V3S Infratech Limited). Accordingly, it has been objected that this notice that the same is not issued in the name of the appellant. On perusal of the assessment order, notices issued by the A.O. and the reply filed by the appellant, both the names i.e. M/s. V3S Infratech Limited/ M/s. Yogum Developers Private Limited have been mentioned by the A.O. as well as by the appellant. In the assessment order, passed u/s 143(3) on 08.12.2009, the name of the assessee is written as M/s. Yogum*

Developers Private Limited, although the name of the company was changed w.e.f. 27.11.2009.

In view of these facts, mentioning of old name, is not fatal and is curable as per provision of section 292BB. Accordingly, this objection of the appellant is not acceptable."

6. At the time of hearing before us Ld. Counsel for the assessee submitted that a company incorporated under the Companies Act, 1956 is a juristic person. It takes its birth and gets life with the incorporation and dies with the dissolution, as per the provisions of Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. Having regard to the consequences provided in law in umpteen numbers of cases and assessment upon a dissolved company is impermissible as there is no provision in income-tax to make an assessment on it. Therefore, it was incumbent upon the Ld. Assessing Officer to substitute the name of the amalgamated company i.e. Gahoi Buildwell Ltd. (renamed as V3S Infratech Ltd.) prior to issue of notice under section 148 and in any case, no assessment could be framed in the name of dissolved and non-existing company which is a jurisdictional defect.

7 Ld. Counsel further submitted that reliance placed by the Ld. CIT(A) on the provisions of section 292BB of the Act is wholly erroneous, as in the present case assessee has raised its objection before the completion of assessment vide letter filed on 07.05.2014 which is evident from pages 2-4 of the PB. Further, the framing of assessment in the name of M/s Yogum Developers Pvt. Ltd., a non-existent entity cannot be cured by the provisions of section 292B of the Act, as it goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect.

8. On the other hand Ld. DR relied on the order of CIT(A) and on the decision of Hon'ble Delhi High Court in the case of **Sky Light Hospitality LLP Vs. ACIT [2018] 405 ITR 296 (Delhi)** against which SLP filed by the assessee was dismissed vide order dated 06.04.2018 since reported in [2018] 254 Taxman 390 (SC). However, Ld. DR did not dispute the factual submission made by the Ld. AR.

9. We have heard the rival submissions and perused the relevant material placed before us. We find that it is not in dispute that M/s Yogum Developers Pvt. Ltd. got merged and amalgamated with Gahoi Buildwell Ltd. (now name changed to V3S Infratech Ltd.) by virtue of the order and judgment dated 21.10.2008 and 24.10.2008 of Hon'ble High Court of Delhi and Bombay respectively w.e.f. 01.04.2007 (appointed date). The factum of Yogum Developers Pvt. Ltd., having been dissolved, as a result of its amalgamation with Gahoi Buildwell Ltd. was brought to the notice of the Asstt. C.I.T., Central Circle-23, New Delhi (in short 'Assessing Officer') vide letter filed on 14.07.2010. Still, the Assessing Officer recorded the 'reasons' under section 147 and issued notice under section 148 dated 31.03.2014 in the name of "M/s Yogum Developers Pvt. Ltd. (Now known as M/s V3S Infratech Ltd.)". The said notice was responded by M/s V3S Infratech Ltd. (amalgamated company) vide letter filed on 07.05.2014, wherein after reiterating the factum of merger and letter filed in earlier proceedings, it was stated that as the addressee company ceased to exist, therefore, the very initiation of reassessment proceedings against a non-existent entity is bad in law and void ab-initio.

9.1 On the aforesaid preliminary objection, no order disposing off objection was passed. However, from a perusal of the show cause notice dated 16.06.2014 (pg. 21-22 of APB), it is seen that AO in para 2 has stated "Your objection regarding issue of notice u/s 148 of IT Act, 1961 is not accepted as now the company has been merged with M/s V3S Infratech Ltd.". Despite the aforesaid, the Assessing Officer, vide order dated 30.06.2014 passed under section 143(3)/147 of the Act, framed the assessment on Yogum Developers Pvt. Ltd., the amalgamating company.

9.2 The aforesaid assessment order was appealed against by M/s V3S Infratech Ltd. (amalgamated company) before the CIT (A), inter alia, on the ground that the same was bad in law and void ab-initio, the assessment having been framed upon and in the name of a no-existent entity. The CIT(A), however, rejected the aforesaid ground by holding that in the notices issued by the A.O. both the names i.e. M/s V3S Infratech Limited / M/s Yogum Developers Private Limited have been mentioned and the defect in the name of assessment order is not fatal and is curable as per provisions of section 292BB of the Act.

10 First of all, it shall be apt to refer to the decision of Hon'ble Jurisdictional High Court in the case of **Spice Infotainment Ltd. Vs CIT [2012] 247 CTR 500 (Del.)**, as relied upon by the Ld. Counsel before us. In the said case Spice Corporation Ltd. in a scheme of amalgamation approved by the Hon'ble Delhi High Court vide order dated 11.02.2004 got amalgamated with MCorp Private Ltd. w.e.f. 01.07.2003 and its name was struck off from the rolls of companies maintained by the RoC. Prior to amalgamation order, it filed its return for the A.Y. 2002-03 on 30.10.2002 which

was selected for scrutiny and notice under section 143(2) was issued by the AO on 18.10.2003. Factum of merger was brought to the notice of the AO on 02.04.2004. Thereafter, the assessment order dated 28.03.2005 was passed under section 143(3) on Spice Corporation Ltd., the amalgamating company. Appeal filed by the amalgamated company on the ground that assessment having been framed on a non-existent entity was bad in law and void *ab-initio* was dismissed by the CIT (A) and also by the Hon'ble ITAT. In further, appeal following two questions of law was framed:-

> "(i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the action of the AO in framing assessment in the name of 'Spice Corp. Ltd.', after the said entity stood dissolved consequent upon its amalgamation with MCorp (P) Ltd. w.e.f 1st July, 2003, was a mere procedural defect ?
>
> (ii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that in view of the provisions of s. 292B of the Act, the assessment, having in substance and effect, been framed on the amalgamated company which could not be regarded as null and void ?"

10.1 The Hon'ble Court, after considering the facts and law observed and held as under:

> *"5. According to the Tribunal, if the Spice was non-existent, there was no reason for the amalgamated company to represent the same or to feel aggrieved against the said order and prefer appeal and get the same decided on merits. In other words, any appeal preferred by a non-existence person must also be treated as* non est. *All these acts of the appellants/amalgamated company clearly show that it had been constantly treated the assessment made*

against the appellant in respect of the assessment of amalgamated company. Further, no prejudice is caused to the assessee merely because in the body of the assessment order name of the amalgamated company is not shown.

6. *On the aforesaid reasoning and analysis, the Tribunal summed up the position in para 14 of its order which reads as under :*

> *"In the light of the discussions made above, we, therefore, hold that the assessment made by the AO, in substance and effect, is not against the non-existent amalgamating company. However, we do agree with the proposition or ratio decided in the various cases relied upon by the learned counsel for the assessee that the assessment made against non-existent person would be invalid and liable to be struck down. But, in the present case, we find that the assessment, in substance and effect, has been made against amalgamated company in respect of assessment of income of amalgamating company for the period prior to amalgamation and mere omission to mention the name of amalgamated company along with the name of amalgamating company in the body of assessment against the item 'name of the assessee' is not fatal to the validity of assessment but is a procedural defect covered by s. 292B of the Act. We hold accordingly."*

7. *The aforesaid line of reasoning adopted by the Tribunal is clearly blemished with legal loopholes and is contrary to law. No doubt, M/s Spice was an assessee and as an incorporated company and was in existence when it filed the returns in respect of two assessment years in question, however, before the case could be selected for scrutiny and assessment proceedings could be initiated, M/s Spice got amalgamated with MCorp (P) Ltd. It was the result of the scheme of the amalgamation filed before the Company Judge of this Court which was duly sanctioned vide orders dt. 11th Feb., 2004. With this amalgamation made effective from 1st July, 2003, M/s Spice ceased to exist. That is the plain and simple effect in law. The scheme of amalgamation itself provided for this consequence, inasmuch as simultaneous with the sanctioning of the*

scheme, M/s Spice was also stood dissolved by specific order of this Court. With the dissolution of this company, its name was struck off from the rolls of companies maintained by the RoC.

8. *A company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. This position is even accepted by the Tribunal in para 14 of its order extracted above. Having regard to this consequence provided in law, in number of cases, the Supreme Court held that assessment upon a dissolved company is impermissible as there is no provision in income-tax can to make an assessment thereupon.* In the case of *Saraswati Industrial Syndicate Ltd. vs. CIT (1990) 88 CTR (SC) 61: (1990) 186 ITR 278 (SC) the legal position is explained in the following terms:*

> *"The question is whether on the amalgamation of the Indian Sugar Company with the appellant company, the Indian Sugar Company continued to have its entity and was alive for the purposes of s. 41(1) of the Act ? The amalgamation of the two companies was effected under the order of the High Court in proceedings under s. 391 r/w s. 394 of the Companies Act. The Saraswati Industrial Syndicate, the transferee company was a subsidiary of the Indian Sugar Company, namely, the transferor company. Under the scheme of amalgamation the Indian Sugar Company stood dissolved on 29th Oct., 1962 and it ceased to be in existence thereafter. Though the scheme provided that the transferee company the Saraswati Industrial Syndicate Ltd. undertook to meet any liability of the Indian Sugar Company which that company incurred or it could incur, any liability, before the dissolution or not thereafter.*

Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or amalgamation has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly amalgamation does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See Halsburys Laws of England *4th Edition Vol. 7 para 1539. Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity."*

9. *The Court referred to its earlier judgment in* General Radio & *Appliances Co. Ltd. vs. M.A. Khader (1986) 60 Comp Cas 1013 (SC). In view of the aforesaid clinching position in law, it is difficult to digest the circuitous route adopted by the Tribunal holding that the assessment was in fact in the name of amalgamated company and there was only a procedural defect.*

10. *Sec. 481 of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in* M.H. Smith (Plant Hire) Ltd. vs. D.L. Mainwaring (T/A Inshore) (1986) BCLC 342 (CA) that *"once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved".*

11. *After the sanction of the scheme on 11th Feb., 2004, the Spice ceased to exist w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the IT authorities to substitute the successor in place of the said 'dead person'. When notice under s. 143(2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the AO made the assessment in the name of M/s Spice which was non-existing entity on that day. In such proceedings an assessment order passed in the name of M/s Spice 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 is 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 s. 292B of the Act. Sec. 292B of the Act reads as under :*

> *"292B.* No return of income assessment, notice, summons or other proceedings furnished or made or issued 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, defect or omission in such return of income, assessment, 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 (2006) 200 CTR (P&H) 604 : (2005) 275 ITR 595 (P&H) *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, s. 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 s. 292B."*

14. *The issue again cropped up before the Court in* CIT vs. Harjinder Kaur (2009) 222 CTR (P&H) 254 : (2009) 19 DTR (P&H) 211. *That was a case where return in question filed by the*

assessee was neither signed by the assessee nor verified in terms of the mandate of s. 140 of the Act. The Court was of the opinion that such a return cannot be treated as return even a return filed by the assessee and this inherent defect could not be cured in spite of the deeming effect of s. 292B of the Act. Therefore, the return was absolutely invalid and assessment could not be made on a invalid return. In the process, the Court observed as under :

> *"Having given our thoughtful consideration to the submissions advanced by the learned counsel for the appellant, we are of the view that the provisions of s. 292B of the 1961 Act do not authorize the AO to ignore a defect of a substantive nature and it is, therefore, that the aforesaid provision categorically records that a return would not be treated as invalid, if the same 'in substance and effect is in conformity with or according to the intent and purpose of this Act'. Insofar as the return under reference is concerned, in terms of s. 140 of the 1961 Act, the same cannot be treated to be even a return filed by the respondent assessee, as the same does not even bear her signatures and had not even been verified by her. In the aforesaid view of the matter, it is not possible for us to accept that the return allegedly filed by the assessee was in substance and effect in conformity with or according to the intent and purpose of this Act. Thus viewed, it is not possible for us to accept the contention advanced by the learned counsel for the appellant on the basis of s. 292B of the 1961 Act. The return under reference, which had been taken into consideration by the Revenue, was an absolutely invalid return as it had a glaring inherent defect which could not be cured in spite of the deeming effect of s. 292B of the 1961 Act."*

15. *Likewise, in the case of* Sri Nath Suresh Chand Ram Naresh vs. CIT (2005) 196 CTR (All) 416 : (2006) 280 ITR 396 (All), *the*

Allahabad High Court held that the issue of notice under s. 148 of the IT Act is a condition precedent to the validity of any assessment order to be passed under s. 147 of the Act and when such a notice is not issued and assessment made, such a defect cannot be treated as cured under s. 292B of the Act. The Court observed that this provision condones the invalidity which arises merely by mistake, defect or omission in a notice, if in substance and effect it is in conformity with or according to the intent and purpose of this Act. Since no valid notice was served on the assessee to reassess the income, all the consequent proceedings were null and void and it was not a case of irregularity. Therefore, s. 292B of the Act had no application.

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

17. *The order of the Tribunal is, therefore, clearly unsustainable. We, thus, decide the questions of law in favour of the assessee and against the Revenue and allow these appeals.*

18. *We may, however, point out that the returns were filed by M/s Spice on the day when it was in existence it would be permissible to carry out the assessment on the basis of those returns after taking the proceedings afresh from the stage of issuance of notice under s. 143(2) of the Act. In these circumstances, it would be incumbent upon the AO to first substitute the name of the appellant in place of M/s Spice and then issue notice to the appellant. However, such a course of action can be taken by the AO only if it is still permissible as per law and has not become time-barred."*

11. Thus, it was held that assessment framed on a non-existent entity is not sustainable in the eyes of law, as it is a jurisdictional defect and is not a mere procedural defect and even section 292B cannot come to the rescue. The decision in the case of Spice Infotainment Ltd. (supra) has been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 285 of 2014 vide order dated 02.11.2017.

11.2 Further, Hon'ble Delhi High Court in the case of **CIT Vs Dimension Apparels P. Ltd. [2015] 370 ITR 288 (Delhi)**, relying on the decision in the case of Spice Infotainment Ltd. (supra) has held as under:

> *"**6.** Sections 170(1) and 170(2) of the Act do not assist the revenue in their case. The revenue does not contest that in a case of amalgamation, the predecessor (being a dissolved company) "cannot be found". Consequently, Section 170(2) applies. This provision clarifies that where the predecessor cannot be found,*
>
> > *"the assessment of the income of the previous year in which the succession took place up to the date of the succession and of the precious year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor." (Emphasis in italics Supplied)*
>
> ***7.** The revenue seems to argue that the assessment is justified because the liabilities of the amalgamating company accrue to the amalgamated (transferee) company. While that is true, the question here is which entity must the assessment be made on. The text of Section 170(2) makes it clear that the assessment must be made on the successor (i.e., the amalgamated company).*

8. *The Supreme Court, in Saraswati Industrial Syndicate Ltd. (supra) held that*

> *".....after the amalgamation of the two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets." (Emphasis Supplied)*

9. *With respect to the specific issue of assessment, in Vived Marketing Servicing (P.) Ltd. (supra) the Court observed that*:

> *"When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies u/s 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved." (Emphasis Supplied)*

10. *Vived Marketing Servicing (P.) Ltd. (supra) also noted that Section 176 of the IT Act, which contains provisions pertaining to a discontinuation of business, does not apply to a case of amalgamation/dissolution. It was also held that Section 159 of the Act, which provides for tax liability to be attached to the legal representatives of a deceased person, is likewise inapplicable. The language of Section 159 evidently only applies to natural persons, and cannot be extended, through a legal fiction, to the dissolution of companies.*

11. *Marshall Sons and Co. (supra), is relied on by the revenue. It was held in that judgment that*

> *"the transferor-company shall, with effect from the transfer date, be deemed to have carried on its business for and on behalf of the transferee-company and, accordingly, the profits*

and losses of the transferor- company for the period commencing from the transfer date, shall be deemed to be the profits or losses of the transferee-company and shall be available to the transferee-company for disposal in any manner ....."

12. *That case, however, involved a controversy about the effective date of amalgamation, and not about whether an assessment of income can be made on an amalgamated company. In fact, the logic of the Madras High Court's decision undermines the Appellants' case. The Madras High Court found for the Revenue, because, in its opinion, the effective date of amalgamation came after the date of the assessment. The assessee argued that the date of amalgamation was January 1, 1982, whereas the assessment order was dated November 25, 1984.*

13. *The Madras High Court held that—*

"... according to the records maintained pursuant to the provisions of the Companies Act, the subsidiary company had continued to remain in existence up to January 21, 1986, even long after January 1, 1982."

14. *On this basis, it held the Assessee liable. This obviously implies that had the company not been in existence at the time of the assessment order, it would not have been liable.*

15. *In Spice Entertainment Ltd. (supra), this Court, after discussing the law declared by the Supreme Court in Saraswati Industrial Syndicate Ltd. (supra) stated that:*

"9. The Court referred to its earlier judgment in General Radio and Appliances Co. Ltd. v. M.A. Khader [1986] 60 Comp Case 1013. In view of the aforesaid clinching position in law, it is difficult to digest the circuitous route adopted by the Tribunal

holding that the assessment was in fact in the name of amalgamated company and there was only a procedural defect.

10. Section 481 of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in M.H. Smith (Plant Hire) Ltd. v. D.L. Mainwaring (T/A Inshore), 1986 BCLC 342 (CA) that "once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved.

11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f 1st July, 2003. Even if Spice 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 under Section 143 (2) was sent, the appellant/amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day In such proceedings and assessment order passed in the name of M/s Spice 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."

16. *The authority of the above precedent binds us; we see no reason to differ from the logic and reasoning in Spice Entertainment Ltd. (supra).*

17. *The other aspect is as to the applicability of Section 292-B of the Act, which reads as follows:*

> "292B. 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, defect or omission in such return of income, assessment, 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."

18. *The Revenue argues that the assessment was in substance and effect in conformity with the Act, because the Assessing Officer had used correct nomenclature in writing the name of the Assessee, along with the fact that the company had amalgamated, as well as the correct address of the amalgamated company. Consequently, they contend that*

> *"the mere omission, if any on the part of the AO to mention the name of the appellant/amalgamated company in place of M/s Dimension Apparel… [is]…therefore a procedural defect."*

19. *The question of whether an assessment upon an amalgamated company is a mistake within the meaning of Section 292B was raised and answered by the Delhi High Court in Spice Entertainment Ltd. (supra). In that case, the Tribunal had held that*

> *"the assessment in substance and effect has been made against amalgamated company in respect of assessment of*

income of amalgamating company for the period prior to amalgamation and mere omission to mention the name of amalgamated company alongwith the name of amalgamating company in the body of assessment against the item "name of the assessee" is not fatal to the validity of assessment but is a procedural defect covered by Section 292B of the Act." (Emphasis Supplied)

20. *This Court rejected this argument, holding that*

"it [becomes] incumbent upon the Income Tax Authorities to substitute the successor in place of the said 'dead person'. Such a defect cannot be treated as procedural defect... once it is 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 292B of the Act." (Emphasis Supplied)

21. *In Spice Entertainment Ltd. (supra) the reason for the inapplicability of Section 292-B was additionally premised on the decision of the Punjab & Haryana High Court in CIT v. Norton Motor, [2005] 275 ITR 595/146 Taxman 701, that while Section 292B can cure technical defects, it cannot cure a "jurisdictional defect in the assessment notice."In Spice Entertainment Ltd. (supra), therefore, this Court expressly classified "the framing of assessment against a non-existing entity/person" as a jurisdictional defect. This has been a consistent position. As early as 1960, in CIT v. Express Newspapers Ltd. [1960] 40 ITR 38 (Mad), the Madras High Court held that*

"there cannot be an assessment of non-existent person. . . The assessment in the instant case was made long after the Free Press Company was stuck off from the register of the companies, and it could not be valid." (Emphasis Supplied)

22. *On the last contention, i.e with respect to participation by the previous assessee, i.e the amalgamating company (which ceases to exist), again Spice Entertainment Ltd. (supra) is categorical; it was ruled on that occasion that such participation by the amalgamated company in proceedings did not cure the defect, because "there can be no estoppel in law." Vived Marketing Servicing (P.) Ltd. (supra) had also reached the same conclusion.*

23. *It is thus clear that all contentions sought to be urged by the revenue are in respect of familiar grounds, which have been ruled upon, against it, consistently in two decisions of this court. Therefore, no substantial question of law arises in this appeal.*

24. *Accordingly, there is no merit in the appeals; they are accordingly dismissed along with the pending applications without any order as to costs."*

11.2 Further, Hon'ble Delhi High Court in the case of **CIT Vs Micra India Pvt. Ltd. [2015] 231 Taxman 809 (Delhi)** has held as under:

*"**10.** In the present case, no doubt there was participation during the course of assessment; however, the AO, despite being told that the original company was no longer in existence, did not take remedial measures and did not transpose the transferee as the company which had to be assessed. Instead, he resorted to a peculiar procedure of describing the original assessee as the one in existence; the order also mentioned the transferee's name below that of M/s Micra India Pvt. Ltd. Now, that did not lead to the assessment being completed in the name of the transferee company. According to the AO, M/s Micra India Pvt. Ltd. was still in existence. Clearly, this was a case where the assessment was contrary to law, as having being completed against a non-existent*

company. The ITAT's decision is, in the circumstances, justified and warranted."

11.3 Further, Hon'ble Delhi High Court in the case of **Pr. CIT Vs Maruti Suzuki India Ltd. [2017] 397 ITR 681 (Delhi)** has held as under:

"*7. On 29th December 2015, the AO passed the assessment order under Section 143 (3) read with Section 144C (1) of the Act in which the name and address of the Assessee was shown as:*

"M/s. Suzuki Powertrain India Ltd (Amalgamated with M/s Maruti Suzuki India Ltd)., Plot No 1, Nelson Mandela Road, Vasant Kunj, New Delhi-110070"

x x x x x x x

12. Even thereafter the Revenue has repeatedly brought the said issue before this Court in a large number of cases where, in more or less identical circumstances, the AO had passed the assessment order in the name of the entity that had ceased to exist as on the date of the assessment order. In many of these cases, as in the present case, the AO, after mentioning the name of the Amalgamating Company as the Assessee, mentioned below it the name of the Amalgamated Company. Illustratively the cases are:

(i) CIT v Micra India (P.) Ltd. [2015] 231 Taxman 809 (Del);

(ii) CIT v. Micron Steels (P.) Ltd. [2015] 372 ITR 386/233 Taxman 120 (Del)

(iii) *CIT v. Dimension Apparels (P.) Ltd. [2015] 370 ITR 288 (Del)*

(iv) BDR Builders & Developers (P.) Ltd. v. Asstt. CIT (Decision dated 26th July 2017 passed by this Court in W.P.(C) No. 2712 of 2016)

12. Further, we find that in the case of Sky Light Hospitality LLP Vs. ACIT [2018] 405 ITR 296 (Delhi) relied upon by the Ld. DR, the

question before the Hon'ble Delhi High Court was with regard to the validity of issue of notice under section 148 in the name of erstwhile private limited company despite company ceasing to exist as it had been converted into LLP. The Hon'ble High Court upheld the validity of the issue of notice with the following finding in paragraph 17 of their order:

> *"**17.** In the context of the present writ petition, the aforesaid ratio is a complete answer to the contention raised on validity of the notice under Section 147/148 of the Act as it was addressed to the erstwhile company and not to the limited liability partnership. There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s Sky Light Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."*

12.1 Simultaneously, cases where validity of assessment order had been passed in the name of non-existing assessee were distinguished as under:

> ***"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.

19. *Spice Infotainment Ltd. (supra) refers to decision of Allahabad High Court in Sri Nath Suresh Chand Ram Naresh v. CIT [2006] 280 ITR 396/[2005] 145 Taxman 186 (All.). We have examined the decision in Sri Nath Suresh Chand Ram Naresh (supra) and would observe that facts were peculiar. There was oral partition of the Hindu undivided family, M/s Munna Lal Moti Lal, on death of the 'Karta' Moti Lal. Capital was divided amongst three brothers, who were the coparceners. Controversy was regarding legality of oral partition that was not recognized by the Revenue. Re-assessment notices were issued, in the name of M/s Sri Nath Suresh Chand Ram Naresh, Karta Shri Nath. 'Nil' return was filed along with letter stating that no business was conducted in the name of the assessee and notices were wrongly issued. Revenue had asserted that this notice was meant to assess M/s Munna Lal Moti Lal though the notice was to another assessee, who was also existing in law. Recording this factual matrix, the notice under Section 148 and assessments made were held to be invalid.*

20. *CIT v. Dimension Apparels (P.) Ltd. [2015] 370 ITR 288/[2014] 52 taxmann.com 356 (Delhi) and CIT v. Intel Technology*

India Ltd.[2016] 380 ITR 272/232 Taxman 279/57 taxmann.com 159 (Kar.) follow the ratio and decision in the case of Spice Infotainment Ltd.(supra), as assessment orders had been passed in the name of the non-existing assessee. These cases are therefore distinguishable."

13. Thus, on perusal of the decision of Sky Light Hospitality LLP (supra), it is clear that it cannot be applied in a situation where the issue of validity of assessment order is involved. Similar view was taken by the Hon'ble 'G' Bench of ITAT, Delhi in the case of M/s SMA Corporation vs. Pr. CIT-8, New Delhi [ITA No. 4832/Del/2018, A.Y. 2010-11, Order dated 18.03.2019]. The relevant observations of the Tribunal in para 8 read as under:

"8. After considering both the above decisions of Hon'ble Delhi High Court, we find that the decision of Sky Light Hospitality LLP (supra) would be applicable while considering the applicability of validity of notice, while, for considering the validity of a final order, the decision of Spice Entertainment Ltd. (supra) would be applicable. Their Lordships have clearly held that while considering the validity of an order, Section 292B would not be applicable because the framing of an assessment against a non-existent entity goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a dead person. The above observation would be squarely application with regard to order under Section 263. When on the date of order under Section 263 admittedly the company M/s SMA Construction Pvt.Ltd. is not in existence, any order passed on a non-existent entity would be nullity. We, therefore, respectfully following the decision of Hon'ble Jurisdictional High Court in the case of Spice Entertainment Ltd. (supra), hold that the order passed

under Section 263 in the case of M/s SMA Construction Pvt.Ltd. was void ab-initio and nullity. The same is quashed."

14. In the instant case, it is an accepted fact that factum of amalgamation of Yogum Developers Pvt. Ltd. with the Gahoi Builwell Ltd. was duly intimated to the Assessing Officer. Further, on amalgamation of Yogum Developers Pvt. Ltd. with the Gahoi Builwell Ltd. (renamed as V3S Infratech Ltd.), the company Yogum Developers Pvt. Ltd. stood dissolved and ceased to exist. Therefore, issue of notice in the name of M/s Yogum Developers Pvt. Ltd. (now known as M/s V3S Infratech Ltd.) cannot lead to issue of notice to V3S Infratech Ltd. (amalgamated company) as held by the Hon'ble Jurisdictional High Court. Further, as the assessment vide order dated 30.06.2014 has been made on the M/s Yogum Developers Pvt. Ltd., on a non-existent company, therefore, we have no hesitation to hold that Ld. CIT(A) was not justified in upholding the validity of assessment framed in the name of non-existent company by applying the provisions of section 292BB which were clearly not applicable in the present case as the issue of notice was duly objected by the amalgamated company. Further, as the infirmity in the framing of assessment on the non-existent company was so fatal that it cannot be cured by the provisions of section 292B. We, therefore, quash the assessment order.

15.. In the result, ground No. 1 & 2 as raised by the assessee are allowed and consequently all other grounds raised by the

assessee have become academic, hence declared as infructuous.

Order pronounced in the open Court on 21/5/2019.

Sd/-	Sd/-
[L.P. SAHU]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 21/05/2019