

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'E', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 2666/Del/2017 : Asstt. Year : 2009-10**

**ITA No. 2667/Del/2017 : Asstt. Year : 2010-11**

**ITA No. 2669/Del/2017 : Asstt. Year : 2010-11**

Deputy Commissioner of Income Tax, Central Circle-19, New Delhi-110055	Vs	M/s Mapsa Logistics (P) Ltd., (Post amalgamation known as M/s Mapsa Tapes (P) Ltd.), 4 <sup>th</sup> Floor, PP Tower, Plot No. C-1, C- 2, C-3, Netaji Subhash Place, Pitampura, New Delhi-110034
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAFCM8120D</b>		

**Assessee by : Sh. C. S. Aggarwal, Sr. Adv.**

**Revenue by : Ms. Pramita M. Biswas, CIT DR**

**Date of Hearing: 13.08.2019**

**Date of Pronouncement: 04.09.2019**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the Reveue against the orders of the Id. CIT(A)-28, New Delhi dated 27.02.2017 and 28.02.2017.

2. Since, the issues involved in all these appeals are common, they were heard together and are being disposed off by common order.

3. In ITA No. 2666/Del/2017, following grounds have been raised:

*"1. That the Ld. CIT(A) erred in law and on facts in quashing the order of the Assessing Officer without*

*properly appreciating the facts and circumstances of the case on account of change of name of company from M/s Mapsa Logistics Pvt. Ltd. to M/s Mapsa Tapes Pvt. Ltd.*

*2. That the Ld. CIT(A) erred in law and on facts in ignoring the communication passed through proper channel vide letter dated 30.08.20 16 that the assessee has not informed the amalgamation of M/s. Mapsa Logistic Pvt. Ltd. in M/s. Mapsa Tapes Pvt. Ltd. during the course of assessment proceedings.*

*3. That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.17,60,00,000/- made on account of bogus share capital without properly appreciating the facts and circumstance of the case.*

*4. That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.10,56,600/- made on account of unaccounted commission paid without properly appreciating the facts and circumstance of the case.*

*5. (a) The order of the CIT(Appeals) 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."*

4. The brief facts of the case are as under:

- "a) Date of search & seizure operation: 20.01.2014*
- b) Date of issue of notice: 28.08.2015*
- c) Date of filing of return: 25.07.2009 (original)*
- d) Date of Hon'ble Delhi High Court order: 21.09.2015 (amalgamation order)*
- e) Date of intimation to AO: 18.01.2016*
- f) Date of completion of assessment: 31.03.2016"*

5. The assessee has informed the Deputy Commissioner of Income Tax, Central Circle-19, New Delhi vide letter dated 18.02.2015 which was filed on 23.02.2015 about the scheme of

amalgamation to the effect that the assessee company M/s Mapsa Logistics Pvt. Ltd. has been amalgamated with Mapsa Tapes Pvt. Ltd. The Id. DR argued that in response to the notice issued u/s 153A of the Act, Mapsa Logistics Pvt. Ltd. had filed the return and hence the AO has rightly completed the assessment in the name of Mapsa Logistics Pvt. Ltd. The Id. AR on the other hand argued that with effect from 21.09.2015, the company ceased to exist in the eyes of the law and it is incumbent upon the AO to substitute the successor company namely Mapsa Tapes Pvt. Ltd. He relied on the judgment in the case of BDR Builders & Developers Pvt. Ltd. Vs ACIT in Writ Petition (Del.) 3175/2015 dated 09.01.2017.

6. We find that the Id. CIT (A) has allowed the appeal of the assessee on the basis of exposition by the Hon'ble jurisdictional High Court in the case of Spice Infotainment Ltd 247 CTR 500 (Del.). Further, the issue in question has also been considered by the Hon'ble Jurisdictional High Court in various other cases including CIY v Dimension Apparels (P) Ltd., CIT v Vivid Marketing Servicing (P) Ltd., CIT v Micra (P) Ltd., BDR Builders and Developers (P) Ltd vs. ACIT in W.P.(C) 3174/2015 dated 9.01.2017, and it has been held that framing order in the name of non-existent entity is not a procedural defect curable under section 292B of the Act or under any other provision of the Act but it is a jurisdictional defect and hence any order passed in the name of non-existing person is *void ab initio*.

7. Further, the Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd. 107 Taxman 375 vide order dated July 25, 2019 held that where despite the fact that the AO was informed

of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice issued in the earlier name in the consequent assessment conducted cannot be held to be valid.

8. Respectfully, following the ratio of the Apex Court, we hereby decline to interfere with the order of the Id. CIT (A).

9. In the result, the appeals of the Revenue are dismissed.  
(Order Pronounced in the Open Court on 04/09/2019).

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 04/09/2019**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**