

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2668/Del./2017  
Assessment Year 2009-2010

The DCIT, Central Circle- 19, Room No.104, 1 <sup>st</sup> Floor, Hall No.1, ARA Centre, E-2, Jhandewalan Extn., New Delhi –110055.	vs.,	M/s. Mapsa Infra (P) Ltd., (Post amalgamation known as M/s. Mapsa Tapses (P) Ltd.,) 4 <sup>th</sup> Floor, PP Tower, Plot No.C-1, C-2, C-3, Netaji Subhash Place, Pitampura, New Delhi – 110 034. PAN AAFCM7438J
(Appellant)		(Respondent)

For Revenue :	Ms. Pramita M. Biswas, CIT-DR
For Assessee :	Shri C.S. Aggarwal, Sr. Advocate, And Shri R.P. Mall, Advocate.

Date of Hearing :	06.11.2019
Date of Pronouncement :	07.11.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against  
the Order of the Ld. CIT(A)-28, New Delhi, Dated

27.02.2017, for the A.Y. 2009-2010, on the following grounds :

1. *“That the Id. 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 chance of name of company from M/s Mapsa Infra Pvt. Ltd. to Mapsa Tapes Pvt. Ltd.*
2. *That the Ld. CIT(A) erred in law and on facts in relying only on assessee’s submission that assessee has intimated the department of such amalgamation- through letter dated 18.02.2015 and 18.01.2016. The ld. CIT(A) should had remanded back to the assessing officer for verification of assessee’s submission whereas in the fact of case no such intimation were filed during the assessment proceedings before the AO.*
3. *That the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.10,25,00,000/-*

*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.6,15,000/- 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.”*

2. Briefly the facts of the case are that in this case search and seizure action under section 132 of the I.T. Act, 1961, was carried out on 20.01.2014 in the business premises of the assessee. Accordingly, notice under section 153A was issued to the assessee and in compliance to the

same, return declaring income of Rs.40,49.370/- was filed. The assessment under section 153A/143(3) of the I.T. Act, 1961 was completed vide Order Date 31.03.2016 at the total income of Rs.10.71 crores. The assessment was passed in the name of [ M/s. Mapsa Infra Pvt., Ltd., ]. The assessee submitted before the Ld. CIT(A) that assessment has been framed in the name of M/s. Mapsa Infra Pvt., Ltd., an entity, which was non-existent on the day of passing of the Order because of the fact that such Company stood amalgamated with M/s. Mapsa Tapes (P) Ltd., vide Order of the Hon'ble High Court Dated 21.09.2015 w.e.f. 01.04.2014, as such, assessment framed under section 153A/143(3) of the I.T. Act, 1961, in the name of a non-existent entity is nullity and liable to be quashed. Several case Law in support of the above contention was relied upon. The Ld. CIT(A) accepted the contention of assessee that Order have been framed in the name of a non-existent entity which had already dissolved and struck-off in the Register of Registrar of Companies under the Companies Act. Appeal of assessee was accordingly allowed.

3. Learned Counsel for the Assessee, at the outset, submitted that the Departmental Appeals on the same issue in the case of same assessee for A.Ys. 2009-2010 and 2010-2011 have been decided by ITAT, A-Bench in ITA.Nos.2666, 2667 and 2669/Del./2017 etc., vide Order Dated 04.09.2019, the Departmental Appeals have been dismissed. The Order of the Tribunal is reproduced as under :

*“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*

<i>Deputy Commissioner of Income Tax, Central Circle-19, New Delhi-110055</i>	<i>Vs</i>	<i>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</i>
<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 30.08.2016 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. 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.*

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

8. *In the result, the appeals of the Revenue are dismissed.”*

4. The Ld. D.R. did not dispute the above contention of the Learned Counsel for the Assessee.

5. In view of the above, we find that the issue is covered in favour of the assessee by the above Order of the

Tribunal in the case of same assessee. Following the same, we dismiss the Departmental Appeal.

6. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 07<sup>th</sup> November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.