

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.5758/M/2017
Assessment Year: 2009-10**

DCIT- 9(3)(2), 418, 4 th Floor, Aayakar Bhavan, Mumbai - 400020	Vs.	M/s. Glint Infraprojects Pvt. Ltd., (Keystone Stockfin Pvt. Ltd. merged in Glint Infraprojects Pvt. Ltd.) 5 th Floor, Sunteck Centre, 37-40, Subhash Road, Vile Parle (E), Mumbai - 400 057 PAN: AADCG5620L
(Appellant)		(Respondent)

**CO No.133/M/2019
(ITA No.5758/M/2017)
Assessment Year: 2009-10**

M/s. Glint Infraprojects Pvt. Ltd., (Keystone Stockfin Pvt. Ltd. merged in Glint Infraprojects Pvt. Ltd.) 5 th Floor, Sunteck Centre, 37-40, Subhash Road, Vile Parle (E), Mumbai - 400 057 PAN: AADCG5620L	Vs.	DCIT- 9(3)(2), 418, 4 th Floor, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Choudhary Arunkumar Singh, A.R.
Revenue by : Shri Rakesh Joshi, D.R.

Date of Hearing : 09.08.2019
Date of Pronouncement : 15.10.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above appeal by the Revenue and the Cross Objection by the assessee have been preferred against the order dated 15.04.2015 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

CO No.133/M/2019

2. In the cross objection the assessee has raised the following grounds :

“i) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in appreciating that assessee had intentionally evaded the reopening proceedings or not availed opportunity of being heard which fact was mentioned by himself in his order that assessee was non-co-operative and assessee did not want to produce evidence during the assessment proceedings.

ii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in merely looking at evidence adduced by the assessee and had not averted to attempts made by the AO during the course of assessment proceedings and also not given an opportunity to the AO while admitting the evidence produced before him.

iii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the share premium money without appreciating the fact that the assessee is a beneficiary who has taken accommodation entry of share premium money and failed to establish the identity, creditworthiness of shareholders and to prove the genuineness of transaction”.

3. At the outset, the Ld. Counsel of the assessee submitted before the Bench that he wants to argue the ground No.2 FIRST which is against the order of Ld. CIT(A) confirming the action of the AO in passing the order in the name of M/s. Key Stone Stock Fin Pvt. Ltd. a nonexistent entity without considering the facts and circumstances of the case.

4. The facts in brief are that the M/S Keystone Stock Fin Pvt Ltd now merged with M/s. Glint Infra Project Pvt. Ltd. filed the return of income on 29.09.2009 declaring an income of Rs. 1,63,520/-. The case of the assessee was selected for scrutiny and assessment order was passed u/s 143(3) of the Act on 05.12.2011 assessing the total income at Rs. 3,48,800/- by

making an addition of Rs. 1,85,164/- u/s 14A of the Act. M/S Keystone Stock Fin Pvt Ltd was merged with M/s. Glint Infra Project Pvt. Ltd. vide High Court order dated 17.06.2011 w.e.f. 1.4.2010. The same was intimated to the AO on 1.3.2013 vide letter dated 28.2.2013. Thereafter, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act on 30.03.2014 in the name of M/S Keystone Stock Fin Pvt Ltd. The reopening of the case was done on the basis of information received from DIT (I&CI) through CCIT, Mumbai that assessee has issued 430500 share of face value Rs.10/- each at a premium of Rs.180/-. The notice issued under section 148 of the Act in the name of non existent company and was sent on the old address and could not be complied with. The ex-parte assessment was framed u/s 144 of the Act r.w.s. 147 of the Act on 13.3.2015 by making an addition of Rs. 8.17 Cr u/s 68 of the Act by treating the share application money as bogus.

5. The assessee challenged the order of AO being nullity and void ab-initio on the ground that the notice u/s 148 of the Act dated 30.3.2014 was issued in the name of non existent company M/s. Key Stone Stock Fin Pvt. Ltd. and assessment order was also framed accordingly which was nonexistent entity w.e.f. 1.4.2010 vide High Court order dated 17.6.2011 and therefore the same was bad in law. However, the Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO by observing that the order passed by the AO is correct and as per law as the same was passed on the basis of information available in his possession while deleting the addition on merits.

6. The Ld. A.R. vehemently submitted before the Bench that the reassessment order passed under section 144 read with section 147 of the Act is nullity and void ab-initio as the same is passed in the name of M/s. Key Stone Stock Fin Pvt. Ltd. which stood merged with M/s. Glint Infra Project Pvt. Ltd. vide High Court order dated 17.06.2011. The Ld. A.R. submitted that the order passed by the AO is bad in law and therefore has to be quashed. In defence of his arguments the Ld. A.R. relied on the following decisions:

1. Pr. CIT vs. BMA Capfin Ltd. (2018) 100 taxmann.com 330 (SC).
2. Pr. CIT BMA Capfin Ltd. (2018) 100 taxmann.com 329 (Del.)
3. Dharmnath Shares & Services (P.) Ltd. vs. ACIT (2018) 94 taxmann.com 458 (Gujarat)
4. ACIT vs. Dharmnath Shares and Services (P.) Ltd. (2018) 100 taxman.com 416 (SC)
5. Pr. CIT vs. Maruti Suzuki India Ltd. (2019) 107 taxmann.com 375 (SC)

The Ld. A.R. vehemently submitted before the Bench that in view of the above decisions, the assessment order passed by the AO u/s 144 r.w.s. 147 of the Act may be quashed.

7. The Ld. D.R., on the other hand, relied on the order of authorities below and submitted that the assessment order has been framed in the name of M/s. Key Stone Stock Fin Pvt. Ltd. which merged with M/s. Glint Infra Project Pvt. Ltd. vide order dated 17.06.2011 of the Hon'ble High Court. The Ld. D.R. submitted that even though the entity is merged with another entity but the same does not become nonexistent as the same entity is converted into another entity and therefore the arguments advanced by the Ld. A.R. seeking the quashing of

assessment is not correct and grounds raised by the assessee may be dismissed.

8. After hearing both the parties and perusing the material on record, we observe that in this case the erstwhile assessee M/s. Key Stone Stock Fin Pvt. Ltd. was merged with M/s. Glint Infra Project Pvt. Ltd. vide High Court order dated 17.06.2011 w.e.f. 1.4.2010 and therefore the said assessee became nonexistent w.e.f 1.4.2010 and the new entity M/s. Glint Infra Project Pvt. Ltd. came into being and therefore the re-assessment proceedings u/s 147 r.w.s. 148 of the Act and consequent assessment order passed by the AO in the name of nonexistent company is nullity and void ab-initio and consequently can not be sustained. In the case of Pr. CIT vs. Maruti Suzuki India Ltd. (supra) the Hon'ble Apex Court has held that assessment made in the name of Suzuki Power Train India Ltd. for assessment year 2012-13 is nullity since the entity has been amalgamated with Maruti Suzuki India Ltd. under the scheme of amalgamation and was not in existence. In the case of Pr. CIT vs. BMA Capfin Ltd. (supra) the Hon'ble Apex Court has dismissed the special leave petition filed by the Revenue against the order of High Court in the case of Pr. CIT vs. BMA Capfin Ltd. wherein the Hon'ble High Court has held as under:

"3. Against the decision of the High Court for AY 2011-12, a Special Leave Petition was dismissed by a two judge Bench of this Court on 16 July 2018 with the following observations:

"Heard learned counsel for the parties.

Delay condoned.

In view of the order dated 02.11.2017 passed by this Court in *C.I. T., New Delhi v. M/s. Spice Entertainment Lid* (Civil Appeal No. 285 of 2014 etc. etc.), this special leave petition also stands dismissed. Pending applications, if any, shall stand disposed of."

On behalf of the respondent, it has been urged that in view of the dismissal of the Special Leave Petition in relation to AY 2011-12. the same course of action must follow in the present case which deals with the assessment for AY 2012-13.

4. We have heard submissions on behalf of the appellant by Mr Zoheb Hossain, learned Counsel and for the respondents by Mr Ajay Vohra, learned Senior Counsel. In order to appreciate the nature of the controversy, a narration of the facts would be instructive.”

9. Similarly, the Hon’ble Supreme Court in the case of ACIT vs. ACIT vs. Dharmnath Shares and Services (P.) Ltd. (supra) dismissed the special leave petition of the Revenue and the order of the Hon’ble High Court was affirmed in which the Hon’ble High Court has held as under:

“It is not in dispute that the assessee-company amalgamated with 'D' by virtue of the judgment of High Court dated 4-5-2012. Though this order was passed on 4-5-2012. Though this order was passed on 4-5-2012, the effective date of amalgamation was 1-4-2010. Division Bench in case of Khurana Engg. Ltd. v. Dy. CIT (2014) 364 ITR 600/[20131 217 Taxman 75 (Mag./34 taxmann.com 261 (Guj.) had held that once the assessee-company had amalgamated with the transferee company, its independent existence did not survive, and therefore, it would no longer be amenable to assessment proceedings. For such purpose, the Court had quashed the notice on the company which had already merged, for producing documents for assessment.

Under the circumstances, the notices in the present case would also be invalid. The revenue, however, made faint attempt to argue that the impugned notices have been issued not to the transferor company, but to 'D'. Such contention has to be rejected out of hand. The notice itself is addressed to the Principal Officer/Director of [the present assessee]. By reference, it also records that the company has now merged with 'D' Limited, nevertheless, the notice is issued to present assessee. Had the revenue desired to issue notice of reassessment to 'D'¹ Limited, there would have been six different notices for the same assessment year, as in the present case. It is also noticed that the very same income has also been taxed in the hands of 'D' Limited.”

10. The Hon’ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd. (supra) has observed and held as under:

“This appeal arises from a judgment of a Division Bench of the Delhi High Court dated 9 January 2018 which upheld the decision of the Income Tax Appellate Tribunal¹. The Tribunal held that the assessment made in the name of Suzuki Powertrain India Limited² for Assessment Year' 2012-13 is a nullity since the entity had been amalgamated with Maruti Suzuki India Limited⁴ under an approved scheme of amalgamation and was not in existence. The High Court, while affirming

this view of the Tribunal followed its own decision for AY 2011-12 in *Principal Commissioner of Income Tax --6, New Delhi v Maruti Suzuki India Limited (successor of SPIL[2017] 397 ITR 681 (Del.)*⁵("Maruti Suzuki"). Holding that no question of law arose, the High Court dismissed the appeal under Section 260A of the Income Tax Act 1961"

11. In the present case also the re-assessment proceedings and the consequent assessment have been framed in the name of entity which is no more existent as the same stood merged with the new entity, we therefore, following the ratio laid down in the aforesaid decisions, are inclined to quash the assessment framed by the AO u/s 144 r.w.s. 147 of the Act. Accordingly, the ground no. 2 in the cross objection of the assessee is allowed.

12. Since we have quashed the assessment order as stated above, the appeal of the Revenue becomes infructuous and is dismissed accordingly.

13. In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee is partly allowed.

Order pronounced in the open court on 15.10.2019.

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 15.10.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.