

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DLEHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITANo.4176/Del/2017
Assessment Year: 2007-08**

**ACIT,
Central Circle-13,
New Delhi**

Vs.

**M/s. Pride Residency (P) Ltd.
(in the case of M/s.
SatkarFincap Ltd.),
F-5/9, Vasant Vihar,
New Delhi
PAN: AAGCP0358K
(Respondent)**

(Appellant)

Appellant by: Shri Sulekha Verma, CIT(DR)
Respondent by: None

Date of hearing:02.12.2019

Date of order :12.12.2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the Order dated 27/02/2017 in Appeal No. 92/16-17 (original)/108/16-17 (new), passed by the Ld. Commissioner of Income Tax (Appeals)-25, New Delhi ("Ld. CIT(A)"), Revenue preferred this appeal, where under the Ld. CIT(A) quashed the assessment order made on the name of M/s Pride Residency Private Limited being the amalgamated company.

2. Brief facts of the case are that by order dated 31/12/2010 passed under section 153C/143(3) of the Income-tax Act, 1961 (hereinafter

referred to as 'the Act') income of the assessee was assessed at Rs.2,47,52,720/- by making an addition of Rs.2,40,13,860/-on account of unexplained purchases under section 69C of the Act and making disallowance of the expenses to the tune of Rs.7,18,405/-. Ld. CIT(A) confirmed the same, but the Tribunal allowed the appeal of the assessee. According to the impugned order, the Hon'ble High Court restored the matter to the Tribunal.

3. While the matters stood thus, pursuant to the search and seizure operations carried out in Sanskar group of cases on 7/8/2010, covering assessee also under section 132/133A of the Act, assessment in the case of the assessee was completed under section 153A of the Act read with section 143(3) of the Act by order dated 26/3/2013 at an income of Rs.2,47,53,650/-. The appeal was preferred by the assessee; subsequently, the same was withdrawn and dismissed by order dated 08/01/2014. Thereafter, the assessee preferred revision application under section 264 of the Act. The Ld. PCIT vide order dated 30/3/2015 passed an order under section 264 of the Act,quashing the assessment made by the Assessing Officer under section 153A of the Act holding that the Assessing Officer had committed an error inasmuch as had passed an order in the name of a non-existent company, and therefore, he directed the Assessing Officer to reassess the income in the hands of the existing correct legal entity after giving proper opportunity of being heard to the assessee and after examination and scrutiny of all the relevant material and verification including the submissions made by the assessee.

4. Pursuant to the directions in the order passed under section 264 of the Act, learned Assessing Officer passed the order dated 23/3/2016

on the name of M/s Pride Residency (P) Ltd (in the case of M/s SatkarFincap Ltd.), assessing the income at Rs.2,47,52,720/-. Challenging the same, assessee preferred an appeal before the Ld. CIT(A), contending that in spite of the directions given by the Id. PCIT to reassess the income in the hands of the existing correct legal entity, Id. Assessing Officer failed to comply with the same.

5. It was argued before the Ld. CIT(A), on behalf of the assessee, that the learned Assessing Officer failed to comply with the directions of the Ld. PCIT, particularly, that the assessment be made "in the hands of the existing correct legal entity", inasmuch as, the learned Assessing Officer neither give notice to the correct legal entity, nor the assessment was made in the hands of an existing correct legal entity. It was further submitted before the Ld. CIT(A) that the initiation of proceedings under section 264/143(3) of the Act, including issue of notice and also completion of assessment on the company which had already become a non-existent on account of its merger with another company was illegal and bad in law and, therefore, such assessment being bad in law deserves to be quashed.

6. It was further brought to the notice of the Ld. CIT(A) that a similar issue had arisen in the case of M/s SatkarFincap Ltd. (through Pride Residency Private Limited) for assessment year 2009-10, where vide order dated 14/7/2016 under section 250(6) of the Act in Appeal No. 60/2013-14, Ld. CIT(A) quashed the assessment order by holding that there was a deviation from the principles with regard to the amalgamation, the income even though has been earned by the amalgamating company, but if the information regarding the

amalgamation is available at the time of assessment, the assessment has to be done in the hands of the amalgamated company.

7. Ld. CIT(A) considered the contentions raised by the assessee and also referred to the decisions of the Hon'ble Apex Court in the case of Saraswati Industrial Syndicate Ltd. Vs.CIT, 186 ITR 279, wherein it was held that when 2 companies amalgamate and managing to 1, the transferor company loses its entity as the decisions to have its business, and their respective rights and liabilities are determined under the scheme of amalgamation, but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective. Ld. CIT(A), therefore, held that, though the learned Assessing Officer was directed in section 264 of the Act to reassess the income in the hands of the existing correct legal entity and as a matter of fact was aware of such directions, failed to follow the same while completing the assessment and assessed the income in the hands of a non-existing company, which had ceased to exist after sum of commission, and, therefore, the assessment order rendered void and was liable to be quashed. He accordingly quashed the same.

8. Challenging such an order, Revenue is in this appeal before us stating that the income of the searched company (amalgamating company) was correctly assessed in the hands of the amalgamated company, namely, M/s Pride Residency Private Limited and, therefore, Ld. CIT(A) was in error in quashing the same. It is argued by the Ld. DR that the notice was issued in the name of searched company and such an error is curable under section 292-B of the Act. She placed reliance on

the decision of the Hon'ble jurisdictional High Court in the case of Skylight Hospitality LLP vs. ACIT (2018) 405 ITR 296 (Delhi).

9. None appeared on behalf of the assessee. Notice was issued to the address given in the Form-36 by Registered mail with postage pre-paid. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods, where of the considered opinion that no time could be granted. Basing on the record we proceed to hear the Ld. DR and decide the matter on merits.

10. We have gone through the record in the light of the submissions made by the Ld. DR. Facts relevant for proper appreciation of the contentions of the Revenue are that the assessee was really was "SatkarFincap Ltd", a company in the group of companies led by the flagship concern M/s Sanskar Home Private Limited. The group is mainly engaged in the business of development and construction of buildings, homes, plots etc. trading in properties and undertaking construction/collaboration projects. Subsequently, the assessee amalgamated with "Pride Residency Private Limited" vide order dated 17/08/2012 of the Hon'ble Delhi High Court passed under section 391(2) and 394 of the Companies Act, 1956, w.e.f., 1/4/2011, and consequently, the SatkarFincap Ltd. says it to exist, thereafter. Such a fact was

informed to the learned Assessing Officer, CC-3, by the company vide letter dated 02/11/2012 and 23/02/2016.

10. Earlier Satkar was assessed by order dated 31/12/2010 at an income of Rs.44,05,658/-against which they have filed appeal before the Ld. CIT(A), who by order dated 25/02/2014 allowed the appeal in part, and the Tribunal by order dated 14/08/2015 quashed the assessment order on technical ground, against which the Revenue preferred an appeal before the Hon'ble High Court. Hon'ble High Court set aside the matter to the ITAT. Subsequently, consequent to the search on 07/08/2010 on the Sanskar group, Satkar once again was assessed under section 153A/143(3) of the Act vide order dated 26/3/2013 by the learned Assessing Officer, CC-3, New Delhi at an income of Rs.44,06,260/-, without there being any incriminating evidence.

11. At this stage, Satkar, through the amalgamated company "Pride Residency Private limited" filed an appeal before the Ld. CIT(A). In between the assessee filed a rectification obligation under section 154 before the Assessing Officer and the learned Assessing Officer by order dated 12/9/2013 reducing the demand to Rs.204/-, upon which the assessee company withdrew the appeal before the Ld. CIT(A). Assessee however, filed a written application under section 264 of the Act and the Ld. PCIT by order dated 30/3/2015 quashed the assessment order dated 26/3/2013 on the ground that the notice was issued and the assessment order was passed on a non-existent company, namely, Satkar which had ceased to exist after its amalgamation with the Pride Residency Private Limited and therefore, Ld. PCIT directed the Assessing Officer to reassess

the income in the hands of the existing correct legal entity after giving proper opportunity of being heard to the assessee.

12. Learned Assessing Officer, issued notice under section 142 (1) of the Act on 30/1/2016 in the name of the non-existent company Satkar, but did not issue any notice under section 153A and 143(2) of the Act in the name of the existing correct legal entity, namely, Pride Residency Private Limited. Assessee protested the same while participating the assessment proceedings. Learned Assessing Officer passed the order dated 23/3/2016 assessing the income at Rs.44,06,260/- on the name of M/s. Pride Residency (P) Ltd (in the case of M/s SatkarFincap Ltd).

12. Against this assessment order, when the assessee preferred appeal before the Ld. CIT(A), Ld. CIT(A) after considering the material before him reached a factual conclusion that the Assessing Officer is aware of the directions issued by the Ld. PCIT in the order under section 264 of the Act to the effect that the assessment made in the hands of the existing correct legal entity which fact he mentioned in the assessment order itself but issued notice to the company with PAN AAJCS 6820 ITA which was upon of M/s SatkarFincap Ltd, the non-existent company. CIT further observed that the ACIT, Central circle-13, New Delhi has no jurisdiction over the existing correct legal entity, namely, M/s Pride Residency Private Limited over which the deduction was vested in circle 20 (1), New Delhi. Ld. CIT(A), therefore, observed that neither the action was taken against the existing correct legal entity, namely, M/s Pride Residency Private Limited, nor the Assessing Officer involved, namely, ACIT, Central Circle-13, New Delhi, could have taken any legal action against the existing correct legal entity, as the

jurisdiction over it was with some other learned Assessing Officer, the assessment order is vitiated and on this ground he quashed the same.

13. It is pertinent to note that under similar circumstances for the assessment year 2009-10, while disposing of the appeal No. 60/2013-14 by order dated 14/7/2016, Ld. CIT(A) held that the assessment order passed on SS Pride Residency Private Limited (in the case of M/s SatkarFincap Ltd.) was rendered void and quashed the same. In the present case in the impugned order Ld. CIT(A) read the order of his predecessor for the assessment year 2009-10 and while following the same quashed the assessment order.

14. As could be seen from the record, Ld. PCIT in the order dated 30/3/2015 passed under section 264 of the Act, observed that the assessment made by the Assessing Officer under section 153A of the Act has been quashed on technical grounds because the learned Assessing Officer issued notice and completed the assessment in the name of non-existing company as the company had ceased to exist after its amalgamation; that there is also no denying of the fact that consequent to the search and seizure action upon the company, there were significant material before the Assessing Officer and the Assessing Officer had completed the assessment of the company after considering the material before him and after making verification and scrutiny and affording the opportunity to the assessee; that the only error which the learned Assessing Officer had committed was that the order was passed in the name of a non-existing company; that this being a technical error, the Assessing Officer was directed to reassess the income in the hands of the existing correct legal entity after giving proper opportunity of being

heard to the assessee and after the examination, scrutiny of all the relevant material and verification, including the submissions made by the assessee; and that to such an extent the directions may be treated as a directions under section 150 of the Act.

15. On a careful perusal of the impugned order, we do not find any factual error in the findings of the Ld. CIT(A) that being aware of the specific directions given by the Ld. PCIT, and having reproduced such directions in the assessment order itself, and in spite of such clear and specific directions, the learned Assessing Officer repeated the earlier action of service of notice and the completion of assessment upon amalgamating company, which is easy to exist. Further, the learned Assessing Officer passed the order dated 26/7/2016 under section 143(3) of the Act in assessee's case in the name of M/s Pride Residency Private Limited for the assessment year 2014-15. So these facts do not admit of any doubt that in spite of the clear directions given by the Ld. PCIT under section 264 of the Act the learned Assessing Officer failed to comply with the same and repeated the earlier action of service of notice and completion of assessment on the amalgamating company which is easy to exist instead of doing so on the amalgamated company as he did for the assessment year 2014-15.

16. We do not find any fault with the Ld. CIT(A) in following the decision of the Hon'ble Apex Court in the case of Saraswati Industrial Syndicate Ltd (supra) wherein it was held that when two companies amalgamated merged into one, the transfer company loses its entity as it serious to have its business, and their respective rights are liable to be determined under the scheme of amalgamation, but the corporate

entity of the transfer company ceases to exist with effect from the date of the amalgamation is made effective. In this matter the amalgamation was effective from 1/4/2011 under the order dated 17/08/2012 passed by the Hon'ble Delhi High Court under section 391 (2) and 394 of the Companies Act, 1956. The decision of the Hon'ble High Court in the case of Skylight Hospitality LLP (supra) has no application to the facts of the case since in such case the notice issued on the amalgamating company was challenged. In this case, however, the assessee specifically brought it to the notice of the learned Assessing Officer that there was a merger of the companies, and there was a direction of the Ld. PCIT to issue notice and hear they correct the existing legal entity. However, there is failure on the part of the learned Assessing Officer to comply with the said direction inasmuch as he issued notices to the non-existent company and completed the assessment on it.

17. In this factual situation we are of the considered opinion that there is no legal infirmity in the impugned order. The reasoning given by the Ld. CIT(A) and his following the order of Ld. CIT(A) for assessment year 2009-10 do not suffer any illegality or irregularity. We, therefore, do not find any merits in the grounds and accordingly dismissed the same.

18. In the result appeal of the Revenue is dismissed

Pronounced in open court on 12th December, 2019.

Sd/-

(G.S. PANNU)

VICE PRESIDENT

Dated: 12/12/2019

'RK'

Sd/-

(K. NARASIMHA CHARY)

JUDICIAL MEMBER