

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.4694/Del./2017
(ASSESSMENT YEAR : 2009-10)**

M/s. Artsy Infrastructure and Projects vs. ACIT, CC – 29
Private Limited, New Delhi.
(now merged with Vatsal Infraprojects
Pvt. Ltd.),
Plot No.M-7, M-52/53, Ground Floor,
Gali No.10, Anand Parbat Indl. Area,
New Delhi – 110 005.
(PAN : AAHCA1969Q)

**ITA No.4695/Del./2017
(ASSESSMENT YEAR : 2009-10)**

M/s. ATJ Impex Pvt. Ltd. vs. ACIT, CC – 29
(now merged with TTJ Impex Pvt. Ltd.), New Delhi.
Plot No.M-7, M-52/53, Ground Floor,
Gali No.10, Anand Parbat Indl. Area,
New Delhi – 110 005.
(PAN : AAGCA6206M)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Ved Jain, CA,
Shri Ashish Goel, CA
Shri Umang Luthra, CA**

REVENUE BY : Shri M. Barnwal, Senior DR

Date of Hearing : 02.09.2020
Date of Order : 04.09.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order for the sake of brevity.

2. Appellants, M/s. Artsy Infrastructure and Projects Private Limited (now merged with Vatsal Infraprojects Pvt. Ltd. and M/s. ATJ Impex Pvt. Ltd. (now merged with TTJ Impex Pvt. Ltd.) by filing the present appeals sought to set aside the impugned orders both dated 03.04.2017 passed by the Commissioner of Income-tax (Appeals)-30, New Delhi qua the assessment year 2009-10 on the identical grounds except for figure of additions made u/s 68 of the Income-tax Act, 1961 (for short 'the Act') inter alia that :-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)] is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order passed by the AO u/s 143(3), despite the fact that the same has been passed in the name of a non-existent entity.

(ii) That on the circumstances and facts of the case, the reassessment framed in the name of M/s Artsy Infrastructure & Project Private Limited which had since amalgamated with M/s Vatsal Infra Project Private Limited and had ceased to exist in the eye of law, was non est.

3. On the facts and circumstances of the case, the learned AO has erred, both on facts and in law, in initiating the proceedings under Section 147 read with Section 148, ignoring the fact that the same was bad in the eye of law as the conditions and procedures prescribed under the statute have not been satisfied and complied with.

4. (i) On the facts and circumstances of the case, the reassessment proceedings initiated by the learned AO are bad in the

eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are vague.

(ii) On the facts and circumstances of the case, the reassessment proceedings initiated by the learned AO are bad in the eye of law as there is no live nexus between the reasons recorded and the belief formed by the Assessing Officer.

5. On the facts and circumstances of the case, the reasons recorded for reopening are bad in law, as the same have been recorded without independent application of mind on the part of the Assessing Officer.

6. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming additions (amount of Rs.50,00,000/- and Rs.40,00,000 in case of M/s. Artsy Infrastructure and Projects Private Limited and M/s. ATJ Impex Pvt. Ltd. respectively) made by AO on account of share capital under Section 68 of the Act as unexplained cash credits.

7. That the said addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of the shareholders as well as genuineness of the transaction.

8. (i) That the abovesaid addition has been confirmed despite having been made on the basis of material collected at the back of the assessee without giving it an opportunity to rebut the same in violation of principle of natural justice.

(ii) That the abovesaid addition has been confirmed despite having been made on the basis of statement recorded without giving assessee an opportunity to cross examine the same in violation of principle of natural justice.

9. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming addition u/s 68 of the Act as amended by Finance Act, 2012, despite the same being not applicable for the year under consideration.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : M/s. Artsy Infrastructure and Projects Private Limited (now merged with Vatsal Infraprojects Pvt. Ltd.) and M/s. ATJ Impex Pvt. Ltd. (now merged with TTJ Impex Pvt. Ltd.) was incorporated on 07.08.2008 and 24.09.2007 respectively. They have filed return of income for AY 2009-10 and the

assessment was framed u/s 143 (3) of the Act. On receipt of information from Investigation Wing, assessment was reopened in both the cases after recording reasons that income chargeable to tax has escaped assessment. AO made addition of Rs.50,00,000/- and Rs.40,00,000/- in case of M/s. Artsy Infrastructure and Projects Private Limited and M/s. ATJ Impex Pvt. Ltd. respectively u/s 68 of the Act and the proviso thereto on the ground that the amount allegedly credited in the books of account of the assessee under the head 'share capital' and 'share premium' by way of receiving share application and share premium money, remained unexplained money having been pumped into its business in the garb of fresh share capital and share premium.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has dismissed both the appeals by confirming the addition. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, Id. AR for the assessee contended that in both the appeals, AO as well as Id. CIT (A) have erred in framing/confirming the order u/s 143 (3) of the Act in the name of non-existent entity being M/s. Artsy Infrastructure and Projects Private Limited merged with Vatsal Infraprojects Pvt. Ltd. and M/s. ATJ Impex Pvt. Ltd. merged with TTJ Impex Pvt. Ltd. which is not sustainable in the eyes of law and as such, reassessment proceedings and consequent assessment orders passed by the AO are liable to be quashed.

6. Ld. AR for the assessee relied upon on the decisions rendered by **Hon'ble Delhi High Court in case of CIT vs. Spice Entertainment vs. CIT in ITA 475 & 476 of 2011 dated 03.08.2011, affirmed by the Hon'ble Apex Court in Civil Appeal No.285-286 of 2014 order dated 02.11.2017, PCIT vs. Nokia Solutions & Network India Pvt. Ltd. (formerly known as Nokia Siemens Network Pvt. Ltd. in ITA 135/2018 order dated 06.02.20189, PCTI vs. BMA Capfin Ltd. ITA 1181 of 2017 & CM No.46887 of 2017 order dated 27.12.2017, BDR Builders & Developers Pvt. Ltd. vs. ACIT WP (C) 2712/2016 order dated 26.07.2017 & PCIT vs. Kaizen Products Pvt. Ltd. (presently known as AAS Research & Solutions (P) Ltd. upon amalgamation with Ventura Research & Solutions (P) Ltd.)**

order dated 25.07.2017, judgments of Hon'ble Apex Court in case of Pr. CIT vs. Maruti Suzuki India Ltd. in C.A. No.5409 of 2019 dated 25.07.2019, M/s. Dalmia Power Ltd. vs. ACIT in CA No.9496-099 of 2019 and decisions of coordinate Bench of the Tribunal in Nirvana Lifestyle Pvt. Ltd. (now merged with TTJ Impex Ltd.) in ITA No.4793/Del/2017 order dated 09.03.2018, Rudraksha Agencies Company Ltd. vs. DCIT, Circle 21 (2), new Delhi 2018 (5) TMI 740 – ITAT Delhi & DCIT, Circle 18 (1), New Delhi vs. NDC Telecommunications India Pvt. Ltd. 2018 (10) TMI 1119 – ITAT Delhi.

7. Undisputedly, M/s. Artsy Infrastructure and Projects Private Limited merged was with Vatsal Infraprojects Pvt. Ltd. vide order dated 25.05.2014 and M/s. ATJ Impex Pvt. Ltd. was merged with TTJ Impex Pvt. Ltd. vide order dated 26.05.2014 passed by the Hon'ble Delhi High Court in Company Petition No.645 of 2013 connected with Company Application No.(M) 157 of 2013 w.e.f. 01.04.2013. It is also not in dispute that assessment in case of M/s. Artsy Infrastructure and Projects Private Limited and M/s. ATJ Impex Pvt. Ltd was framed by the AO on 28.12.2016 & 29.12.2016 respectively. It is also not in dispute that even at the time of issuance of notice u/s 148 of the Act, assessment company was not in existence.

8. By now, the issue as to framing the assessment on a non-existent company having been merged with some other entity being nullity is settled. *Hon'ble Delhi High court in case of Spice Entertainment Ltd. vs. CIT* (supra) quashed the assessment in the identical facts by returning following findings :-

"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 Section 292B of the Act. - provisions of Section 2928 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.

.....

16. When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 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."

9. Aforesaid decision has been confirmed by the *Hon'ble Apex Court vide order dated 02.11.2017 passed in Civil Appeal No.285-286opf -2014.*

10. Similarly, *Hon'ble Apex Court in case of Pr.CIT vs. Maruti Suzuki India Ltd.* (supra) also quashed the assessment framed on amalgamating company by returning following findings :-

"33 In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its

name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a coordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainments on 2 November 2017. The decision in Spice Entertainments has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainments.

34. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable."

11. Coordinate Bench of the Tribunal vide order dated 09.03.2018 in case of Nirvana Lifestyle Pvt. Ltd. (supra) also quashed the assessment on amalgamating company merged with TTJ Impex Pvt. Ltd.

12. Ld. DR for the Revenue contended that notice of merger alleged to be issued by the assessee to the ITO in case of M/s. Artsy Infrastructure and Projects Private Limited has never been served upon the jurisdictional ITO as the jurisdiction was transferred from ITO, Ward No.3(2), New Delhi. He has also contended that even letters of intimation by the assessee in both the

cases bear no signature and no diary number of the Revenue department. We are of the considered view that when factum of merger by virtue of the orders dated 25.05.2014 and 26.05.2014 passed by the Hon'ble Delhi High Court was in the public domain and the notice of intimation of merger was given by the assessee in case of M/s. TTJ Impex Pvt. Ltd. to the jurisdictional ITO, the assessment was framed in both the cases much after merger of the assessee company with amalgamated company. The ld. DR for the Revenue relied upon the decision rendered by **Hon'ble Apex Court in case of Pr. CIT, Mumbai vs. I-Ven Interactive Ltd. (2019) 418 ITR 662 (SC)**.

13. We are of the considered view that decision relied upon by the ld. DR for the Revenue is not applicable to the facts and circumstances of the case which is on the service of notice u/s 143(2) of the Act whereas, in the instant case, the issue is simply *“as to whether assessment framed of amalgamating company is sustainable in the eyes of law”*.

14. Moreover, the scheme of amalgamation itself takes care of all the consequences of the erstwhile company. Since the assessee company ceased to be in existence and its name got struck off from the rolls of Registrar of Companies, assessments framed against it

by the AO vide orders dated 28.12.2016 & 29.12.2016 are not sustainable in the eyes of law, being a nullity.

15. So, in view of what has been discussed above and by relying upon the decisions rendered by Hon'ble jurisdictional High Court and Hon'ble Apex Court discussed in the preceding paras, we are of the considered view that when both the amalgamating company, assesseees in this case, have ceased to exist by virtue of the approved scheme of amalgamation w.e.f. 01.04.2013 by the order passed by Hon'ble Delhi High Court, AO was not within his jurisdiction to frame the assessment in the name of non-existent entity and such assessment orders dated 28.12.2016 & 29.12.2016 are nullity and not sustainable in the eyes of law. Consequently, assessment framed in the name of M/s. Artsy Infrastructure and Projects Private Limited and M/s. ATJ Impex Pvt. Ltd. vide orders dated 28.12.2016 & 29.12.2016 respectively passed by the AO and confirmed by the Id. CIT (A) are ordered to be quashed.

Order pronounced in open court on this 10TH day of September, 2020.

**SD/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**SD/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 10TH day of September, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-30, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.