

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "ए", नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & SH. ANIL CHATURVEDI, AM

[THROUGH VIDEO CONFERENCING]

आयकर अपील सं. / ITA No.2567/Del/2017

निर्धारण वर्ष / Assessment Year: 2010-11

M/s. Ahead Enterprises Ltd.
(Merged with M/s Akriti Realtech Ltd.)
RRA Taxindia,
D-28, South Extension, Part-I,
New Delhi-110049
PAN-AAGCA5942C

.....अपीलार्थी/Appellant

vs

The DCIT,
Central Circle-II,
Faridabad,

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by:

Sh. Somil Agarwal Adv.

प्रत्यर्थी की ओर से / Respondent by:

Sh. Sanjay Goyal, DR

सुनवाई की तारीख / Date of Hearing : 06.08.2020	घोषणा की तारीख / Date of Pronouncement: 09.09.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, VP

The present appeal is filed by the assessee against order of CIT(A), Karnal relating to assessment years 2010-11 against the order passed under section 153A r.w.s 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The issue raised vide Ground No.1 is the jurisdictional issue and we proceed to address the same before adjudication of other issues raised on merits. Ground of appeal raised by the assessee is as under:-

1. *“That having regard to the fact and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld.AO in assuming jurisdiction and issuing of notice u/s 153A r.w.s. 153C of the Act, more so when the notice was issued in the name of non-existing entity.”*

3. Briefly in the facts of the case, search u/s 132 of the Act was carried out at the residential as well as business/office premises of M/s. SRS Group of cases on 09.05.2012. The Assessing Officer in accordance with provision of section 153C r.w.s 153A of the Act, issued notice dated 10.11.2014, requiring it to file return of income in respect of Assessment Year 2010-11. In response thereto, the assessee filed return of income declaring Rs.25,26,830/-. Thereafter, the case of the assessee was taken up for scrutiny. An addition was made in the hands of the assessee totaling Rs.47,46,688/-. The assessment order was passed in the name of the assessee i.e. M/s. Ahead Enterprises Ltd.

4. Before the CIT(A), the assessee raised preliminary issue that the assessment order was not justified since the assessee's company did not exist on the date of issue of notice u/s 153C r.w.s. 153A of the Act. The case of the assessee before the CIT(A) was that no assessment could be made in the name of company, if its names had been struck off from the Registrar of Companies.

The assessee pointed out that it had amalgamated with M/s. Akriti Realtech Ltd. (in short "M/s. Akriti") as per the order of the Hon'ble High Court. The assessee claimed it as the assessee did not exist on the date of service of notice, the assessment was not valid. The CIT(A) rejected the plea of the assessee on the ground that it has not informed the Income tax Department regarding its non-existence within reasonable time. He also decided the issue on merits against the assessee. The assessee is in appeal before us, both on the preliminary issue and also issue raised on merits.

5. The Ld.AR for the assessee pointed out that search of M/s. SRS Group had been carried out on 09.05.2012. He further pointed out that notice u/s 153C of the Act was issued on 10.11.2014. Plea in this regard was that the assessee company had merged with M/s. Akriti w.e.f. 01.04.2012 as per the order of Hon'ble High Court dated 10.12.2012. The Ld.AR for the assessee before us pointed out that the assessment order for Assessment Year 2013-14 which is also dated 20.03.2015, was passed by the same Assessing Officer and the proceedings were filed as the assessee had merged with M/s. Akriti. However, for Assessment Year 2010-11, the same Assessing Officer had passed the assessment order dated 20.03.2015 in the name of the merged non-existing entity. Our attention was drawn to page 52 of the Paperbook wherein common notice was issued for all the proceedings and in reply thereto, the assessee had informed about its merger with M/s. Akriti in Assessment Year 2013-14. The proceedings were filed and in Assessment Year 2010-11, the assessment was

completed u/s 153C r.w.s. 143(3) of the Act. Reliance was placed on the decision of Hon'ble Supreme Court in Maruti Suzuki Civil Appeal No. 5409 of 2019 vide judgement dated 25.07.2019.

6. The Ld.DR for the Revenue placing reliance on the orders of the authorities below pointed out that no separate letter informing about the merger of assessee with M/s. Akriti was filed.

7. We have heard the rival contentions and perused the record. The jurisdictional issue raised in the present appeal is whether the assessment which is completed in the name of an entity, which is not in existence on the date of passing of the assessment order, can the said order be upheld in law? As referred by us in paras above, consequent to search on M/s. SRS Group on 09.05.2012, notice u/s 153C of the Act was issued to the assessee for Assessment Year 2010-11. The Assessing Officer had issued notice dated 05.12.2014 u/s 143(2) of the Act alongwith letter dated 05.12.2014 relating to Assessment Years 2007-08 to 2013-14. In this letter, the assessee was asked to furnish the return of income for the past six years alongwith other details. Copy of the said notice and the letter are placed at pages 51 to 55 of the Paperbook. The assessee filed its reply and participated in the assessment proceedings. Simultaneously, assessment proceedings were also carried out for Assessment Year 2013-14. Copy of the order for Assessment Year 2013-14 is also placed on record which is dated 20.03.2015. It may be noted that for Assessment Year 2010-11, assessment order was passed by the same

Assessing Officer on 20.03.2015. In the assessment order for Assessment Year 2013-14, the Assessing Officer acknowledged the statement of the assessee that company had merged with M/s. Akriti and also reference to the copy of order of Hon'ble High Court. He further goes to say that during the year, company was not in existence, therefore, proceedings instituted u/s 142(1) of the Act are hereby filed. Where the factum of non-existence of the assessee i.e. the merger of the assessee company with M/s. Akriti was in the knowledge of the Assessing Officer, then the present order passed for Assessment Year 2010-11 suffers from infirmity, as it is passed in the name of non-existent entity. In this regard, we find support from the ratio laid down by the decision of Hon'ble Supreme Court in Maruti Suzuki (supra).

8. The Ld.DR for the Revenue has stressed that no separate letter informing the merger was filed for the year under consideration. But where the assessment proceedings are being carried out simultaneously for six years and where the common letter was issued for all the years, then the factum of the assessee having been merged with M/s. Akriti was in the knowledge of Assessing Officer, and same cannot be brushed aside. In any case, assessment framed in the name of the non-existing entity cannot stand in the eyes of law. Hence, we hold that the present assessment order is both invalid and bad in law. Ground of appeal No.1 raised by the assessee is thus allowed.

9. The remaining grounds of appeal raised by the assessee became academic in nature and the same are not adjudicated.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09th September, 2020.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
उपाध्यक्ष / VICE PRESIDENT

दिल्ली / दिनांक Dated : 09th September, 2020

* Amit Kumar *

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi