

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

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

**ITA No.3594/M/2017
Assessment Year: 2007-08**

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: AADCG 5620L
(Appellant)		(Respondent)

**CO No.277/M/2018
(Arising out of ITA No.3594/M/2017)
Assessment Year: 2007-08**

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: AADCG 5620L	Vs.	DCIT 9(3)(2), 418, 4 th Floor, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rakesh Joshi, A.R.
Revenue by : Shri V. Vinod Kumar, D.R.

Date of Hearing : 23.09.2020

Date of Pronouncement : 25.09.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 03.02.2017 of the Commissioner of

Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2007-08. Besides the assessee has challenged the jurisdiction of the AO to re-open and frame assessment on legal grounds by way of cross objections.

2. The Revenue has challenged the order of Ld. CIT(A) on the deletion of addition of Rs.4,75,55,000/- as made by the AO under section 68 of the Act whereas the assessee has by way of cross objection changed the validity of jurisdiction of the AO to reopen the assessment under section 147 of the Act on various counts which was decided against the assessee by the first appellate authority. Therefore, we are inclined to first decide the cross objection of the assessee.

CO No.277/M/2018

3. The grounds raised by the assessee in cross objection are as under:

“1. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing in reopening the assessment u/s.147 of the Income Tax Act, 1961, without considering the facts and circumstances of the case.

2. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing in passing the order in name of keystone Stockfin Pvt. Ltd. which is not in existence, without considering the facts and circumstances of the case.

3. The respondent craves leave to add, amend, alter or delete the said ground of appeal.”

4. At the outset, the Ld. Counsel of the assessee submitted before the Bench that ground No.2 is against the order of Ld. CIT(A) confirming the action of AO in passing the order in the name of Keystone Stockfin Pvt. Ltd. which is a non existent entity and stood merged with the assessee. The Ld. Counsel of the assessee pointed out that the issue is squarely covered by

the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.5758/M/2017 and CO.133/M/2019 A.Y. 2009-10 vide order dated 15.10.2009 wherein the assessment framed under section 144 read with section 147 of the Act has been quashed on the ground that the reassessment proceedings and consequent assessment was framed in the name of non existent entity which stood merged with the new entity. The ld. AR therefore prayed that the ground no 2 may be allowed by following the decision of the coordinate bench as referred to above.

5. The Ld. D.R., on the other hand, relied on the order of first appellate authority.

6. After hearing both the parties and perusing the material on record especially the decision of the co-ordinate bench of the Tribunal in ITA No.5758/M/2017 and CO/133/M/2019 A.Y. 2009-10 (supra), we observe that the Tribunal in the said appeal has quashed the reassessment proceedings as well as the consequent assessment framed on the ground that these were initiated and assessment was framed in the name of non existent entity. The operative para is reproduced below:

"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 Ltd* (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.”

7. Since the facts of the case are identically same, we, therefore, respectfully following the decision of the co-ordinate bench of the Tribunal quash the reassessment proceedings as well as the consequent assessment framed under section 144 read with section 147 of the Act. The ground no 2 of the cross objection of the assessee is allowed.

8. Since we have quashed the proceedings by adjudicating the ground no 2 in favour of the assessee, other grounds raised in the cross objections need no adjudication.

ITA No.3594/M/2017

9. Since we have quashed the reopening proceedings as well as the reassessment order passed by the AO while deciding the

cross objection filed by the assessee, the appeal of the revenue is rendered infructuous and is dismissed accordingly.

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

Order pronounced in the open court on 25.09.2020.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 25.09.2020.

* 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.