

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 5990/Del/2014 : Asstt. Year : 2005-06

Anirudh Overseas Pvt. Ltd., 26A, Sadhana Enclave, New Delhi-110017	Vs	ITO, Ward-1(4), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACA8200B		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. Sohail Malik, Sr.DR

Date of Hearing: 03.11.2020	Date of Pronouncement: 14.12.2020
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-IV, New Delhi dated 27.08.2014.

2. Following grounds have been raised by the assessee:

"1. *That on the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals)-IV, New Delhi [briefly "the CIT(A)"] has erred in upholding the reopening of assessment under section 147 of the Income tax Act, 1961 (briefly "the Act").*

2. *That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that there was no application of mind to the alleged information received from Investing Wing that the assessee was amongst the beneficiaries of the bogus*

accommodation entries. There was no tangible material to reopen the assessment.

3. That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that the proviso to section 147 of the Act was applicable inasmuch as notice u/s 148 of the Act has been issued after the expiry of four years from the end of assessment year and that there was no failure on the part of the assessee to disclose fully and truly material facts necessary for the assessment.

4. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the assessment at total income of Rs. 1,25,74,500/-, as against returned income of Rs.3,24,055/-. The Appellant denies its liability to be assessed at income of Rs. 1,25,74,500/-.

5. That on the facts and circumstances of the case and in law, the CIT(A) has erred confirming the addition of Rs. 1,22,50,000/- under section 68 of the Act, as bogus accommodation entry.

6. That on the facts and circumstances of the case and in law, the CIT(A) has erred in not appreciating that no opportunity was granted by the Assessing Officer to the Appellant to cross examine Mr. Tarun Goel, on whose statement addition was made."

3. Brief facts of the case are that the assessee has filed return of income on 29.10.2005 declaring total income of Rs.3,24,055/-. The return was accepted u/s 143(1) of the I.T. Act, 1961. Thereafter, the AO received information from the Investigation Wing that the assessee company has received accommodation entries by way of share capital/ premium to the extent of Rs.1,22,55,000/- from M/s Traun Goyal and Associates Groups, which was searched u/s 132 of the Act on 15.9.2008.

Therefore, the AO recorded the reasons for issuing notice u/s 148 on 21.03.2012 and obtained the required sanction from the competent authority and issued notice u/s 148 to the assessee on 28.03.2012. The notice was sent by speed post on 28.03.2012 vide speed post acknowledgment no. ED 093032895 IN. In response to notice u/s 148, the assessee attended the assessment proceedings and participated in the assessment proceeding.

4. The additional grounds have been filed by the assessee vide letter dated 18.06.2019. The germane grounds taken up at point 5 read as under:

"8. 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 147/143(3), despite the fact that the same being passed in the name of a non-existent entity, is illegal and void ab-initio.

9. On the circumstances and facts of the case, the reassessment framed in the name of M/s Anirudh Overseas Pvt. Ltd. which had since amalgamated with M/s Archit Securities Pvt. Ltd. and had ceased to exist in the eye of law, was no nest."

5. The Id. DR opposed for admission of additional ground arguing that this is not the time to raise such grounds as the AO and Id. CIT (A) have not been confronted with any such objection and raising of the technical ground at this juncture cannot be admitted.

6. The Id. AR argued that the ground raised being a legal ground and goes to the root of the matter, the same may be admitted. He placed reliance on the order in the case of National Thermal Power Co. Ltd. Vs Commissioner of Income

Tax on 4 December, 1996, (229 ITR 383), the additional ground filed by the assessee is accepted. The relevant portion of the judgment is as under:

“Under Section 254 of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under Section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

6. In the case of Jute Corporation of India Ltd. v. C.I.T. this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate

Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income-tax (Appeals) takes too narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T, v. Anand Prasad (Delhi), C.I.T. v. KaramchandPremchand P. Ltd. and C.I.T. v. Cellulose Products of India Ltd. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits."

7. Respectfully following the above judgment of the Hon'ble Apex Court, the additional grounds taken up by the assessee are hereby admitted. The matter is taken up for adjudication.

8. Relevant facts adjudication for the issue are as under:

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|------------|---|---------------------|
| i. | Date of filing of the original return | - 29.10.2005 |
| ii. | Date of issue of notice u/s 148 | - 28.03.2012 |
| iii. | Date of passing of order u/s 148/143(3) | - 15.03.2013 |
| iv. | Date of order of merger of
the assessee company with
M/s Archit Securities Pvt. Ltd. | - 21.01.2011 |
| v. | Date of compliance | - 22.04.2012 |

- vi. Date of attendance from the side of the assessee - 20.07.2012, 27.08.2012, 29.10.2012, 28.11.2012, 31.01.2013, 28.02.2013
- vii. Date of reply to the show-cause - 15.03.2013
- viii. Sh. Anuj Modi, CA attended the proceedings as per the record

Grounds of jurisdiction

9. The Id. AR argued that at the time of the passing of the assessment order on 15.03.2013, the assessee company stands merged with M/s Archit Securities Pvt. Ltd. vide order dated 21.01.2011 of the Hon'ble Delhi High Court. It was argued that not only the assessment order, the notice issued u/s 148 dated 28.03.2012 has also been issued after the merger of the assessee company hence the assessee company is not in existence when the notice was issued.

10. The Id. DR argued that these facts have not been brought to the notice of the revenue authorities nor any objections have been filed on this issue. He argued that in response to the notice issued on 28.03.2012 compliance was also made by the assessee on 22.04.2012 wherein it was stated that the original return filed in compliance to the notice. He also argued that the assessee company has responded and attended the hearings, sought adjournment and filed replies. Hence, it is a ploy to defraud the revenue and hence the assessment order needs to be sustained.

11. Heard the arguments of both the parties and perused the material available on record.

12. We have gone through the various judgments on the issue of passing of assessment order on a non-existing entity.

13. We find that the assessee has duly discharged his duties about the issue of merger of the assessee company. The Assessing Officer has quite aware of the issue of merger but still choose to issue notice u/s 148 and complete the assessment in the case of the assessee, which is no longer in existence. To that effect, the assessment has been completed on a non-existing entity. Hence, keeping in view the judgment of Hon'ble High Court of Delhi in the case of Spice Infotainment Ltd. Vs CIT (2012) 247 CTR 500, Impsat (Pvt.) Ltd. vs. ITO (2004) 91 ITD 354 (Del.), Hewlett Packard India (P.) Ltd. in ITA No. 4016/Del/2005, Modi Corp. Ltd. Vs JCIT 105 TTJ 303 and ACIT Vs M/s DLF Cyber City Developers Ltd. and the order of the Tribunal in the case of Maruti Suzuki Pvt. Ltd. 72 taxmann 164, we hereby hold that the decision of the Id. CIT(A) in annulling the assessment completed on a non-existing entity is legally valid. With regard to the compliance by the assessee in the name /and said to be representing Anirudh Overseas Pvt. Ltd. (not in the name of Archit Securities Pvt. Ltd.), we leave it to the discretion of the revenue to take any action as deemed fit.

14. Since, the matter has been adjudicated on the legality of the assessment, any adjudication on the grounds taken up would be infructuous hence not resorted to.

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

Order Pronounced in the Open Court on 14/12/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 14/12/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR