

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7342 to 7345/Del/2017
(Assessment Year: 2008-09, 2009-10, 2011-12 to 2012-13)

Ahead Enterprises Ltd, C/o. M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi PAN: AAGCA5942C	Vs.	DCIT, Central Circle-II, Faridabad
(Appellant)		(Respondent)

Assessee by :	Shri Somil Aggarwal, Adv
Revenue by:	Shri Satpal Gulati, CIT DR
Date of Hearing	06/01/2020
Date of pronouncement	06/01/2021

ORDER

PER BENCH

1. These are the four appeals filed by the assessee for Assessment Years 2008-09, 2009-10, 2011-12 and 2012-13.
2. The solitary ground pressed in this appeal is that the notice was issued in the name of non-existent company and the assessment orders are also passed in the name of non-existent company.
3. In the present case, the Id AR submitted that for Assessment Year 2010-11 identical ground appeal of the assessee has been decided by the coordinate bench in assessee's own case wherein, following the decision of the Hon'ble Delhi High Court in case of Maruti Suzuki India Ltd, the assessment orders passed were quashed as those were passed on and non-existent entity. He further submitted that these are the assessment orders for two prior and two subsequent years. He therefore, submitted that the issue is squarely covered in favour of the assessee.
4. The Id DR vehemently submitted that the assessee has never informed the Id AO about the amalgamation of the company and therefore, the issue is not covered by the decision of Hon'ble Delhi High Court in case of Maruti Suzuki India Ltd but is squarely covered by the decision of the Hon'ble Madras High Court in case of **Oasys Green Tech (P.) Ltd. v. Income-tax Officer*** [2020] 115 taxmann.com 153 (Madras)/[2020] 272 Taxman 147 (Madras)/[2020] 426 ITR 124 (Madras).

5. The Id AR rebutted the same saying that for Assessment Year 2013-14 the Id AO has passed an order on 20.03.2015, which is on the same date on which all these orders have been passed. He submitted that in paragraph 2 and 3 the Id AO categorically mentions that information is available with him about the merger. Incidentally he also dropped the proceedings u/s 142(1) for Assessment Year 2013-14 vide order dated 20.03.2015. Therefore, the cases squarely covered by the decision of the honourable Delhi High Court and on the facts the decision relied upon by the learned departmental representative does not apply.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. The above issue is squarely covered in favour of the assessee by the decision of the coordinate bench in his own case in ITA number 2567/del/2017 for Assessment Year 2010-11 as under:-

“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.”

7. Regarding the argument of the ld DR that assessee has not intimated to the ld AO is also not correct because while passing the order for Assessment Year 2013-14 on 20.03.2015, which

is on the same date on which all the impugned orders for these years were also passed in paragraph 2 and 3 for that year, he noted the fact that the assessee company has merged with Ankriti Real Tech Ltd and the copy of the order of the Hon'ble High Court was also placed before him. Consequent to that he drops the proceedings initiated u/s 142(1) of the Act for Assessment Year 2013-14. Thus, the information is already available with the Id AO at the time of passing of the impugned order. In view of this reliance on the decision of the honourable Madras High Court is misplaced. Thus, In view of the above facts, we have no hesitation to hold that the Id AO has passed the order on a non-existent company which was within his knowledge when he passed the assessment order. Thus, respectfully following the order of the coordinate bench for Assessment Year 2010-11 we quashed all the assessment orders passed by the Id AO and all subsequent proceedings.

8. Accordingly, all the four appeals of the assessee are allowed.

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

Order pronounced in the open court on 06/01/2021.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 06/01/2021

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi