

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.1516/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

Blue Star Engineering & Electronics Ltd. (successor-in-interest of Blue Star Design and Engineering Ltd.) Kasturi Building, Mohan T. Advani Chowk Jamshedji Tata Road, Mumbai - 400020	बनाम / Vs.	DCIT-Circle 1(1)(1) R.No.533, 5 th Floor Aaykar Bhawan, M.K.Road Mumbai – 400020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AACCB-2978-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Neeraj Sheth-Ld. AR
Revenue by	:	Shri Tharian Ommen, Ld.Sr. DR
सुनवाई की तारीख/ Date of Hearing	:	21/01/2021
घोषणा की तारीख / Date of Pronouncement	:	25/01/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 contest the order of learned Commissioner of Income Tax (Appeals)-2, Mumbai [CIT(A)] order dated 28/12/2018 on certain grounds of appeal. The assessee has also raised an additional ground vide petition dated 04/12/2020 wherein it has been pleaded that intimation passed u/s 143(1) is to be treated as invalid and bad in law since the same has been issued in the name of a non-existent entity. The impugned order has dismissed assessee’s

appeal since the same was found to be invalid in view of the fact that the appeal was filed in the name of a non-existent assessee.

2. We have carefully heard the rival submissions and perused relevant material on record including intimation issued by revenue to assessee u/s 143(1) dated 19/06/2017.

3. The material facts are that the assessee filed return of income for the year under consideration on 29/09/2015. However, the return was revised and again revised on 30/03/2017. The final revised return was processed u/s 143(1) and intimation was issued by Centralized Processing Center (CPC) on 19/06/2017 in the name of *Blue Star Design and Engineering Limited (since merged with Blue Star Engineering & Electronics Limited)*. In the intimation, the amount of refund due to the assessee was reduced since credit u/s 115JAA of earlier years was reduced by Rs.2.51 Lacs. There was short grant of TDS credit also.

4. Aggrieved by said intimation, the assessee preferred appeal before Ld. CIT(A) in Form No.35. This form was filed in the name of *Blue Star Design and Engineering Limited*. The Ld. CIT(A) noted that the assessee company had amalgamated with *Blue Star Engineering & Electronics Limited* w.e.f. 01/02/2015 as per approval of Hon'ble Bombay High Court order dated 18/12/2015. Pursuant to the same, the assessee filed revised return of income on 15/10/2016 covering transactions from the period 01/04/2014 to 31/01/2015. The return was again revised on 30/03/2017 which was processed u/s 143(1) and accordingly, an amount of Rs.14.64 Lacs was refunded to the assessee. Since at the time of filing of appeal on 19/07/2017, the erstwhile assessee namely *Blue Star*

Design and Engineering Limited was not in existence, the appeal filed in the name of non-existent entity was invalid. Accordingly, the appeal was dismissed as invalid appeal. Aggrieved, the assessee is in further appeal before us.

5. Going by the factual matrix, we observe that assessee's own folly has led to dismissal of appeal before Ld. CIT(A). The return was revised two times in the name of new entity to give effect to the scheme of amalgamation. Therefore, it was obligatory for the assessee to file the appeal in the name of new entity only since the appeal could not be filed in the name of non-existent entity and the appeal so filed would be invalid one as rightly held by Ld. CIT(A).

6. Even in the additional ground, the assessee is seeking quashing of intimation which has merely processed assessee's revised return of income and the same has been issued in the same name in which the revised return has been filed by the assessee. If the intimation was to be quashed, as per assessee's additional ground, then the assessee would be liable to refund back the refund granted under the said intimation. There is a vast difference in mere processing of return vis-à-vis framing of assessment. Therefore, we do not find any substance in the additional ground raised before us. The same stand dismissed.

7. Proceeding further, we find that Form No.35 was filed within time and the assessee was diligent in preferring further appeal before Ld. CIT(A). Keeping in view the same, we direct assessee to suitably amend Form No. 35 in the name of new entity or alternatively file a fresh Form No. 35 which shall be taken up by Ld. CIT(A) on merits. However, the concession so granted to the

assessee would come at a cost of Rs.10,000/- which shall be deposited by the assessee in *Prime Minister National Relief Fund* within 15 days of receipt of this order. The proof of the same shall be submitted before the registry as well as before Ld. CIT(A) and the same shall enable Ld. CIT(A) to proceed for adjudication of appeal on merits.

8. The appeal stand partly allowed for statistical purposes in terms of our above order.

Order pronounced on 25th January, 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/01/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.