

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

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 3499/Del/2015
Assessment Year: 2005-06**

V3S Infratech Ltd.,
23, (Amalgamated Company of YMC
Buildmore (P) Ltd.), A-20, Naraina
Indl. Area, Phase-I, New Delhi.

vs.

ACIT, Central Circle
New Delhi.

PAN : AAACY2030R
(Appellant)

(Respondent)

Appellant by : Sh. Sanjay Kumar C.A.

Respondent by: Sh. Padamapani Bora, Sr. DR

Date of hearing: 08/11/2021

Date of order : 08/11/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 06.01.2015 passed by the Commissioner of Income Tax (Appeals)-30, New Delhi ("Ld. CIT(A)") for the assessment year 2005-06, V3S Infratech Ltd. ("the assessee"), preferred this appeal.

2. Brief facts of the case are that the assessee filed return of income for the assessment year 2005-06 on 16.02.2010 declaring an income of Rs.8,38,733/-. On the basis of information received subsequently, on 29.03.2012, a notice u/s. 148 of the Income-tax Act, 1961 ("the Act" for

short) was issued to the assessee and according to the Revenue, the seized material at the search and seizure conducted on 14.09.2010 at the residential as well as business premises of Jain Brothers, established that the assessee received accommodation entries to the tune of Rs.25,00,000/- during the financial year 2004-05 relevant to assessment year 2005-06. After hearing the assessee, Id. Assessing Officer passed order dated 28.03.2013 u/s. 143(3) read with section 147 of the Act making an addition of Rs.25,00,000/- being the accommodation entries and Rs.75,000/- towards commission. Assessee challenged the said additions before the Id. CIT(A) and argued that as on the date of initiation of proceedings u/s. 147 of the Act, the company, M/s. YMC Buildmore Pvt. Ltd. was no longer in existence and it was merged with M/s. Gahoi Buildwell Ltd. (now re-named as M/s. V3S Infratech Ltd.). He further noted that the notice dated 29.03.2012 u/s. 148 of the Act was issued in the name of "Principal Officer, M/s. YMC Buildmore (P) Ltd. (Now merged with M/s. V3S Infratech Ltd.)". Learned CIT(A), however, recorded that since the Id. Assessing Officer has expressed in the notice and assessment order that M/s. YMC Buildmore Pvt. Ltd. has merged with V3S Infratech Ltd., it cannot be said that either during recording of reasons or during the assessment proceedings, or even in the assessment order, the name of the amalgamated company, M/s. V3S Infratech Ltd. is not appearing. By recording so, learned CIT(A) concluded that it cannot be said that the assessment was not made in the name of amalgamated company, M/s. V3S Infratech Ltd. just because the name of YMC Buildmore Pvt. Ltd. is also appearing in all such notices, reasons recorded and finally in the assessment order. On this score, Id. CIT(A) brushed aside the contentions raised on behalf of the assessee and held that the assessment order is

not bad on this score. Ld. CIT(A) proceeded further and dismissed the appeal on merits.

3. Aggrieved by such findings of learned CIT(A) both on question of law and on facts, this appeal is preferred by the assessee. Main planks of the arguments of the Id. AR is that inasmuch as the assessment order was passed on the name of M/s. YMC Buildmore Pvt. Ltd., though the name of M/s. V3S Infratech Ltd. is also mentioned within the brackets, such an assessment order is bad in law. He further submitted that the case of assessee is squarely covered by the decision of Hon'ble Supreme Court in Maruti Suzuki India Ltd (2019) 416 ITR 613 (SC) wherein the facts are identical.

4. Learned DR heavily relied on the findings of the Id. CIT(A) and submitted that no prejudice is caused to the assessee merely because the name of M/s. YMC Buildmore Pvt. Ltd. is also mentioned in addition to the amalgamating company, M/s. V3S Infratech Ltd. Since the assessee understood the nature and participated in the proceedings, such an order cannot be invalidated merely because the name of the amalgamated company, namely, M/s. YMC Buildmore Pvt. Ltd. is also to be found in the reasons recorded, notice and the assessment order.

5. We have gone through the record in the light of submissions made on either side. It remains an undisputed fact that by letter dated 16.02.2010, the assessee took an objection to a notice u/s. 153A issued to the assessee pursuant to the search that was conducted on 19.01.2009. However, the consequent proceedings pursuant to such search dated 19.01.2009 ended up in ITAT deleting the additions by order

dated 27.11.2013 in ITA No. 2118 & 2119/Del/2012 for the assessment years 2004-05 and 2005-06.

6. Be that as it may, the fact remains that absolutely, there is no dispute as to the assessee informing the authorities about the merger of M/s. YMC Buildmore Pvt. Ltd. with M/s. Gahoi Buildwell Ltd., which is now rechristened as M/s. V3S Infratech Ltd. It is also not in dispute that in spite of the said facts, subsequent to such date of intimation on 16.02.2010, while recording the reasons in this matter, the name of the assessee was mentioned as M/s. YMC Buildmore Pvt.Ltd. and the same being continued in the notices culminating in the assessment order. Learned CIT(A) noted at paragraph No. 3.3 of his order that the assessee was described in the notice dated 29.03.2012 issued u/s. 148 as the Principal Officer, M/s. YMC Buildmore Pvt. Ltd. (Now merged with M/s. V3S Infratech Ltd.). Learned CIT(A) further recorded that in the reasons recorded, the name was mentioned as M/s. YMC Buildmore Pvt. Ltd. (Now merged with M/s. V3S Infratech Ltd.) whereas in the notice u/s. 142(1) issued on 01.03.2013, it was mentioned as "The Principal Officer, V3S Infratech Ltd.". Assessment order was passed on the name of M/s. YMC Buildmore Pvt. Ltd. (Now merged with M/s. V3S Infratech Ltd.).

7. In these facts, learned AR submits that the facts involved in the case of Maruti Suzuki India Ltd. (supra) are identical where the Hon'ble Supreme Court at paragraph No. 11 noted that the description of assessee therein was mentioned as "The Principal Officer M/s Suzuki Power Train India Limited (Now known as M/s Maruti Suzuki India Limited)". In spite of the fact of mentioning both the names, Hon'ble

Supreme Court did not accept the contention of the Revenue that the notice cannot be said to be bad under law.

8. A perusal of the judgment of Hon'ble Supreme Court in the case of Maruti Suzuki India Limited (supra) clearly shows that Hon'ble Apex Court held that despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name; that the basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation; that participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law; and that this position holds the field in view of the judgment in the case of Spice Infotainment Ltd. v/s CIT, [2012] 247 CTR 500 (Del.).

9. On a perusal of the record, we find that the facts are similar. In spite of the fact of amalgamation pursuant to the order dated 27.03.2008 passed by the Hon'ble Delhi High Court, M/s. YMC Buildmore Pvt. Ltd. got amalgamated in M/s. Gahoi Buildwell Ltd. w.e.f. 01.04.2006, intimated to the Assessing Officer on 16.02.2010 itself, which is evident from notice issued u/s. 142(1), the Assessing Officer initiated proceedings against M/s. YMC Buildmore Pvt. Ltd.

10. Respectfully following the decision of Hon'ble Apex Court in the case of Maruti Suzuki India Limited (supra), we are of the considered opinion that the proceedings u/s. 147 initiated against M/s. YMC Buildmore Pvt. Ltd. cannot be sustained and it is not open for the

Revenue to contend that no prejudice is caused to the assessee by such violation of legally established principles.

11. Since we find that the assessment proceedings are liable to be quashed on the ground of such proceedings being against a non-existent entity, we do not consider it necessary to adjudicate the grounds on merits of additions.

12. In the result, the appeal is allowed.

Order pronounced in the open court on this the 8th day of November, 2021.

Sd/-

(G.S. PANNU)
PRESIDENT

Dated: 08/11/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER