

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4182/Del/2017  
Assessment Year: 2006-07**

ACIT, Central Circle-13  
New Delhi.

vs. Pride Residency (P) Ltd.,  
(in the case of SPN Milk  
Products Industries. P. Ltd.), F-  
5/9, Vasant  
Vihar, New Delhi

**PAN :AAGCP0358K**  
(Appellant)

(Respondent)

Appellant by : Sh. V.K. Dhingra, CA  
Respondent by: Sh. T Kipgen, Sr. DR

Date of hearing: 07/12/2021

Date of order : 09/12/2021

**ORDER**

**PER K. NARASIMHA CHARY, J.M.**

Aggrieved by the Order dated 27/02/2017 in Appeal No. 95/16-17 (original)/113/16-17 (new), passed by the Ld. Commissioner of Income Tax (Appeals)-25, New Delhi ("Ld. CIT(A)"), Revenue preferred this appeal, where under the Ld. CIT(A) quashed the assessment order made on the name of M/s Pride Residency Private Limited being the amalgamated company.

2. Brief facts of the case are that by order dated 26/3/2013 passed under section 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') income of the assessee was assessed at Rs.1,93,23,540/-. While the matters stood thus, pursuant to the search and seizure operations carried out in Sanskar group of cases on 7/8/2010, covering assessee also under section 132/133A of the Act, assessment in the case of the assessee was completed under section 153A of the Act read with section 143(3) of the Act by order dated 26/3/2013 at an income of Rs.1,93,23,540/-. Though an appeal was preferred by the assessee, subsequently, the same was withdrawn and dismissed by order dated 08/01/2014. Thereafter, the assessee preferred revision application under section 264 of the Act. The Ld. PCIT vide order dated 30/3/2015 passed an order under section 264 of the Act, quashing the assessment made by the Assessing Officer under section 153A of the Act holding that the Assessing Officer had committed an error inasmuch as had passed an order in the name of a non-existent company, and therefore, he directed the Assessing Officer to reassess the income in the hands of the existing correct legal entity after giving proper opportunity of being heard to the assessee and after examination and scrutiny of all the relevant material and verification including the submissions made by the assessee.

3. Pursuant to the directions in the order passed under section 264 of the Act, learned Assessing Officer passed the order dated 23/3/2016 on the name of M/s Pride Residency (P) Ltd (in the case of M/s SPN Milk Products Industries Pvt. Ltd.(Also known as M/s. Smart Tradeline (P) Ltd.), assessing the income at Rs.1,93,23,540/-. Challenging the same,

assessee preferred an appeal before the Ld. CIT(A), contending that in spite of the directions given by the Id. PCIT to reassess the income in the hands of the existing correct legal entity, Id. Assessing Officer failed to comply with the same.

4. It was argued before the Ld. CIT(A), on behalf of the assessee, that the learned Assessing Officer failed to comply with the directions of the Ld. PCIT, particularly, that the assessment be made “in the hands of the existing correct legal entity”, inasmuch as, the learned Assessing Officer neither give notice to the correct legal entity, nor the assessment was made in the hands of an existing correct legal entity. It was further submitted before the Ld. CIT(A) that the initiation of proceedings under section 264/143(3) of the Act, including issue of notice and also completion of assessment on the company which had already become a non-existent on account of its merger with another company was illegal and bad in law and, therefore, such assessment being bad in law deserves to be quashed.

5. It was further brought to the notice of the Ld. CIT(A) that a similar issue had arisen in the case of M/s SatkarFincap Ltd. (through Pride Residency Private Limited) for assessment year 2009-10, where vide order dated 14/7/2016 under section 250(6) of the Act in Appeal No. 60/2013-14, Ld. CIT(A) quashed the assessment order by holding that there was a deviation from the principles with regard to the amalgamation, the income even though has been earned by the amalgamating company, but if the information regarding the amalgamation is available at the time of assessment, the assessment has to be done in the hands of the amalgamated company.

6. Ld. CIT(A) considered the contentions raised by the assessee and also referred to the decisions of the Hon'ble Apex Court in the case of Saraswati Industrial Syndicate Ltd. Vs.CIT, 186 ITR 278, wherein it was held that when two companies amalgamate and managing to one, the transferor company loses its entity as the decisions to have its business, and their respective rights and liabilities are determined under the scheme of amalgamation, but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective. Ld. CIT(A), therefore, held that, though the learned Assessing Officer was directed in section 264 of the Act to reassess the income in the hands of the existing correct legal entity and as a matter of fact was aware of such directions, failed to follow the same while completing the assessment and assessed the income in the hands of a non-existing company, which had ceased to exist after sum of commission, and, therefore, the assessment order rendered void and was liable to be quashed. He accordingly quashed the same.

7. Challenging such an order, Revenue is in this appeal before us stating that the income of the searched company (amalgamating company) was correctly assessed in the hands of the amalgamated company, namely, M/s Pride Residency (P) Ltd (in the case of M/s SPN Milk Products Industries Pvt. Ltd.(Also known as M/s. Smart Tradeline (P) Ltd.),and, therefore, Ld. CIT(A) was in error in quashing the same. It is argued by the Ld. DR that the notice was issued in the name of searched company and such an error is curable under section 292-B of the Act. He placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of Skylight Hospitality LLP vs. ACIT (2018) 405 ITR 296 (Delhi).

8. Learned AR reiterated the arguments advanced in appeal before the Id. CIT(A) and submitted that assessment on non-existent company despite directions of the Id. PCIT in revision order u/s. 264 of the Act, is not sustainable at all.

9. We have gone through the record in the light of the submissions made by the Ld. DR. Facts relevant for proper appreciation of the contentions of the Revenue are that the assessee original was "SPN Milk Products Industries Pvt. Ltd.", a company in the group of companies led by the flagship concern M/s Sanskar Home Private Limited. The group is mainly engaged in the business of development and construction of buildings, homes, plots etc. trading in properties and undertaking construction/collaboration projects. Subsequently, the assessee amalgamated with "Pride Residency Private Limited" vide order dated 17/08/2012 of the Hon'ble Delhi High Court passed under section 391(2) and 394 of the Companies Act, 1956, w.e.f., 1/4/2011, and consequently, the SPN ceased to exist thereafter. Such a fact was informed to the learned Assessing Officer, CC-3, by the company vide letter dated 23/02/2016. PAN No of M/s SPN Milk Products was AAICS7591K and the PAN No of M/s Pride Residency is AAGCP0358K.

10. Pursuant to the search and seizure operations carried out in Sanskar group of cases on 7/8/2010, covering the M/s SPN Milk Products (assessee) also under section 132/133A of the Act, assessment in the case of the assessee was completed under section 153A of the Act read with section 143(3) of the Act by order dated 26/3/2013 at an income of Rs.1,93,23,540/-. Though an appeal was preferred by the assessee, subsequently, the same was withdrawn and dismissed by order dated

08/01/2014. Thereafter, the assessee preferred revision application under section 264 of the Act. The Ld. PCIT vide order dated 30/3/2015 passed an order under section 264 of the Act, quashing the assessment made by the Assessing Officer under section 153A of the Act holding that the Assessing Officer had committed an error inasmuch as had passed an order in the name of a non-existent company, and therefore, he directed the Assessing Officer to reassess the income in the hands of the existing correct legal entity after giving proper opportunity of being heard to the assessee and after examination and scrutiny of all the relevant material and verification including the submissions made by the assessee.

11. Learned Assessing Officer, issued notice under section 142 (1) of the Act on 13/1/2016 in the name of the non-existent company SPN with PAN number AAICS7591K, but did not issue any notice under section 153A and 143(2) of the Act in the name of the existing correct legal entity, namely, Pride Residency Private Limited with PAN number AAGCP0358K. Assessee protested the same while participating the assessment proceedings. Learned Assessing Officer passed the order dated 23/3/2016 assessing the income at Rs.1,93.23,540/- on the name of M/s. Pride Residency (P) Ltd (in the case of M/s SPN Milk Products Industries Pvt. Ltd.).

12. Against this assessment order, when the assessee preferred appeal before the Ld. CIT(A), Ld. CIT(A) after considering the material before him reached a factual conclusion that the Assessing Officer is aware of the directions issued by the Ld. PCIT in the order under section 264 of the Act to the effect that the assessment made in the hands of the existing correct legal entity which fact he mentioned in the

assessment order itself but issued notice to the company with PAN AAICS7519K which pertains to SPN, the non-existent company. Ld. CIT(A) further observed that the ACIT, Central circle-13, New Delhi has no jurisdiction over the existing correct legal entity, namely, M/s Pride Residency Private Limited over which the jurisdiction was vested in circle 20 (1), New Delhi. Ld. CIT(A), therefore, observed that neither the action was taken against the existing correct legal entity, namely, M/s Pride Residency Private Limited, nor the Assessing Officer involved, namely, ACIT, Central Circle-13, New Delhi, could have taken any legal action against the existing correct legal entity, as the jurisdiction over it was with some other learned Assessing Officer, the assessment order is vitiated and on this ground he quashed the same.

13. It is pertinent to note that under similar circumstances for the assessment year 2009-10, while disposing of the appeal No. 60/2013-14 by order dated 14/7/2016, Ld. CIT(A) held that the assessment order passed on M/s Pride Residency Private Limited (in the case of M/s SatkarFincap Ltd.) was rendered void and quashed the same. In the present case in the impugned order Ld. CIT(A) read the order of his predecessor for the assessment year 2009-10 and while following the same quashed the assessment order.

14. It is not in dispute, and further matter it is so mentioned in the assessment order, that Ld. PCIT in the order dated 30/3/2015 passed under section 264 of the Act, observed that the assessment made by the Assessing Officer under section 153A of the Act has been quashed on technical grounds because the learned Assessing Officer issued notice and completed the assessment in the name of non-existing company as

the company had ceased to exist after its amalgamation; that there is also no denying of the fact that consequent to the search and seizure action upon the company, there were significant material before the Assessing Officer and the Assessing Officer had completed the assessment of the company after considering the material before him and after making verification and scrutiny and affording the opportunity to the assessee; that the only error which the learned Assessing Officer had committed was that the order was passed in the name of a non-existing company; that this being a technical error, the Assessing Officer was directed to reassess the income in the hands of the existing correct legal entity after giving proper opportunity of being heard to the assessee and after the examination, scrutiny of all the relevant material and verification, including the submissions made by the assessee; and that to such an extent the directions may be treated as a directions under section 150 of the Act.

15. On a careful perusal of the impugned order, we do not find any factual error in the findings of the Ld. CIT(A) that being aware of the specific directions given by the Ld. PCIT, and having reproduced such directions in the assessment order itself, and in spite of such clear and specific directions, the learned Assessing Officer repeated the earlier action of service of notice and the completion of assessment upon amalgamating company, which is easy to exist. So these facts do not admit of any doubt that in spite of the clear directions given by the Ld. PCIT under section 264 of the Act the learned Assessing Officer failed to comply with the same and repeated the earlier action of service of

notice and completion of assessment on the amalgamating company which has ceased to exist.

16. Adverting to the contention of the Revenue regarding the aforesaid defect being curable u/s. 292B, when we look at the case law on this aspect, we find that in Pr. Commissioner of Income Tax-6 New Delhi Vs. Maruti Suzuki India Limited (Successor of Suzuki Powertrain India Limited) (2017) 397 ITR 681 (Delhi), Spice Entertainment Limited Vs. Commissioner of Income Tax(2012) 247 CTR (Delhi) 500 (Civil Appeal 285/2014, Commissioner of Income Tax Vs. Dimension Apparels (P) Ltd.(2015) 370 ITR 288 (Civil Appeal 43 17/2014 where against SLP was dismissed on 2nd November, 2017), Commissioner of Income-Tax Vs. Norton Motors (2005) 275 ITR 595 (Punjab & Haryana High Court), CIT Vs. Harjinder Kaur(2009) 222 CTR (P&H) 254 and Sri Nath Suresh Chand Ram Naresh Vs. Commissioner of Income Tax (2006) 280 ITR 396 (All), it had been held that such a defect cannot be treated as a procedural one and once it is found that the assessment is framed in the name of a non-existent entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Act and, thus the assessment orders framed by the AO on a non-existent company were a nullity in the eyes of law and void and the provisions of Section 292B could not rescue the appellant department.

17. In this context, we do not find any fault with the Ld. CIT(A) in following the decision of the Hon'ble Apex Court in the case of Saraswati Industrial Syndicate Ltd (supra) wherein it was held that when two companies amalgamated merged into one, the transfer company loses its entity as it serious to have its business, and their respective

rights are liable to be determined under the scheme of amalgamation, but the corporate entity of the transfer company ceases to exist with effect from the date of the amalgamation is made effective. In this matter the amalgamation was effective from 1/4/2011 under the order dated 17/08/2012 passed by the Hon'ble Delhi High Court under section 391 (2) and 394 of the Companies Act, 1956. The decision of the Hon'ble High Court in the case of Skylight Hospitality LLP (supra) has no application to the facts of the case since in such case the notice issued on the amalgamating company was challenged. In this case, however, the assessee specifically brought it to the notice of the learned Assessing Officer that there was a merger of the companies, and there was a direction of the Ld. PCIT to issue notice and hear they correct the existing legal entity. However, there is failure on the part of the learned Assessing Officer to comply with the said direction inasmuch as he issued notices to the non-existent company and completed the assessment on it.

18. Further, under similar circumstances, in the case of a group company a coordinate Bench of this Tribunal in ACIT vs. M/s. Pride Residency (P) Ltd (ITA No. 4176/Del/2017) by order dated 12/12/2019 upheld the action of the Ld. CIT(A) in crashing the assessment order that was framed in case of the nonexisting company. In that case also the assessment was framed against "M/s. Pride Residency (P) Ltd.(in the case of M/s.SatkarFincap Ltd.)," instead of M/s Pride Residency private limited. The facts of such case are on all fours with the facts of this case.In this factual situation we are of the considered opinion that there is no legal infirmity in the impugned order. The reasoning given by the

Ld. CIT(A) do not suffer any illegality or irregularity. We, therefore, do not find any merits in the grounds and accordingly dismissed the same.

19. In the result appeal of the Revenue is dismissed

Pronounced in open court on this the 9<sup>th</sup> day of December, 2021.

Sd/-

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

Dated: 09/12/2021

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