

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

***(Conducted through Virtual Court)***

**ITA No.3300/Ahd/2016  
Assessment Year: 2008-09**

M/s. Mehta Air Travels Pvt. Ltd., vs. The Income Tax Officer  
LG-1, Shefali Centre, Ward 2(1)(4), Ahmedabad.  
Near Paldi Char Rasta, Paldi,  
Ahmedabad.  
[PAN – AAACM 7947 H]  
(Appellant) (Respondent)

Appellant by : Shri M.K. Patel, Advocate  
Respondent by : Shri Anand Kumar, Sr. D.R.

Date of hearing : 10.12.2021  
Date of pronouncement : 02.02.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

This appeal is filed by the assessee against the order dated 10.11.2016 passed by the CIT(A)-2, Ahmedabad for the Assessment Year 2008-09.

2. The grounds of appeal raised by the assessee are as under :

- “(1) *The Learned Assessing Officer has erred in law in issuing notice u/s 148 of the I.T. Act on a non existing company when the name of the company was struck off as a defunct company by Registrar of Companies vide order dt. 18/05/2011 and hence the company was not in existence on and from 18/05/2011. Accordingly the company was not in existence on the date of issuance of notice u/s 148 alleged to have been served on 31/03/2015 (the said notice is received back by Department as stated in the Assessment Order) and served through Affixture) (no proof available of service of notice) and Hon’ble CIT(A) has erred in law and on facts in confirming the issuance and service of notice.*
- (2) *The learned Assessing Officer has erred in law and on facts and Hon’ble CIIT(Appeal) has erred in law and on facts in confirming the assessment*

*order passed when the notice issued u/s 148 on a non-existent company when such notice was not served on the assessee and hence the entire proceedings deserves to be annulled and held to be against the provisions of law and as such the order passed is bad in law and the demand of Rs.96,993/- be deleted and cancelled and determined at Rs. Nil.*

- (3) *The learned Assessing Officer has erred in law and on facts in passing the assessment order when no notice u/s 143(2) is served on the assessee, (The learned Assessing Officer has stated in the order that the notice u/s.143(2) is issued and is silent on service of notice and merely stating that the notice was issued on 26.06.2015, and Hon'ble CIT(A) has erred in law and on facts in not taking cognizance of this ground in the appeal and erred in not giving any decision on this ground. Hence it be held that order is invalid in law in absence of service of notice u/s. 143(2) of the Act.*
- (4) *Hon'ble CIT(A) has erred in not following the judicial support submitted vide submissions during the course of hearing of Appeal and has erred in merely stating "the same could not be applied due to difference of facts" (para 2.4 of the Order):*
- (a) *CIT v/s. Vivid Marketing Services Pvt. Ltd. (Delhi High Court) ITA 273/2009*
  - (b) *Khurana Engineering Ltd. Successors of M.S. Khurana V/s. DCIT (SCA No.605 of 2013 order dt. 28/01/2013)*
  - (c) *Spice Entertainment Ltd. v/s. CIT (DTA No.475 of 2011 and 476 of 2011 Delhi High Court order dt. 03/08/2011.*
  - (d) *Saraswati Industrial Syndicate Ltd. v/s.CIT 186 ITR 278 (SC)*
  - (e) *General Radio and Appliances Co. v/s M.A. Khuder (1986) 60 Co. Cass 1013 (SC)*
  - (f) *M.H. Smith (Plant Hiro) Ltd. v/s. D.L. Mainwaring (T/A Inshore) 1986 BCLC 342 (CA)*
  - (g) *CIT v/s. Norton Motors 275 ITR 595 (P&H)*
- (5) *Hon'ble CIT(Appeal) has erred in law in not considering the judicial support cited in support of the contention of the assessee.*
- (6) **PRAYER**

*It is prayed that it be held that :-*

- (1) *Issue of notice u/s148 on a non-existent assessee be held to be invalid.*

- (2) *The assessment order dt. 11/09/2015 be held to be invalid in absence of service of notice on the assessee.*
- (3) *It be held that the demand is cancelled.*
- (4) *It be held that Refund of Rs.11,525/- be granted with interest."*

3 M/s. Mehta Air Travel Pvt. Ltd. was a Company engaged in the business of tour and travels. The assessment in this case was reopened under Section 147 of the Income Tax Act, 1961 on the basis of data available in Form No.26AS in ITD System that during the year the assessee had total receipt of Rs.1,13,304/- from which tax was deducted and deposited in the Government account by the deductor amounting to Rs.11,525/- but no return of income was filed in this case. Accordingly, notice under Section 148 of the Act was issued and served by Speed Post on 31.03.2015. The Assessing Officer observed in the Assessment Order that since the said notice was received back as the assessee had left it's given address, it was again served through Affixture at the available address. A notice under Section 143(2) was also issued on 26.06.2015. In response to notices under Section 148 and 143(2) of the Act, nobody attended the proceedings and no return was filed by the assessee. Later on, show cause notice was issued on 18.08.2015 stating that the assessment will be completed taking the total income at Rs.1,13,304/- without allowing any deductions whatsoever and further no credit for TDS will be allowed as no return was filed in this case. Thus, the total income of the assessee was estimated at Rs.1,13,304/- as total receipt mentioned in the Form No.26AS. The assessment was completed under Section 144 read with Section 147 of the Act and the order was passed on 11.09.2015.

4. Being aggrieved by the Assessment Order, the assessee filed the appeal before the CIT(A) . The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessment is made on a non-existent company. One Mr. Dhirajlal Terraiya vide letter dated 25.08.2015 in respect of reply to Show Cause Notice dated 18.08.2015 intimated the ITO Ward 2(1)(4) that the company was struck off from the records of Registrar of Companies (ROC), Gujrat, vide order dated 18.05.2011. Thus, the company is no longer in existence after being struck off from the Register of ROC. In absence of existing company, there cannot be any director

who can sign the verification for the filing of Income Tax Return or making any compliances or replying to any notices from Income Tax Department. The Ld. AR submitted that there is no company in existence hence the proceedings are infructuous. The Ld. AR relied upon the following decisions:

- i) CIT vs. Vivid Marketing Services Pvt. Ltd. (Del. HC) ITA No. 273/2009
- ii) Khurana Engineering Ltd. Successors of M.S. Khurana vs. DCIT (SCA No. 605 of 2013 order dated 28.01.2013)
- iii) Spice Entertainment Ltd. Vs. CIT (DTA No. 475 of 2011 and 476 of 2011 Del. HC order dated 03.08.2011)
- iv) Saraswati Industrial Syndicate Ltd. Vs. CIT 186 ITR 278 (SC)
- v) General Radio and Appliances Co. vs. M.A. Khuder (1986) 60 Co. Cases 1013 (SC)
- vi) M. H. Smith (Plant Hiro) Ltd. Vs. D. L. Mainwaring (T/A Inshore) 1986 BCLC 342 (CA)
- vii) CIT vs. Norton Motors 275 ITR 595 (P & H)

6. The Ld. DR submitted that the assessee company was very much in business in this particular year and was functional. The status of the company does not affect its receipts, thus, it was very much in existence. Therefore, the ratio laid down by the Hon'ble Apex Court in Spice Entertainment Ltd. (supra) as well as Maruti Suzuki Co. will not be applicable in the present case. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is matter of record that One Mr. Dhirajlal Terraiya vide letter dated 25.08.2015 in his reply to Show Cause Notice dated 18.08.2015, intimated the ITO Ward 2(1)(4) that the company was struck off from the records of Registrar of Companies (ROC), Gujrat, vide order dated 18.05.2011. Thus, the company is no longer in existence after being struck off from the Register of ROC. In absence of existing company, there cannot be any director who can sign the verification for the filing of Income Tax Return or making any compliances or replying to any notices from Income Tax Department. The struck off company i.e. Mehta Air Travel Pvt. Ltd. was not in existence on the date of passing Assessment Order. Hence, the present

Assessment order is not valid and the same may be quashed. The assessment order for Assessment Year 2008-09 is set aside.

In the result, appeal of the assessee is allowed. Order pronounced in the open Court on this 2<sup>nd</sup> day of February, 2022.

Sd/-  
**(WASEEM AHMED)**  
Accountant Member

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 2<sup>nd</sup> day of February, 2022**

**PBN/\***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*