

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **697/CHNY/2014**

निर्धारण वर्ष /Assessment Year: 2009-10

**M/s. Lakshmi Machine Works
Ltd.,**

(amalgamated company of LMW
Machinery Ltd w.e.f.

01.04.2012), S.R.K.V. Post,

Perianaickenpalayam,

Coimbatore – 641 020.

PAN : AAACL5244N

(अपीलार्थी/Appellant)

The ACIT,

v. Company Circle – IV(2),

Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

प्रत्यर्थी की ओर से/Respondent by

: Shri Vikram Vijayaraghavan, Advocate

: Shri S. Palanikumar, CIT

सुनवाई की तारीख/Date of Hearing

: 10.01.2022

घोषणा की तारीख/Date of Pronouncement

: 22.02.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is directed against the assessment order passed by ACIT, Company Circle IV(2), Coimbatore passed u/s. 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter the 'Act') in pursuance of directions of Dispute Resolution Panel, Chennai in F.No.DRP/CHE/05/2013, directions dated 28.11.2013 for the assessment year 2009-10 vide order dated 16.01.2014.

2. At the outset, Id.counsel for the assessee drew our attention to additional grounds raised vide letter dated 25.01.2016. He referred the following additional grounds:-

- (i) *The impugned order, u/s.143 r.w.s 144C of the Income Tax Act, 1961 dated 16.01.2014 on the dissolved Company M/s. Rieter LMW Machinery Limited, is opposed to law and ab initio void.*
- (ii) *The learned DRP, ought to have quashed the draft order of the TPO, as the company stood dissolved with effect from 01.04.2012, as per the order of the Hon'ble High Court of Madras dated 26th day of April 2013, a copy of which position was brought to the notice of the DRP, in the facts and the circumstances of the case and in law.*

3. The Id.counsel for the assessee stated that the assessee has filed appeal against the order u/s.143(3) r.w.s. 144C of the Act, dated 16.01.2014 before ITAT, Chennai. But the assessee inadvertently omitted to raise a specific ground i.e., jurisdictional ground as regards to assessment framed in the name of non-existent company. The Id.counsel stated that M/s. LMW Machinery Ltd., who is assessed by the impugned assessment order, have been amalgamated with M/s. Lakshmi Machine Works Ltd., w.e.f. 01.04.2012 as per the scheme of amalgamation approved by the Hon'ble High Court of Madras in C.P. No. 33 of 2013, vide order dated 26.04.2013. The Id.counsel for the assessee stated that this was brought to the notice of DRP by the assessee at the very first instance on receipt of notice of hearing u/s.144C(11) dated 08.07.2013, vide its letter dated 22.07.2013. The Id.counsel for

the assessee stated that this ground raised by the assessee as regards to assumption of jurisdiction by the AO for framing assessment on a non-existent company goes to the root of the matter and hence, in view of the decision of Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs CIT, (1998) 229 ITR 383, the issue may be admitted and adjudicated accordingly. The Id.counsel for the assessee stated that all the facts relating to this issue are already available on the assessment record of the AO and that of the DRP and nothing new is to be brought on record or nothing new is to be adjudicated. Once the facts are available on record of the assessment, the issue being a jurisdictional issue goes to the root of the matter, the additional ground should be admitted at the very first instance and this should be decided first.

4. Per contra, the Id.CIT-DR opposed the admissibility of additional grounds for the reason that this issue was before the AO and the DRP and assessee has specifically raised this issue before DRP during the course of adjudication proceedings vide its letter dated 22.07.2013, whereas the directions of DRP was passed only on 28.11.2013 and in consequence to the same assessment was framed vide order dated 16.01.2014. According to Id.CIT-DR once

the assessee has not raised the issue in its original ground, the concept of limitation will apply to the additional ground raised now before the Tribunal by the assessee i.e., almost after 1½ years. Hence, he opposed the admissibility of additional ground.

5. Having heard rival contentions on the issue of admissibility of additional ground, we note that the issue raised is purely jurisdictional issue whether the assessment can be framed on the dissolved company or on the non-existent company. We noted that the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., *supra*, has considered this issue and held that the jurisdictional issue can be raised at any stage for the first time even before the Tribunal exception is that facts should be available on record. In the present case before us the facts are available on record and even this issue was contested by the assessee before DRP by filing a letter dated 22.07.2013 before completion of adjudicating proceedings by the DRP. Hence, we admit this issue and adjudicate the same.

6. Brief facts are that M/s. LMW Machinery Ltd., (formerly called as M/s. Reiter LMW Machinery Ltd.) was amalgamated with M/s. Lakshmi Machine Works Limited w.e.f. 01.04.2012 by the scheme

of amalgamation and consequent to the order passed by Hon'ble High Court of Madras in C.P.No.33 of 2013 dated 26.04.2013. We noted that the Hon'ble High Court of Madras approved the scheme and passed order in C.P.No.33 of 2013 dated 26.04.2013. We noted that the TPO passed order in the name of M/s. Reiter LMW Machinery Ltd., having PAN No.AABCR 0309M vide order dated 28.01.2013. The AO passed draft assessment order on a non-existent company i.e., M/s. Reiter LMW Machinery Ltd vide order dated 08.02.2013. The proceedings before DRP started vide its notice issued u/s.144C(11) dated 08.07.2013, which was replied by the assessee vide letter dated 22.07.2013 (which is placed on record) and the relevant text of the letter reads as under:-

"We are in receipt of your notice dated 8th July, 2013 dispatched on 15.07.2013 and redirected by Post office and delivered to us on 22.07.2013 to attend hearing on 22.07.2013.

Please note that M/s. LMW Machinery Limited has been amalgamated with M/s. Lakshmi Machine Works Limited with effect from 1st April 2012 as per Scheme of Amalgamation sanctioned by the High Court of Madras. Copy of the Order enclosed herewith."

The AO passed final assessment order dated 16.01.2014 in the name of M/s. Reiter LMV Machinery Ltd., the name of non-existent company.

7. In view of the above facts, the Id.counsel for the assessee stated that the assessment made on non-existent company, even after the fact of amalgamation of that company was brought to the notice of DRP as well as the AO in the course of adjudicating proceedings vide letter dated 22.07.2013, the assessment made is bad in law and invalid. It was contented by Id.counsel for the assessee that even the provisions of section 292B of the Act does not help the Revenue and for this, the Id.counsel for the assessee relied on the decision of Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Limited, 416 ITR 613. The Id.counsel for the assessee also relied on the decision of Hon'ble High Court of Madras in the case of CIT vs. Gitsons Engineering Co., (2015) 370 ITR 87 and the decision of Hon'ble High Court of Delhi in the case of CIT vs. Micra India (P) Ltd., (2015) 231 Taxman 809 (Delhi).

8. Per contra, the Id. CIT-DR relied on section 292B of the Act and stated that this is purely a mistake happened from record and it can be rectified. Further, he could not controvert above facts as well as could not reply to the case law cited by Id.counsel for the assessee of Hon'ble Supreme Court in the case of Maruti Suzuki India Limited, *supra*.

9. We noted that the assessment order was passed by ACIT, Company Circle 4(2), Coimbatore u/s.143(3) r.w.s. 144C of the Act, dated 16.01.2014 is the base order which was passed on non-existent company, the subsequent proceedings all will not survive in view of the decision of Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki Ltd, 416 ITR 613. The Hon'ble Supreme Court held that "notice u/s.143(2) under which jurisdiction was assumed by the Assessing Officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section292B". The Hon'ble Supreme court has also considered the provision of section 170 of the Act and stated that "it is necessary to advert to the provisions of section 170 which deal with succession to business otherwise than on death". The Hon'ble Supreme Court considered this issue as under:-

"In this case, the notice u/s.143(2) under which jurisdiction was assumed by the Assessing Officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section292B.

In this context, it is necessary to advert to the provisions of section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:"

9.1 The Hon'ble Supreme Court has also relied on the decision of Hon'ble Supreme Court in another case CIT vs. Spice Entertainment, Civil Appeal No.285 of 2014, dated 02.11.2017. We noted that in the case of M/s. Maruti Suzuki Ltd., *supra*, the Hon'ble Supreme Court has noted the fact that the draft assessment order and the final assessment order contained the name of both amalgamated and amalgamating companies but despite the fact both name existed, the Hon'ble Supreme Court held that the assessment framed is on non-existent company and in view of the above fact that the assessment is framed on a non-existent company and the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of M/s. Maruti Suzuki Ltd., *supra*, we quash the assessment and allow the appeal of assessee.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 22nd February, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 22nd February, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |