

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VP, &  
Ms. KAVITHA RAJAGOPAL, JM**

(Virtual Court Hearing)

आयकरअपीलसं./ I.T.A. No. 3028/Mum/2019

(निर्धारणवर्ष / Assessment Year: 2010-11)

DCIT-8(2)(2) R. No. 625, 6 <sup>th</sup> floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	M/s Spirit Infrapower & Multiventures Pvt. Ltd. (Successor to M/s Premier Finance & Trading Co. Ltd.) 18 <sup>th</sup> floor, A-Wint, Marathon Futurex, N. M. Joshi Marg, Lower Parel, Mumbai-400 013
स्थायीलेखासं ./जीआइआरसं ./PAN No. AALCS5905J		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Jay Bhansali, Ld. AR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Hoshang B. Irani, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	31.01.2022
घोषणाकीतारीख / Date of Pronouncement	:	03.03.2022

आदेश / ORDER

**Per Kavitha Rajagopal, Judicial Member:**

The present Appeal filed by the revenue challenges the order dated 04.12.2018 passed by Ld. Commissioner of Income

Tax (Appeals) – 13, Mumbai in short referred as ‘Ld. CIT(A)’ in the matter of assessment u/s 143(3) r.w.s. 147 of Income Tax Act, 1961 (in short ‘I.T. Act’) for Assessment Year (in short AY) 2010-11. The grounds raised by the revenue that are to be adjudicated upon are as follows:-

*1. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was right in upholding that in view of compliance by assessee and A.R. to all the queries and assessment proceedings, the only error of passing the assessment order in the name of erstwhile company is a curable error u/s. 292B and 292BB of the I.T. Act ?"*

*2. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) should be directed to adjudicate the matter of interest account and on NPA amount on merits if the Hon'ble ITAT upholds the Department's contention at Ground 1 above."*

*II. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.*

*III. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the AO restored.*

2. The brief facts are that, the assessee company is a NBFC registered under RBI and was engaged in the business of trading in shares, finances and investments. The assessee company filed its return of income on 15.10.2010 declaring total loss of Rs. 1,16,48,707 and thereafter revised its return of income on 31.03.2012 declaring total income of Rs. 1,56,85,127/-. The assessment order was passed on 28.03.2013 assessing the total income at Rs. 15,51,64,480/- disallowing the interest u/s

36(1)(iii) of Rs. 13,22,54,824/-. Subsequent to that, the assessment was reopened vide notice dated 05.03.2015 and the assessee challenged the reopening before the Ld. CIT(A). The AO made the additions to the tune of Rs. 1,68,05,930/- as notional interest @ 10% on NPA provisions of Rs. 16.80 crores. The assessee challenged the impugned order of the AO on 3 grounds namely:-

- i) Reopening as bad in law,
- ii) Additions of Rs. 1,68,05,930/- as notional on NPA being arbitrary and
- iii) Assessment on non-existing company.

3. Though the Ld. CIT(A) has allowed all the above mentioned grounds of appeal preferred by the assessee, the revenue is in appeal before the Tribunal only on the limited issue which involves only one substantial issue. However, we reproduce the grounds as such stated by the assessee in the appeal memo for the convenience of adjudication of substantial issue as whether the assessment order passed in the name of erstwhile company is curable u/s 292B and 292BB of the I.T. Act and if the issue has been upheld by the Tribunal, then the matter should be directed to Ld. CIT(A) for adjudication of the issue of interest on NPA.

4. Ld. DR did not have much to elaborate on the grounds of appeal and relied on the assessment order.

5. On the other hand, Ld. AR relied on a catena of judgments which states that assessment proceedings should not be carried

out on erstwhile company and should be quashed. He further stated that Ld. CIT(A) order should be upheld.

6. We have given our careful consideration to the rival contentions and the material placed on record before us. The decisions relied on by Ld. AR has been considered before us. The assessee company has been amalgamated with M/s Spirit Textiles Pvt. Ltd. w.e.f. 01.04.2013 which was approved by the Hon'ble Bombay High Court vide its order dated 20.09.2013 and on filing of the High Court order with ROC on 27.11.2013, the Premier Finance & Trading Co. Ltd. ceased to exist. The facts of amalgamation was well within the knowledge of AO and the same is also evident at page no. 2 of the assessment order. In the present case, despite the fact that AO was informed about the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the AO issued jurisdictional notice only in the name of erstwhile company. Issuing notice to the amalgamated /successor company is a sine quo non and omission in following this make the assessment order null and void. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of **PCIT Vs. Maruti Suzuki India Ltd.[2019] 107 taxmann.com 375 (SC)** wherein Hon'ble Supreme Court upheld the judgment of Hon'ble Delhi High Court and held that assessment order passed subsequently in the name of non-existing company would be without jurisdiction and a nullity. The operative portion of the said order is reproduced below:-

*33. In the present case, 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. 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. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in **Spice Enfotainment** (supra) on 2 November 2017. The decision in **Spice Enfotainment** has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in **Spice Enfotainment** (supra).*

7. Even after the amalgamation, the AO erred in issuing statutory notice u/s 143(2) dated 28.09.2015 on the erstwhile company. Upon considering the fact that whether such error of passing the assessment order in the name of erstwhile company is a curable error u/s 292B & 292BB of I.T. Act, we would like to place reliance on the ratio laid down in the judicial precedents referred supra. The assessment order u/s 143(3) r.w.s. 147 of the I.T. Act passed in the erstwhile Premier Finance & Trading Co. Ltd, a non-existing company is invalid and requires to be cancelled. We find no reason to deviate from the view taken by Ld. CIT(A). For the aforementioned reason, the ground no. 1 is dismissed.

8. Furthermore, the other grounds of appeal with regard to additions made in the assessment order are of purely academic in

nature, hence we find that there is no reason to adjudicate any further on these grounds pertaining to the assessment year of this appeal.

9. In the result, the appeal filed by the revenue is **dismissed** in terms indicated above.

*Orders pronounced in the open court on 03.03.2022.*

*Sd/-*  
(Pramod Kumar)  
Vice President

*Sd/-*  
(Kavitha Rajagopal)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 03.03.2022  
*Sr.PS. Dhananjay*

**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/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**