



Ltd. w.e.f. 01.04.2018 vide order dated 23.01.2019 passed by NCLT and consequently Shri Ram Financial Consultants Pvt. Ltd. has ceased to exist w.e.f. 1.4.2018. The said entity Sri Ram Financial Consultants Pvt. Ltd. filed its return of income for A.Y. 2017-18 on 26.10.2017 declaring a total income of Rs. 8,41,600/-. The case of the said company was selected for limited scrutiny through CASS and assessment u/s 143(3) of the Act dated 12.07.2019 was framed by the AO in the name of Sri Ram Financial Consultants Pvt. Ltd. Pertinent to state that the assessee intimated the AO vide letter dated 25.10.2019 filed on 06.11.2019 that M/s. Sri Ram Financial Consultants Pvt. Ltd. was merged with it i.e. M/s. Bbigplas Ploy Pvt. Ltd. vide order dated 23.01.2019 which was effective from 01.04.2018 and also surrendering the PAN of the ceased company and also requesting the AO to make all correspondences in future at the address of amalgamating company i.e. Bbigplast Poly Pvt. Ltd. The Ld. PCIT upon perusal of the assessment records came to the conclusion that the rental income received by M/s. Sri Ram Financial Consultants Pvt. Ltd. of Rs. 76,55,761/- has not been fully offered to tax as it has only shown Rs. 4,50,000/- as gross annual value of the let out property resulting into underassessment and thus the assessment framed by the AO is erroneous in so far as prejudicial to the interest of the revenue. Accordingly, a show cause notice u/s 263 of the Act dated 08.09.2021 was issued in the name of Sri Ram Financial Consultants Pvt. Ltd. which has ceased to exist w.e.f. 01.04.2018 vide NCLT order dated 23.01.2019 and thereafter order u/s 263 of the Act dated 29.10.2021 was passed by the ld. PCIT setting aside the assessment framed vide order dated 12.07.2019.

4. The Ld. AR vehemently submitted that the exercise of revisionary jurisdiction u/s 263 of the Act is not valid since the ld. PCIT has issued show cause notice u/s 263 of the Act in the

name of the non-existent company which has already merged with the assessee company. The Ld. AR submitted that the notice u/s 263 of the Act dated 08.09.2021 has been issued in the name of merged company, M/s. Sri Ram Financial consultants Pvt. Ltd. which stood merged with the assessee M/s. Bbigplas Poly Pvt. Ltd. by the order dated 23.01.2019 passed by the NCLT and thus the notice issued in the name of non-existent company is invalid notice and nullity in the eyes of law. The Ld. AR submitted that the revisionary proceedings initiated in the name of non-existent company are invalid and void ab-initio and so is the order passed by the PCIT u/s 263 of the Act. The Ld. AR submitted that the fact of Sri Ram Financial Consultants Pvt. Ltd. having merged with the assessee was duly intimated to the ITO Ward 8(4), Kolkata vide letter dated 25.10.2019 filed on 06.11.2019 that M/s. Sri Ram Financial Consultants Pvt. Ltd. merged with M/s. Bbigplas Poly Pvt. Ltd. vide the above said order and the said letter was part of the assessment records before the AO. The Ld. AR submitted that the action of the ld. PCIT initiating the revisionary proceeding in the name of non-existent company is a substantive illegality which is not curable at all and renders the entire revisionary proceedings and the consequent order as invalid and nullity. The ld. AR argued that this is not a procedural irregularity which can be rectified by then ld. PCIT. The Ld. AR relied on a couple of decisions in defense of his arguments namely i) PCIT Vs Maruti Suzuki India Limited (2019) 107 taxmann.com 375 (SC) and ii) BASF India Ltd. Vs DCIT (2020) 121 taxmann.com 129. The Ld. AR finally prayed before the bench that the revisionary proceeding as well as the order passed u/s 263 of the Act may kindly be quashed as being nullity and invalid in the issue of law.

5. The Ld. DR, on the other hand, strongly opposed the arguments put forward and presented by the Ld. AR by submitting that the assessee was in the know of order of NCLT which was not filed by the assessee before the AO during the assessment proceeding while the merger has been approved by NCLT vide order dated 23.01.2019. Thus the assessee has not challenged the assessment proceedings in the name of non-existent company. The Ld. AR, though admitting that the assessee has informed the AO regarding the merger vide communication dated 25.10.2019 filed with the AO on 06.11.2019 which was part of the records before the AO, however strongly opposed the contentions and arguments of the assessee that the revisionary jurisdiction exercised by the ld PCIT is incurable and is a substantive illegality which goes to the root of the matter. The ld DR contended that the revisionary proceedings as well as the order framed u/s 263 of the Act suffer from the vice of procedural defects which can be rectified if the matter is restored to the file of the ld. PCIT to correct the anomaly and initiate fresh revisionary proceeding in the name of the assessee company. The ld DR also referred to the provisions of section 292B of the Act and submitted that since the assessee has participated and attended the assessment proceedings as well as the revisionary proceedings but did not point out this fact either to the AO or to the ld PCIT, therefore the assessee cannot be allowed to raise this issue of at this stage as the provisions of section 292B of the Act unequivocally and in clear terms provides that any such procedures irregularities or lapses committed by the AO or any other authority has no implications if the assessee has participated in the proceedings and is allowed sufficient opportunity of hearing. The ld DR therefore prayed that the appeal of the assessee may dismissed on this point.

6. We have heard the rival parties and perused the material on record including the decisions cited before us by the Id Sr Counsel Shri S.K. Tulsian. The undisputed facts are that M/s. Sri Ram Financial Consultants Pvt. Ltd. was merged with M/s. Bbigplas Poly Pvt. Ltd. the assessee vide order of NCLT dated 23.01.2019 w.e.f. 01.04.2018. The assessee has also intimated the AO about M/s. Sri Ram Financial Consultants Pvt. Ltd. having merged with M/s. Bbigplas Poly Pvt. Ltd. and thus has ceased to exist w.e.f. 01.04.2018 beside surrendering the PAN of the said merged entity beside requesting the AO to make all future communications in the name of assessee company at its given address. There is no dispute as to that communication by the assessee to the AO which is part of the assessment records. Now the issue before us is whether the proceedings initiated in the name of M/s. Sri Ram Financial Consultants Pvt. Ltd. a non-existent company vide show cause notice issued u/s 263 of the Act dated 08.09.2021 are valid proceedings or suffers from the vice of illegality or this is just a curable procedural mistake on the part of the Id PCIT while exercising his jurisdiction u/s 263 of the Act. Considering the facts as placed before us vis-a-vis the provisions of the Act including that of section 292B of the Act and the various decisions cited before us , we are certainly of the considered opinion that proceedings initiated u/s 263 of the Act in the name of non-existent company vide show cause notice dated 08.09.2021 issued u/s 263 of the Act by the Id PCIT is nullity and void ab initio on the ground that M/SSri Ram Financial Consultants Pvt. Ltd was non existing at the time when the show cause notice was issued. In our considered opinion, the jurisdiction assumed by Id PCIT by issuing show cause notice u/s 263 of the Act dated 08.09.2021 in the name of non-existent entity suffers from the substantive illegality and consequently the revisionary proceedings as

well as order passed u/s 263 of the Act will not survive and have to be set aside as the very initiation of proceedings is invalid and nullity in the eyes of law. The case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of PCIT vs Maruti Suzuki India Limited (supra) wherein it has been held that the jurisdictional notice issued in the name of non-existent company and consequent assessment order are to be set aside as the issue of jurisdictional notice on non entity is a substantive illegality and not procedural irregularity of the nature as referred to in section 292B of the Act. The Hon'ble Apex Court held that mere fact that the assessee has participated in the proceedings before the AO will not cure this substantive illegality and the mere participation of the assessee in the assessment proceedings cannot debar the assessee from challenging the proceedings on this ground as there is no estoppel against law. The Hon'ble Court has followed the decision of the coordinate bench of two judges in the case of CIT Vs Spice Infotainment Ltd. (2012) 247 CTR 500(Delhi) wherein similar ratio has been laid down by the Hon'ble Apex Court. The assessee has also relied on the decision of tribunal in the case of BASF Ltd Vs DCIT(supra) wherein it has been held that that assessment in the name of non-existent entity is invalid and has to be quashed and the tribunal has followed the decisions of the Hon'ble Apex court in the case of PCIT vs Maruti Suzuki India Limited and CIT Vs Spice Infotainment Ltd.(supra). Considering the facts and circumstances of the instant case, the proceedings u/s 263 of the Act cannot be sustained. We, therefore, respectfully following the ratio laid down by the Hon'ble Apex Court quash the revisionary proceeding initiated the Ld. PCIT and also the revisionary order framed u/s 263 of the Act. The ground no 1 to 3 are allowed.

7. Since we have allowed the appeal of the assessee on jurisdictional issue by quashing the proceedings u/s 263 of the Act as well as the consequent order, the grounds on merits academic and need no further deliberation.

8. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 07.03.2022.**

**Sd/-  
(SONJOY SARMA)  
JUDICIAL MEMBER**

**Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated:. 07.03.2022  
Biswajit, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Kolkata  
The CIT (A) Concerned, Kolkata  
The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata