

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI****BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER****I.T.A. No. 6138/Del/2016 (A.Y 2006-07)**

Saurabh Overseas Pvt. Ltd. (Now merged with DBG Leasing and Housing Ltd.) C-88, Gali No. 8, Jyoti Colony, Shahadra, Delhi 110032 PAN No. AABCS3390K(Old) PAN No. AAACD0473F(New) (APPELLANT)	Vs	ITO Ward-7(4) New Delhi (RESPONDENT)
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Appellant by	Sh. Ved Jain, Adv & Sh. Ashish Goel, Adv
Respondent by	Sh. B. S. Anand, Sr. DR

Date of Hearing	09.05.2022
Date of Pronouncement	11.05.2022

ORDER**PER YOGESH KUMAR U.S., JM**

The present appeal is preferred by the assessee for the assessment year 2006-07 against order dated 05/09/2016, passed under Section 250(6) of the Income-Tax Act, 1961 ("the Act") by the Commissioner of Income-Tax(Appeals)-28, New Delhi.

2. Brief facts of the case are that, return of income for the AY 2006-07 was filed on 24/11/2016 declaring loss of Rs. 26,784/-. The same was processed u/s 143(1) of the Act vide intimation dated 09/08/2007. Subsequently the case was reopened under section 147 of the Act vide notice dated 25/03/2013. The assessment under section 147/143(3) of the Act was completed vide order dated 10/03/2014 at total income of Rs. 2,60,04,960/- making addition of Rs.

2,60,00,000/- u/s 68 of the I.T. Act. As against the assessment order dated 10/03/2014, the assessee has preferred an appeal before CIT(A) -28, New Delhi and the appeal filed by the assessee has been dismissed on 05/09/2016 by the CIT(A).

3. Aggrieved by the order dated 05/09/2016 passed by CIT(A) the assessee has preferred the present appeal on following grounds and additional grounds:-

- “1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the initiation of the proceedings under Section 147, read with Section 148, is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated by the learned A.O. are bad in the eye of law as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by learned A.O. is bad both in the eye of law and on facts as the same has been reopened on the basis of reasons without there being any whisper that the income has escaped due to the failure on part of the assessee to disclose fully*

and truly all material facts necessary for assessment, as the same has been reopened after a period of four years from the end of relevant assessment year and the assessment has already been made under Section 143(3).

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by learned A.O. is bad both in the eye of law and on facts, as the assessee had already disclosed fully and truly all material facts necessary for the assessment under Section 143(3).*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by learned A.O. under Section 147 is bad both in the eye of law and on facts, as the same has been passed without service of statutory notice under section 148.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by AO is bad both in the eye of law and on facts as the same has been passed without receiving statutory notices under section 143(2) of the Act.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.2,60,00,000/- made by AO on account of share capital under*

section 68 of the Act.

9. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the explanation and evidence brought on record by the assessee to prove the identity and creditworthiness of the shareholder as well as genuineness of the transaction.*
10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the same has been made by the AO without bringing any adverse material on record or to point out any defect in the evidences filed by the assessee.*
11. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that even after having served the notices under section 133(6) of the Act, the AO could not bring the investigation to its logical end.*
12. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the same having been made on the basis of material collected at the back of the assessee without giving him an opportunity to rebut the same.*
13. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition by rejecting the contention of the assessee that no adverse inference can be drawn against the assessee on the basis of some statement recorded without giving assessee an opportunity to cross examine.*

Additional grounds

1. *The applicant has filed the above said appeal No. 8128/Del/2018 on 30th November, 2018 against the order dated 05.09.2016 passed by the learned Commissioner of Income Tax (A)-28, New Delhi under Section 250 of the Income Tax Act.*
2. *That while filing the appeal, the applicant has raised 14 grounds of appeal.*
3. *That while filing the appeal the appellant inadvertently has left out the grounds of appeal on one of the legal issue pertaining to reopening u/s 147 read with section 148 of the Act.*
4. *That accordingly, the applicant is filing additional grounds of appeal.*
5. *That it is submitted that the following two additional grounds may kindly be taken as the same goes to the root of the issue and all the facts are already on record.*

"15. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order passed by the AO u/s 147/143(3), despite the fact that the same being passed in the name of a nonexistent entity, is illegal and void ab-initio.

16. On the circumstances and facts of the case, the reassessment framed in the name of M/s Saurabh Overseas Pvt. Ltd which had since amalgamated with M/s DBG Leasing and Housing Ltd. and had ceased to exist in the eye of law, was nonest."

6. *That the grounds revised in this application are legal grounds going to the root of the matter, and all the facts relating to the same are already part of record.*

7. *That in the circumstances, it is prayed that the additional grounds may be taken on record.*

For this act of kindness the applicant shall ever be grateful.”

4. During the pendency of the present appeal the Ld. Counsel for the assessee has filed revised Form No. 36 along with additional grounds of appeal on 21/01/2021. The said additional ground is in respect of passing the order by the Ld. A.O and CIT(A) against non existence of the entity. Since, the said ground is purely a question of law and in the peculiar facts and circumstances of the case we admit the additional grounds of appeal.

5. The main contention of the Ld. AR is that, M/s Saurabh Overseas Pvt. Ltd. has been merged with DBG Leasing and Housing Ltd. w.e.f. 07/05/2011 pursuant to the order of High Court of Delhi dated 21/01/2011. The said fact of merger has been intimated by DBG Leasing and Housing Ltd. to the Assessing Officer vide letter dated 18/06/2011 which has been acknowledged on 27/07/2011 by the Assessing Officer. Even after receipt of the letter dated 18/06/2011, the Assessing Officer has passed the assessment order dated 10/03/2014 against Saurabh Overseas Pvt. Ltd. The Ld. AR further submitted that, since the existence of Saurabh Overseas Pvt. Ltd. is ceased to be in existing as on 07/05/2011, passing of the assessment order dated 10/03/2014 against non existing entity is illegal, void and ab initio.

6. Per contra, Ld. DR submitted that the assessee has filed the appeal before CIT(A) in the name of M/s Saurabh Overseas Pvt. Ltd. and even before this Tribunal, the appeal has been filed in the name of M/s Saurabh Overseas Pvt. Ltd. and by way of revised Form No. 36 the name of the appellant has been

mentioned as 'Saurabh Overseas Pvt. Ltd. (Now merged with DBG Leasing and Housing Ltd.)'. Therefore, submitted that no interference is called for by this Tribunal.

7. We have heard the parties and perused the material on record and gave our thoughtful consideration. M/s Saurabh Overseas Pvt. Ltd. ceased to be exist w.e.f. 07/05/2011 on which date the said Company has merged with DBG Leasing and Housing Ltd. pursuant to the order of Hon'ble High Court of Delhi dated 21/01/2011. The said fact has been conveyed to the Assessing Officer vide letter dated 18/07/2011 by DBG Leasing and Housing Ltd. which has been acknowledged on 27/07/2011 by the A.O. Despite of the said information of merger of the Company, the Assessing Officer has issued notice u/s 148 on 25/03/2013 and the show cause notice u/s 142(1) of the Act in the name of M/s Saurabh Overseas Pvt. Ltd., The assessment order has been passed u/s on 147/143(3) of the Act on 30/03/2014 against M/s Saurabh Overseas Pvt. Ltd., on the which dates M/s Saurabh Overseas Pvt. Ltd. was non existing entity. Therefore, in our considered opinion, passing the assessment order against non existing entity is not sustainable in the eyes of law and the same is void ab initio.

8. Accordingly, we quash the assessment order dated 10/03/2014 and also the order of CIT(A) dated 05/09/2016 by allowing the addition grounds of appeal taken by the assessee. The other grounds of appeal are dismissed having become infructuous.

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

Order pronounced in the Open Court on this 11th Day of May, 2022

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 11/05/2022
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI