

आयकर अपीलीय अधिकरण
मुंबई पीठ " सी "
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER
आअसं.4754/मुं/2017 (नि.व. 2011-12.)
ITA NO.4754/MUM/2017(A.Y.2011-12)

Deputy Commissioner of Income Tax- 14(2)(1)
Room No.432, 4th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Idea Tracom Pvt. Ltd.
463, Dr. Annie Besant Road,
Worli, Mumbai – 400 030.
PAN: AACCI-3147-F

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Jagdish Jangid
प्रतिवादी द्वारा/Respondent by : Shri Vijay Mehta

सुनवाई की तिथि/ Date of hearing : 01/07/2022
घोषणा की तिथि/ Date of pronouncement : 26/09 /2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-12, Mumbai [in short 'the CIT(A)] dated 25/04/2017 for the assessment year 2011-12.

2. The solitary ground raised by the Revenue in appeal is:

"1. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the A.O. of Rs.11,38,20,000/- on receiving excess premium by the assessee treated as income u/s.56(1) merely relying on the submissions made by the A.R. of the assessee and on the basis of various judicial decisions made by the courts without considering the genuine fact of the case".

3. The assessee has filed an application u/r. 27 of the Income Tax (Appellate Tribunal) Rules, 1963 [in short ' the ITAT Rules') assailing validity of assessment order as the same has been passed in the name of a non-existing entity.

4. Shri Jagdish Jangid representing the Department vehemently opposed maintainability of application u/r.27 of the ITAT Rules. The Id.Departmental Representative submitted that application u/r.27 can only be filed by respondent/assessee on the grounds decided against him. In the present, the issue of validity of assessment order was never raised before the CIT(A). There is no finding of CIT(A) on the issue raised by assessee in application u/r.27 of the ITAT Rules, hence, the said application is not maintainable.

5. Shri Vijay Mehta appearing on behalf of the assessee narrating the facts of the case submitted that Idea Tracom Pvt. Ltd.(ITPL)(erstwhile assessee) had filed its Income Tax Return for assessment year 2011-12 electronically on 21/09/2011. When the return was filed, the then assessee had its registered office in Kolkata. The case of the assessee for impugned assessment year was selected for scrutiny assessment under CASS by ITO -11(2), Kolkata and notice issued under section 143(3) of the Income Tax Act, 1961 [in short ' the Act'] dated 02/08/2012 was served on the then assessee. During the pendency assessment proceedings, in pursuance to the order of Hon'ble Bombay High Court dated 13/04/2012 approving the Scheme of Amalgamation ITPL

amalgamated with Instant Holdings Ltd.(IHL). The appointed date as per the scheme was 31/03/2012. The order of the Hon'ble High Court was filed before the Registrar of Companies, Mumbai on 15/05/2012. IHL vide letter dated 16/05/2012 informed the Assessing Officer i.e. ITO, Ward -11(2), Kolkata regarding the fact of amalgamation of ITPL with IHL. It was categorically mentioned in the letter that upon the scheme becoming effective ITPL would stand dissolved. The copy of the said letter was also delivered to the Additional Commissioner of Income Tax, Range 5(2), Mumbai on 04/06/2012, in whose jurisdiction IHL was assessed. The copy of the letter is at page 15 of the paper book. Thereafter, the assessee received notice u/s.143(2) of the Act at Mumbai address in the name of ITPL from the Assessing Officer – ITO Ward 11(2), Kolkata. The assessee while replying to the said notice vide letter dated 23/08/2012 again informed the Assessing Officer at Kolkata that ITPL has amalgamated with IHL consequent to scheme of amalgamation approved by Hon'ble Bombay High Court and ITPL stands dissolved. Thereafter, the assessee vide letter dated 05/03/2013 while replying to notice u/s. 142(1) of the Act brought the fact of amalgamation to the notice of Assessing Officer at Kolkata and highlighted the fact of ITPL being dissolved consequent to amalgamation.

The Registered Office of the assessee was shifted from Kolkata in the State of West Bengal to Mumbai, Maharashtra on 05/05/2011. The assessee vide letter dated 01/06/2011 requested the Commissioner of Income Tax –IV, Kolkata to transfer the files/assessment records from Kolkata to Mumbai. The assessee had given the complete address of the Registered Office at Mumbai. Along with the letter assessee had furnished a certificate from the Registrar of Companies, Mumbai, Maharashtra. The copy of said letter was also sent to

Commissioner of Income Tax-5, Mumbai, Additional Commissioner of Income Tax, Range-5, Mumbai and the ITO-Ward 11(2) Kolkata. A copy of the said letter is at page 22 of the paper book. Again on 31/05/2013 the assessee requested for transfer of assessment records from Kolkata to Mumbai, giving complete details of Registered Office at Mumbai. In the said letter assessee had also mentioned about the fact of amalgamation of ITPL with IHL w.e.f. 31/03/2012. The copy of letter dated 31/05/2013 was also sent to the Assessing Officer of IHL at Mumbai and the Commissioner of Income Tax-6, Mumbai. It was after great follow up that the jurisdiction of the Assessing Officer was changed vide order u/s. 127 dated 26/12/2013. In the said order the name of the erstwhile assessee i.e. ITPL and the name of assessee after amalgamation IHL was also mentioned. The copy of order u/s. 127 of the Act is at page 27 of the paper book. Despite informing the Assessing Officer and various other authorities multiple times the fact of amalgamation of ITPL with IHL, the Assessing Officer –ITO-6(1)(2), Mumbai issued notice u/s. 142(1) of the Act dated 09/01/2014 in the name of non-existing entity i.e. ITPL. In reply to said notice the assessee vide letter dated 16/01/2014 at page 29 of the paper book informed that ITPL has amalgamated with IHL. Thereafter, the Assessing Officer passed the assessment order dated 22/03/2014 in the name of non-existing entity i.e. ITPL. The Id. Authorized Representative for the assessee submitted that the assessee had time and again intimated the Assessing Officer at Kolkata as well as the Assessing Officer at Mumbai after shifting of Registered Office of the assessee from Kolkata to Mumbai and, thereafter, amalgamation of ITPL with IHL the complete details of change in Registered Office and change in name consequent to amalgamation. The Assessing Officer despite having knowledge of amalgamation of ITPL with IHL framed the

assessment in the name of erstwhile company which had ceased to exist on the date of passing of the order. The Id. Authorized Representative for the assessee submitted that the case of the assessee is squarely covered by the decision of Hon'ble Supreme Court of India in the case of PCIT vs. Maruti Suzuki (India) Ltd. reported as 416 ITR 613.

6. On maintainability of application u/r.27 of the ITAT Rules, the Id. Authorized Representative for the assessee placed reliance on the decision of Hon'ble Bombay High Court in the case of Peter Vaz vs. CIT reported as 436 ITR 616 to contend that a legal issue can be raised at any stage during Appellate Proceedings even without filing Cross Objections or application u/r.27 of ITAT, Rules..

7. The Id. Departmental Representative vehemently defended the validity of assessment order. The Id. Departmental Representative contended that the assessee has informed the Assessing Officer about the change in name at Kolkata, whereas, the assessment order has been passed by the Assessing Officer at Mumbai. The intimation regarding change in name was sent by the assessee to the Assessing Officer at Kolkata in 2012 and in the year 2013, whereas the case was transferred to Mumbai in December, 2013 and the assessment order was passed in March 2014. The Id. Departmental Representative submitted that in so far as merits of the addition are concerned the Revenue has a strong case.

8. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee by way of application under Rule-27 has raised a legal ground challenging validity of assessment order.

Before travelling to decide the appeal of the Revenue on merit it would be imperative to first deal with legal issue raised in the application under Rule 27.

9. The Revenue has assailed maintainability of application u/r. 27 of the ITAT Rules filed by the assessee. The objection raised by the Id. Departmental Representative is that in an application u/r. 27 the respondent may support the order appealed against on any of the grounds decided against him. Whereas, in the instant case, the legal issue raised by the assessee by way of application u/r. 27 was never a subject matter of consideration by the CIT(A). The ground raised by assessee by way of said application is as under:

“On the facts and in the circumstances of the case, the Ld. CIT (Appeals) -12 Mumbai, while passing the order u/s 250 of the Act, ought to have held that the order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 was bad-in-law.”

9.1 The assessee by way of application r/r. 27 of the ITAT Rules has raised a legal issue which goes to the root of validity of assessment order. Undisputedly, the legal ground assailing validity of assessment order has been raised first time before the Tribunal. In appeal before the CIT(A) assessee had challenged the addition on merits No ground /additional ground challenging validity of assessment order was before the CIT(A) for adjudication. The CIT(A) after examining the facts and accepting the contentions raised by the assessee deleted the addition in toto. Now, the Revenue is in appeal against the findings of CIT(A) deleting the addition. It is a well settled law that parties to the lis can raise legal/jurisdictional issue at appellate stage. The assessee has challenged the validity of assessment order passed in the name of a non existing entity. The assessee by raising the legal issue is supporting the order of CIT(A) wherein relief has been granted to the assessee on merits. The

assessee could have raised this legal ground either by way of cross objections or application u/r.27. The assessee choose the later option.

10. The Hon'ble Bombay High Court in the case of Peter Vaz vs. CIT (supra) has held that legal issue can be raised in an appeal even without filing cross objections. One of the substantial question of law for consideration before Hon'ble High Court was:

“Whether in the facts and circumstances of the present case, it was open to the appellants/assessee to have supported the orders of the Commissioner (Appeals), based on the ground that the jurisdictional parameters prescribed under section 153C of the I.T. Act were not fulfilled, even without the necessity of filing any cross objections ?”

The relevant facts in the said case were: In assessment proceedings addition under section 2(22)(e) of the Act was made by the Assessing Officer. The assessee filed appeal before the CIT(A) assailing the said addition.. The CIT(A) deleted the addition and allowed the appeal of assessee. The Revenue carried the issue in appeal before the Tribunal. Before the Tribunal, the assessee filed cross objections raising legal ground. However, the cross objections filed by the assessee were time barred by 248 days. The Tribunal allowed the appeal of Revenue and dismissed the cross objections on the ground of limitation. The Hon'ble Bombay High Court reversed the findings of the Tribunal in dismissing the cross objections challenging jurisdiction. The Hon'ble High Court held:

*31. In this case, the assessee merely wanted to support the order made by the CIT (Appeals), which was entirely in their favor. The assessee wished to raise an issue, that was at least prima facie going to the root of jurisdiction to initiate proceedings under section 153C of the IT Act. **Having regard to the provisions of rule 27 referred to above, the ITAT in our opinion should have permitted the assessee who were Respondents before it to support the orders of CIT (Appeals) on this ground, even without the necessity of filing any cross-objections.**”*

10.1 The Hon'ble High Court, thereafter, referring to the decision in the case of Dahod Sahakari Kharid Vechan Sangh Ltd. vs. CIT reported as 282 ITR 321 (Guj) held as under:

“34. The Division Bench of Gujarat High Court however held that the ITAT committed an error in law in not permitting the assessee to assail the finding of the concealment without filing cross-objections. The Court held that the ITAT apparently lost sight of the fact that the assessee had succeeded before the CIT (Appeals) that had allowed the assessee's appeal and even set aside the penalty in its entirety. Therefore, the assessee did not have to appeal. The position in law is well settled that the cross-objections, for all intents and purposes, would amount to an appeal and the cross objector would have the same rights which an appellant has before the Tribunal. Since the assessee did not have to appeal, the ITAT could not have insisted upon the filing of cross-objections as a precondition for permitting the assessee to assail the finding of concealment.

35. The Division Bench referred to the provisions of section 253 of the IT Act and after analyzing the scheme held that on a plain reading of the provision, it transpires that the party had been granted an option or a discretion to file cross-objections. In case a party having succeeded before the CIT (Appeals) opts not to file cross-objection even when an appeal is preferred by the other party, from that, it is not possible to infer that the said party had accepted the order or the part thereof which was against the respondent. Since the ITAT drew such an inference that was not supported by the plain language of Section 253, the High Court held that the ITAT was clearly in error.

36. The High Court then referred to Rule 27 quoted above and held that if the inference drawn by the ITAT is accepted as a correct proposition, then, it would render rule 27 of the Appellate Tribunal Rules 1963 redundant and nugatory. The High Court held that it is not possible to interpret the provision in such a manner. Any interpretation placed on a provision has to be in harmony with the other provisions under the Act or the connected Rules and interpretation which makes other connected provisions otiose has to be avoided. Rule 27 of the Appellate Tribunal Rules is clear and unambiguous. The right granted to the respondent by the said Rule cannot be taken away by the Tribunal by referring to the provisions of Section 253(4) of the IT Act. The ITAT was, therefore, in error in holding that the finding recorded by the CIT (Appeals) remained unchallenged since the assessee had not filed cross-objections.

37. The reference in this regard can also be made to the provisions of section 260A(7) of the IT Act which provides that save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall, as far as may apply in the case of appeals under this Section. Now in the Context of the provisions of Order XLI Rule 22 of the CPC dealing with the cross-objections, the Hon'ble Supreme Court in the case of S. Nazeer Ahmed (supra) has held that the High

Court was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order XLI Rule 22 of the Code, could not challenge the finding of the trial Court that the suit was not barred by Order II Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial Court even by challenging any of the findings that might have been rendered by the trial Court against himself. For supporting the decree passed by the trial Court, it is not necessary for the respondent in the appeal, to file a memorandum of cross-objections challenging a particular finding that is rendered by the trial Court against him when the ultimate decree itself is in his favor. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negated to him by the trial Court and in addition to what he has already been given by the decree under challenge. The Hon'ble Supreme Court, therefore, held that the respondent in the appeal had every right to canvas correctness of the finding on the bar of Order II Rule 2 rendered by the trial Court.

38. In the present case, it is not as if the issue of non-fulfillment of jurisdictional parameters of Section 153C was raised but rejected by the CIT (Appeals). Such issue was not raised before the CIT (Appeals). Having regard to the provisions of Rule 27 of the Appellate Tribunal Rules, 1963 as also the provisions of section 260A(7) read with Order XLI Rule 22 of CPC as interpreted by the Hon'ble Supreme Court in S. Nazeer Ahmed (supra) we think that the ITAT should not have precluded the assessee from raising the issue in the appeals instituted by the Revenue, even without the necessity of filing any cross-objections. Accordingly, the additional substantial question of law is required to be answered in favor of the Appellant/assesseees and against the Revenue.

[Emphasized by us]

Thus, from above decision it is unambiguously clear that for raising any legal ground/ jurisdictional issue, that questions the jurisdiction, filing of cross objections is not necessary. Legal issue can be raised at second appellate stage by way of application u/r.27, even if the said issue was not subject matter of appeal before the First Appellate Authority. Thus, in the facts of the instant case and the decision cited above, we are of considered view that the application u/r. 27 filed by the assessee raising jurisdictional issue, assailing validity of assessment order is maintainable. Hence, we admit the same for adjudication.

11. The assessee has raised a legal issue assailing validity of assessment order passed in the name of a non existing entity. To decide this issue, it would be relevant to refer to chronology of events:

Date	Particulars
21/09/2011	The assessee filed return of income for A.Y.2011-12.
13/04/2012	The scheme of amalgamation approved by Hon'ble Bombay High Court; vide which ITPL to be amalgamated with IHL.
15/05/2012	The order of the High Court was furnished to the Registrar of Companies, Mumbai.
16/05/2012	Amalgamated company i.e. IHL informed the AO-ITO-Ward 11(2) Kolkata regarding the fact of amalgamation and ITPL ceasing to exist.
04/06/2012	The Addl.CIT -Range 5(2) Mumbai in whose jurisdiction IHL was assessed was informed about the fact of amalgamation and consequent dissolution of ITPL
02/08/2012	Notice u/s. 143(2) issued by the A.O (ITO Ward 1(2), Kolkata) in the name of ITPL.
22/08/2012	The assessee informed the AO Kolkata that ITPL was amalgamated with IHL consequent to the scheme of amalgamation approved by Hon'ble Bombay High Court, hence, ITPL stands dissolved.
22/02/2013	The A.O Kolkata issued notice u/s. 142(1) in the name of ITPL.
05/03/2013	In reply to notice u/s. 142(1), the assessee again informed the AO at Kolkata regarding the fact of amalgamations of ITPL into IHL and consequent cessation of existence of ITPL.
26/12/2013	Order under section 127 of the Act, transfer of jurisdiction from AO - ITO, Ward 11(2) Kolkata to ACIT, Circle-6(1) Mumbai.

09/01/2014	Notice u/s. 142(1) of the Act by Assessing Officer-ITO 6(1)(2) Mumbai in the name of ITPL
16/01/2014	Reply to above said notice and intimation to Assessing Officer regarding amalgamation of ITPL with IHL with current address.
22/03/2014	Assessment order u/s. 143(3) of the Act.

12. From the sequence of events narrated above it is unambiguously clear that the assessee has time and again informed the Assessing Officer first at Kolkata and after the change of jurisdiction u/s. 127 of the Act, to the AO at Mumbai. It is relevant to mention here that in the order u/s. 127 of the Act, along with the name of erstwhile assessee the name of the amalgamated company i.e. IHL was mentioned. The Assessing Officer without taking note of any of the communications from the assessee intimating the fact of amalgamation of ITPL with IHL and the consequent cessation of ITPL passed the order in the name of a non existing entity. The Hon'ble Supreme Court of India in the case of Maruti Suzuki India Ltd. (supra) has held that where the assessee company was amalgamated with another company and thereby lost its existence despite the fact that Assessing Officer was informed about the fact of amalgamation and that the amalgamated company having ceased to exist as a result of approval of scheme of amalgamation, the assessment order passed subsequently in the name of non existing entity is without jurisdiction and is liable to be set-aside.

13. In the facts of the present case, we find that the assessee had discharged its onus of intimating the fact of amalgamation to the Assessing Officer having jurisdiction over the assessee, first in Kolkata and thereafter in

Mumbai. The assessee multiple times informed the Assessing Officer at Kolkata and thereafter, at Mumbai having jurisdiction over the assessee at relevant times, the fact of amalgamation of ITPL with IHL. The Assessing Officer without taking note of either order under section 127 of the Act wherein, the name of amalgamated company was mentioned or repeated letters from assessee intimating change in entity, has erred in framing assessment in the name of a non existing entity. The said assessment order is without jurisdiction, hence, quashed.

14. In the result, the application u/r. 27 of the ITAT Rules is allowed.

15. Since, we have quashed the assessment order on the ground of jurisdiction, the appeal of the Revenue assailing the findings of CIT(A) on the merits of the addition arising from the said assessment order has become infructuous and hence, the same is dismissed as such.

16. In the result, ground raised by assessee u/r. 27 of ITAT Rules is allowed and appeal by Revenue is dismissed.

Order pronounced in the open court on Monday the 26th day of September, 2022.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 26/09/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/Sr. Private Secretary
ITAT, Mumbai