

**IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH: 'A' NEW DELHI**

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER

AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 9897/DEL/2019 (A.Y 2011-12)

Income Tax Officer, Ward : 1 (1), New Delhi.	Vs.	M/s. ASM Pipes Pvt. Ltd., [earlier known as Mar Fashions Pvt. Ltd.,] Plot No. 67, Road No. 41, West Punjabi Bagh, West Delhi – 110 026. PAN No. AAGCA0304C
----------------------------------------------------	-----	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

AND

**C. O. No. 23/Del/2020
 [in I.T.A. No. 9897/DEL/2019 (A.Y 2011-12)]**

M/s. ASM Pipes Pvt. Ltd., [earlier known as Mar Fashions Pvt. Ltd.,] Plot No. 67, Road No. 41, West Punjabi Bagh, West Delhi – 110 026. PAN No. AAGCA0304C	Vs.	Income Tax Officer, Ward : 1 (1), New Delhi.
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----	----------------------------------------------------

Appellant by	Shri Amit Goel, C. A.; & Shri Nippun Mittal, C. A.
Respondent by	Shri Kanav Bali, Sr. D. R.;

Date of Hearing	20.10.2022
Date of Pronouncement	25.11.2022

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

This Income Tax appeal and Cross Objection are filed by the Revenue and the Assessee for assessment year 2011-12 against the order of the ld. Commissioner of Income Tax (Appeals)-I, New Delhi [hereinafter referred to as CIT (Appeals)] dated 31.10.2019.

2. The substantive grounds of appeal raised by the Revenue are as under:-

“Whether on the facts and circumstances of the case, the ld. CIT (A) has erred in deleting the addition of Rs.1,58,10,000/- made by the Assessing Officer on account of forfeiture of share application money received by the assessee from the company which was controlled and managed by the same group which controls the assessee and transactions were controlled transactions to shift the profit from assessee company to the other group companies.”

3. The grounds of C.O raised by the Assessee are as under:-

“1. On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is bad in law and the consequent assessment order passed by the Assessing Officer on the foundation of such notice are liable to be quashed as notice u/s 148 was issued in the name of non-existent entity.

2. On the facts and circumstances of the case and in law, the notice u/s 148 of the Income Tax Act, 1961 issued in the case is

bad in law, void and without jurisdiction and, therefore, the said notice along with the assessment order passed by the Assessing Officer on the foundation of such notice are liable to be quashed.

3. On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is contrary to law including the specific provision of section 147 to 151 of the Act.”

4. The present appeal is filed by the Department against the ASM Pipes Pvt. Ltd. (earlier known as MARS Fashions Pvt. Ltd.) and the CO has been filed by the Assessee. Since the assessee has filed the C.O on the issue of notice u/s 148 in the name of non-est entity, we inclined to deal with C.O before deciding the Appeal of the Revenue.

5. Brief facts of the case are that, the assessment order came to be passed on 29/10/2018 u/s 144/147 of the Income Tax Act, 1961 ('Act for short) for the Assessment Year 2011-12 in the name of the assessee M/s ASM Pipes Pvt. Ltd. (earlier known M/s Mar Fashions Pvt. Ltd.) by making addition of Rs. 1,58,10,000/- u/s 68 of the Act on the ground that the money fortified by the assessee Company in the garb of share application money during the year under consideration remained unexplained by the assessee. The said assessment order has been challenged by the assessee before the Ld.CIT(A) and the Ld.CIT(A) vide order dated 25/10/2019 deleted the addition of Rs. 1,58,10,000/- made by the Assessing Officer on account of forfeiture of share application money received by the assessee. Further, Ld.CIT(A) has not adjudicated the issue of validity of assessment order which was raised by the assessee.

6. As against the order of the Ld.CIT(A), the Department has preferred an appeal in ITA No. 9897/Del/2019 and the assessee has also filed the C.O No.

23/Del/2019 contending that the notice u/s 148 issued by the A.O. is bad in law, consequently, the assessment order deserves to be set aside and the said issue has not been adjudicated by the CIT(A).

7. The Ld. Counsel for the assessee submitted that, by virtue of order of Hon'ble Delhi High Court dated 16/04/2015, M/s MARS Fashions Pvt. Ltd. has merged with ASM Pipes Pvt. Ltd. w.e.f. 01/04/2014. Ld. Counsel for the Assessee vehemently submitted that the reasons recorded and Notice u/s 148 of the Act issued in the name of 'MARS Fashions Pvt. Ltd.' and as on the date of issuance of the notice, M/s MARS Fashions Pvt. Ltd. was a non-est entity. Further submitted that the fact of amalgamation was very well in the knowledge of the Assessing Officer well before the date of issuing of the notice u/s 148 of the Act. Therefore, submitted that, the assessment order is bad in law, consequently, the C.O filed by the assessee requires to be allowed and the Appeal of the Revenue deserves to be dismissed.

8. Per contra, the Ld. DR could not bring any contradictory facts narrated by the Ld. AR and relied on the orders of the Lower Authorities.

9. We have heard the parties, perused the material on record and gave our thoughtful consideration.

10. It is found from the record that by virtue of order of the Hon'ble Delhi High Court dated 16/04/2015 the 'MARS Fashion Pvt. Ltd.' has amalgamated with 'ASM Pipes Pvt. Ltd.' w.e.f 01/04/2014. Further it is not in dispute that the Ld. A.O. has recorded the reasons on 14/03/2018, issued notice u/s 148 of the Act on 22/03/2018 and the same has been issued in the name of MARS Fashions Pvt. Ltd. The copy of the notice dated 22/03/2018 made available to us, which is reproduced here under:-



GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 INCOME TAX DEPARTMENT
 OFFICE OF THE INCOME TAX OFFICER
 WARD 16(2), DELHI

To,
 MARS FASHION PRIVATE LIMITED
 ROAD NO. 47 HOUSE NO. 14A, SECOND
 FLOOR, WEST PUNJABI BAGH
 NEW DELHI 110028, Delhi
 India

PAN: AAECM8705F AY: 2011-12 DATED: 22/03/2018 NOTICE NO.: ITBA/AST/S/148/2017-18/1009365814(1)

Notice Under Section 148 Of The Income Tax Act, 1961

Sir/Madam/M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2011-12 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/re-assess the Income/Tax for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT 6, DELHI

MADAN LAL GUPTA
 WARD 16(2), DELHI

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

As on the said date of issuance of notice u/s 148A of the Act 'M/s MARS Fashions Pvt. Ltd.' has already merged with ASM Pipes Pvt. Ltd.

11. The fact of the merger was very well aware to the A.O. prior to recording the reasons and issuing notice u/s 148A of the Act. The representative of the assessee during the assessment proceedings for the Assessment Year 2015-16 vide letter dated 17/06/2017 has brought to the notice of the said Amalgamation to the A.O. The extract of the letter dated 17/06/2017 filed by the assessee before the A.O for the Assessment Year 2015-16 is as under:-

"5. Breakup op additions, to share premium account)' all the addition to share premium account is on account of merger only , by clubbing the share premium appearing in the Balance sheet of merging companies as on 31.03.2014. Copies of audited Balance Sheet of all the merging companies for the year ended 31.03.2014 are enclosed herewith to verify the amount of share premium appearing in audited Balance Sheets.

6. Details and calculation of amount transferred to Amalgamation reserve Account's.

7. Account statements of loans in the name of Dee Faces Herbal

- Pvt. Ltd and Shri. D. K. Aggarwal for the previous year until the date of repayments, all the loans have been repaid.*
8. *List of Directors as on 31.03.2014 of all the companies under merger.*
 9. *List of Directors as on 31.03.2014 of all the companies under merger.*
 10. *List of shareholders as on 31.03.2014 of all the companies under merger, there was cross holding of the companies under merger, therefore some amount of investment have been cancelled, details as per chart of investments.”*

12. Thus, it is crystal clear that M/s MARS Fashion Pvt. Ltd. was non-est entity as on the date of recording the reasons and issuing notice u/s 148A of the Act. The fact of amalgamation was also been brought to the notice of the A.O. during the Assessment proceedings for the Assessment Year 2015-16 itself which is well before recording the reasons on 14/03/2018 and issuing notice on 22/03/2018 for the year under consideration. In consequence to the above said reasons recorded and the notice issued u/s 148 against the non-est entity, the impugned assessment order came to be passed against the assessee company to which ‘ASM Pipes Pvt. Ltd. (Earlier known as MARS Fashions Pvt. Ltd.)’. The said action of the Ld. A.O. in passing the assessment order is contrary to the settled position of law which requires interference at our hands.

13. In the case of Pr. CIT Vs. Maruti Suzuki India Ltd. [2019] 107 Taxmann.com 375 (S.C.). The Hon'ble Supreme Court has held as under:-

“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 Entotainment** (supra) on 2 November 2017. The decision in **Spice Entotainment** 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 Entotainment (supra).*

34. *We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.*

35. *For the above reasons, we find no merit in the appeal. The appeal is accordingly dismissed. There shall be no order as to costs.”*

14. In the present case, the reasons recorded and notice u/s 148 are issued in the name of non-est entity, the entire assessment proceedings will be vitiated. In view of the above settled position of law, the assessment order passed against the assessee is liable to be quashed by allowing the grounds of the Assessee in the C.O.

15. In the result, C.O No.23/Del/2020 filed by the assessee is allowed.

16. In view of allowing the C.O of the assessee, the Appeal in ITA No. 9897/Del/2019 filed by the Revenue is deserves to be dismissed for having become in-fructuous. Accordingly, Appeal filed by the Revenue in ITA No. 9897/Del/2019 is dismissed.

Order pronounced in the Open Court on : 25.11.2022.

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER

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

Dated : 25 /11/2022

R. N, Sr. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI