

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No. 2538/Mum/2022
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकर अपील सं/ I.T.A. No. 2421/Mum/2022
(निर्धारण वर्ष / Assessment Year: 2011-12)

Capco Finance & Investment Pvt. Ltd. (Stuck Off) 103, Gateway Plaza, Hiranandani Gardens, Powai, Mumbai-400076.	बनाम/ Vs.	ITO-15(1)(3) Room No. 456, Aayakar Bhavan, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC8254A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Manish Sheth	
Revenue by:	Smt. Nayana K. Kumar	

सुनवाई की तारीख / Date of Hearing: 28/11/2022
घोषणा की तारीख /Date of Pronouncement: 16/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 26.08.2022 for the assessment year 2011-12 against the quantum addition made as well as against the penalty levied u/s 271F of the Income Tax Act, 1961 (hereinafter "the Act") (for non-filing of return of income for AY. 2011-12).

2. Brief facts of the case as noted by the AO (in the quantum assessment order) was that he received information from NMS (Non-Filers Monitoring System) that assessee company has deposited cash aggregating to Rs.14,00,000/- with Oriental Bank of Commerce from



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source which was un-known. As per the AO, the assessee being corporate entity is under obligation to furnish u/s 139(1) of the Act. According to the AO, from the department's system it is observed that the assessee company did not file its return of income for AY 2011-12 either u/s 139(1) or u/s 139(4) or u/s 139(5) of the Act. Therefore, after recording reasons for reopening u/s 147 of the Act, the AO issued notice u/s 148 of the Act on 27.03.2018. Pursuant to the same, the assessee filed return of income declaring loss of Rs.2,18,827/-. The AO noted that the assessee company deals in listed and unlisted securities and in the relevant assessment year, the assessee has credited to the P & L account receipts aggregating to Rs.10,183/- on account of income from Capital market and after debiting administrative expense of Rs.1,34,244/- and finance charges of Rs.94,766/- has shown a net loss of Rs.2,18,827/-. And thereafter, the AO further noted that the assessee had deposited cash aggregating to Rs.14,00,000/- in the bank account of the company maintained with Oriental Bank of Commerce, Powai, bearing account no.06321010004060/-; and the AO directed the assessee to furnish the copy of the bank statement. And thereafter, the AO notes on which date the cash was deposited i.e. on 26.11.2010, 27.11.2010 & 18.12.2010 and according to the AO, the deposits are on account of professional fees received by the company, which has not been offered to tax. Therefore, in the absence of any explanation regarding the deposit of Rs.14,00,000/- appearing in the bank statement of the assessee, the same was treated as deemed income u/s 69A of the Act. Aggrieved, the assessee preferred an appeal before the



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Ld. CIT(A) which was dismissed. Aggrieved, the assessee preferred this appeal before this Tribunal raising the legal issue that the assessee's (private limited company) has been struck off from the Register of Registrar of Companies (dissolved) vide notice dated 03.05.2012 (refer page no. 1 of the PB) (AY. 2013-14); and consequently the notice issued by AO u/s 148 of the Act (reopening the assessment) was bad in law. Even though, it was brought to the notice of the AO that the assessee company is not in existence vide letter dated September, 07, 2018 (refer page no. 2 of the PB) but the AO went ahead to frame the re-assessment by order dated 20.01.2018 which according to Ld. AR is null in the eyes of law.

3. Having heard both the parties and after perusal of the records, it is noted that the assessment has been framed/made on a non-existent company since the assessee company has been dissolved/struck off from the Register of Registrar of Companies after thirty (30) days from 03.05.2012. Pursuant to the notice u/s 148 of the Act dated 14.11.2018 it has been brought to the notice of AO vide letter dated 07.09.2018 [ITO-15(1)(3)] that the assessee company M/s.Capco Finance & Investment Pvt. Ltd. has been struck off from the Register of Registrar of Companies w.e.f. 11th June, 2012 which was pursuant to the notice of Ministry of Corporate Affairs, Government of India u/s 560(3) of the Companies Act, 1956 (notice dated 03.05.2012) and thus the company stood dissolved from 04.06.2012 (after expiry of thirty (30) days from 03.05.2012). Despite this crucial fact was brought to the notice (dissolving of assessee), the AO has made an addition of



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Rs.14,00,000/-, in the hands of the assessee company M/s.Capco Finance & Investment Pvt. Ltd.. According to the Ld. AR, since the assessee company is no longer existing after being dissolved from June, 2012, the notice issued by the AO u/s 148 of the Act proposing reopening of the assessment is not valid in the eyes of law as held by the Hon'ble Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd wherein the Hon'ble Supreme Court has concurred with the observation of the Hon'ble Delhi High Court in the case of Spice Entertainment, wherein the Hon'ble High Court clarified that "*the framing of assessment against a non-existing entity/person*" is a jurisdictional defect. The Hon'ble Supreme Court in the case of Maruti Suzuki India Ltd order above on 25.07.2019 held at para no. 33 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 Entertainment on 2 November 2017. The decision in Spice Entertainment 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 Entertainment.



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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.”

4. In the light of the aforesaid decision of the Hon’ble Supreme Court (supra), this Tribunal is of the view that the assessment order passed by the AO against non-existent company dated 21.12.2018 despite knowing about it is bad in law. And therefore, is quashed.
5. Coming to the penalty levied u/s 271F of the Act, the penalty framed also does not survive because the quantum assessment order dated 21.12.2018 has been quashed (supra). And therefore, penalty levied u/s 271F of the Act stands cancelled.
6. In the result, the appeals of the assessee are allowed.
Order pronounced in the open court on this 16/12/2022.

**Sd/-
(ABY T. VARKEY)
ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated : 16/12/2022.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**