**IN THE INCOME TAX APPELLATE TRIBUNAL,**
**KOLKATA BENCH "SMC", KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER**
**AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.97/Kol/2023**
**Assessment Year: 2015-16**

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| Mathletics LLP Formerly Mathletics (P) Ltd.<br><br>C/o. P.K. Himmatsinghka, 41 B.B. Ganguly Street, Central Plaza, 2nd Floor, Kolkata-700012.<br><br>**PAN: AAXFM 4704 C** | Vs. | ITO, Ward-9(1), Kolkata |
| (Appellant) | | (Respondent) |

**Present for:**
Appellant by : Shri Pramod Kumar Himmatsinghka, AR
Respondent by : Smt. Ranu Biswas, Addl. CIT, Sr. DR

Date of Hearing : 27.03.2023
Date of Pronouncement : 26.04.2023

## O R D E R

## PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is arising out of the order of CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/104812839(1) dated 21.12.2022 against the assessment order passed u/s 147 r.w.s. 144B of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for A.Y. 2015-16.

2. Grounds taken by the assessee are as under:

*i. For that the reassessment proceedings itself being bad in law, the consequential proceedings are also bad in law.*

*ii. For that the reason recorded is arbitrary, whimsical and bad in law in as much as no belief in respect of escaped income was specified in the reason recorded, consequently the reason so recorded without quantification of the escaped income is unlawful, illegal, bad in law & liable to be quashed.*

*iii. That under the facts & circumstances of the case, no addition was made on the basis of which initiation of reopening proceeding was made, consequently the whole proceedings is unlawful, bad in law & void ab-initio.*

*iv. That under the facts of the case, the initiation of re-opening proceeding u/s 147 r.w.s 148 is wrong, illegal, bad in law and consequential proceeding are also bad in law and liable to be void ab-initio.*

*v. That the reason was recorded on the basis of borrowed satisfaction without any application of mind, copy of approval u/s 151 not provided for rebuttal of assessee, thus violating the principle of natural justice.*

*vi. that the initiation of re-opening proceeding by issuing notice u/s 148 in the name of erstwhile company being dead person is bad in law.*

*vii. That under the facts & circumstances of the case the impugned addition of Rs. 2,00,096/- is not justified and liable to be deleted.*

*viii. That the CIT(A) erred in not considering the grounds objectively and proceeded that appeal is not maintainable."*

2.1. From the above grounds, we note that ground no. 1 to 6 relate to validity of reopening of assessment made u/s 147 r.w.s. 148 of the Act. Ground no. 7 & 8 are on the merits of the case.

3. Brief facts of the case from the record are that the present status of the assessee as a Limited Liability Partnership (LLP) was acquired by it with effect from 31.07.2013 upon conversion of private Limited Company into LLP. The erstwhile assessee was a private limited company in the name of Mathletics Private Limited having PAN : AAGCM 9754 Q which was converted into LLP, that is, Mathletics LLP with new PAN: AAXFM 4704 C. Assessee in the status of private limited company did not file its return of income for AY 2015-16 since the same was not in existence during the year.

3.1. Ld. AO recorded reasons to believe that assessee company had made investment in mutual funds during A.Y. 2015-16 of Rs. 2,18,50,000/- and initiated the proceedings u/s 148 of the Act by

issuing a notice on 23.03.2021. The reason to believe recorded by the ld. AO for issuing notice u/s 148 and as supplied to the assessee is reproduced as under:

> *"As per system, we found that it has AIR-003 of Rs. 2,18,50,000/-. But the assessee company did not file any return till today."*

3.2. In response to the said notice, assessee filed a return of income with the old PAN reporting income as Nil. During the course of re-assessment proceedings, it was submitted that since assessee was converted from private limited company into LLP, all the transactions were included in LLP's profit & loss account and balance sheet for the year ended 31.03.2015. Income of the assessee was reported in the return filed by the LLP for A.Y. 2015-16 filed on 27.11.2015 with a total income of Rs. 77,67,900/-.

3.3. Assessee explained that Rs. 2,18,50,000/- were invested temporarily in Kotak Mutual Fund out of sales proceeds remittance received upon export of education software. Part of these remittances were invested in mutual fund which earned an income of Rs. 2,00,096/- on their redemption. The details of investment made in the mutual fund and income earned thereon is tabulated as under:

| *Sl. No* | *Date of Investment* | *Investment Amount (Rs.)* | *Date of Redemption* | *Redemption Amount (Rs.)* | *Profit (Rs.)* |
|---|---|---|---|---|---|
| *1* | *23.04.2014* | *2700000.00* | *23.07.2014* | *2746870.85* | *46870.85* |
| *2* | *24.04.2014* | *4250000.00* | *23.07.2014* | *4310812.61* | *60812.61* |
| *3* | *06.06.2014* | *2700000.00* | *23.07.2014* | *2720047.54* | *20047.54* |
| *4* | *15.07.2014* | *2800000.00* | *08.10.2014* | *2821919.95* | *21919.95* |
| *5* | *24.07.2014* | *9400000.00* | *09.09.2014* | *9450445.40* | *50445.40* |
| | | *2,18,50,000.00* | | *2,20,50,096.35* | *2,00,096.35* |

3.4. It was explained that the converted entity of LLP reflected the interest income on fixed deposit with its new PAN, amounting to Rs. 5,98,275/- in its audited profit and loss account for the year under

consideration which also included profit on redemption on Kotak Mutual Fund Units of Rs. 2,00,096/-. In this respect, assessee had wrongly mentioned the nomenclature as interest income on fixed deposit with bank. To corroborate its submission, assessee referred to Form 26AS to demonstrate that it had earned interest income of Rs. 1,53,340/- only, from Kotak Mahindra Bank Ltd. Thus, substantiated that figure of Rs. 5,98,275/- reported as interest income included the income from redemption of mutual fund units also.

4. Before the ld. AO, assessee also furnished all the details relating to source of investment made in the Kotak Mutual Fund Units. It was submitted that assessee is engaged in the business of designing and developing online educational software and export thereof. Assessee had received advance remittances for one of its Australian customers, that is, M/s. 3P Learning PTY Ltd, details of which are tabulated as under:

| *Date* | *Name of Customer* | *Australian Dollar* | *INR (Rs.)* |
|---|---|---|---|
| *22.04.2014* | *3P Learning PTY Ltd. L18/124, Walker St. North Sydney, NSW-2060, Australia* | *50,000/-* | *28,17,096/-* |
| *23.04.2014* | *Blake E Learning PTY Ltd. 655, Parramatta Road, Leichhardt. NSW-2040, Australia* | *81,120/-* | *45,98,379/-* |
| *06.06.2014* | *3P Learning PTY Ltd. L18/124, Walker St. North Sydney, NSW-2060, Australia* | *50,000/-* | *27,47,104/-* |
| *14.07.2014* | *3P Learning PTY Ltd. L18/124, Walker St. North Sydney, NSW-2060, Australia* | *50,000/-* | *28,02,098/-* |

5. To support its explanation, assessee submitted the computation of income of LLP, return of LLP for A.Y. 2015-16, copy of Form 26AS, mutual fund statement, certificate of registration for conversion of Mathletics Pvt. Ltd. to Mathletics LLP, copy of Indusind Bank Statement in which remittances were credited, copies of export sales invoice issued by the assessee on its Australian customers. In the course of assessment proceeding, ld. AO sought clarification as to why the mutual fund account was maintained in the name of old entity instead

of new converted entity, during the year under consideration. In this respect, assessee made its submission by giving an explanation that the bank account of the converted LLP could be opened only on 26.08.2014 with Kotak Mahindra Bank. Since the bank account opening took time for new entity, assessee raised its sales bills in the name of old entity for the sake of convenience & explanation to RBI so as to prove the receipt of inward remittance from abroad against the export sales made by it. After considering all the submissions made by the assessee, ld. AO proposed an addition of Rs. 2,00,096/- in respect of profit earned on redemption of Kotak Mutual Fund Units. No addition was made in respect of amount of investment of Rs. 2,18,50,000/- made in Kotak Mutual Find Units as recorded in the reasons to believe, for which the reassessment procceeding was initiated. The assessment was completed at an assessed income of Rs. 2,00,096/-.

6. Aggrieved, assessee went in appeal before ld. CIT(A).

7. Before the ld. CIT(A), it was strongly contested that ld. AO did not quantify the amount of escaped income in the reasons recorded by him. According to the assessee, since no amount of escapement of income was quantified in the reasons to believe recorded, ld. AO has usurp the jurisdiction u/s 149(1)(b) as the notice u/s 148 dated 23.03.2021 is issued for more than 4 years from the end of relevant assessee year 2015-16. In this respect, reliance was placed on the decision of co-ordinate bench of ITAT, Kolkata in the case of Dipendra Nath Chunder vs ITO, ITA No. 2425/Kol/2019 dated 19.02.2020.

7.1. Further, assessee contested that section 147 mandates to assess the income for which notice is issued u/s 148 and also any other income chargeable to tax which has escaped, which comes to the notice of AO subsequently in the course of reassessment proceedings. In view of this provision, it was submitted that notice u/s 148 was issued on

the reasons recorded that AIR information of Rs. 2,18,50,000/- was found as per the system. However, ld. AO did not make addition of Rs. 2,18,50,000/- being satisfied by the explanations and submissions made by the assessee in the course of reassessment proceedings. Thus, ld. AO was not competent to continue with the proceeding u/s 147 on the other issues by bringing Rs. 2,00,096/- to tax in respect of profit earned on redemption of Kotak Mutual Find Units which in any way was included in the total income reported by the LLP entity in its return. It was submitted by the assessee that income tax return of the converted entity of LLP included all the transactions carried out in the LLP as well as transactions undertaken in the name of erstwhile private limited company which relates to profit on redemption of mutual fund units. Thus, contended that there is no escapement of income.

7.2. Reliance was placed on the decision of Hon'ble High Court of Delhi in the case of Ranbaxy Laboratories Ltd. 336 ITR 136 and Hon'ble Bombay High Court in the case of CIT vs Jet Airways India Ltd. 331 ITR 236. The ratio laid down in these decisions is that reassessment must be in the first place, in respect of income escaped assessment for which the reasons were recorded and only thereafter in respect to some other items of escaped income. If, however, the income, escapement of which was the foundation for recording of reasons to believe, is not assessed or reassessed in the order u/s 147, then it is not open to the AO to independently assess any other income, which comes to his notice subsequently.

7.3. It was also argued that initiation of proceedings by issuing notice u/s 148 was on non-existence entity and, therefore, the entire proceedings are bad in law in view of the decision of Hon'ble Supreme Court in the case of PCIT vs Maruti Suzuki India Ltd. in Civil Appeal No. 5409 of 2019 dated 25.07.2019. After considering this submissions, ld. CIT(A) dismissed the appeal of the assessee as not maintainable. Ld.

CIT(A) referred to the decision of Hon'ble Supreme Court in the case of PCIT vs Mahagun Realtors Pvt. Ltd. (2022) 137 taxmann.com 91 (SC).

7.4. The finding given by ld. CIT(A) by holding the appeal as not maintainable is reproduced as under:

> *"7.1. As explained elsewhere in this order, the assessee company was dissolved and converted into LLP on 31.07.2013 and, therefore, it is an admitted fact that the assessee company was not in existence in the eyes of law since 31.07.2013. Accordingly, as a natural corollary, the assessee company was not in existence during the FY 2014-15 relevant to the impugned AY 2015-16. In view of this, the assessee company did not file its return of income for the impugned AY 2015-16 in terms of the provisions of sec. 139(1) of the Act.*
>
> *7.2. At this juncture, it may be noted that though the assessee company was not in existence during the FY 2014-15, the AO received specific information that huge amount of investments were made in the name of the company in mutual funds. To be precise, as per the documentary evidence placed on record, the assessee company made an aggregate amount of investment of Rs. 2,18,50,000/- in mutual funds of Kotak Mutual Funds during the FY 2014-15 and, also, received profit on account of redemption of mutual funds to the extent of Rs. 2,00,096/-.*
>
> *7.3. In view of this, without knowing the fact that the company was not in existence during the FY 2014-15, based on specific information that investment was made in the name of the assessee company and, also, the assessee company received profit on redemption of mutual funds, the AO initiated the proceedings u/s. 147 of the Act by issuing a notice u/s. 148 of the Act dated 23.03,2021. In response thereto, the non-existing assessee company filed its return of income, albeit, belatedly on 02.09:2021, declaring a total income of Rs. Nil.*
>
> *7.4. As seen from the above, it is amply clear that the assessee company though not in existence during the FY 2014-15 and, as a natural corollary even during the FYs 2020-21 and 2021-22, quiet strangely responded to the notice issued by the AO u/s. 148 of the Act and filed the return of income in the name of non existing company. At this juncture, I have*

*perused the case laws relied upon by the assessee, including the decision of the Hon'ble Supreme Court in the case of PCIT s. Maruti Suzuki India Ltd. (Supra) wherein it is held that the AO cannot issue any notice or initiate any proceedings in terms of the provisions of the statute against the non existing company. Accordingly, on the basis of the notice issued against a non existing entity, the question of filing a return of income in the name of the non existing company, that too, by the non existing company doesn't arise.*

*7.5. However, in the instant case, the assessee company, being a non existing company since 31.07.2013, not only filed the return of income on 02.09.2021 but also participated in the assessment proceedings without raising any objection against issue of notice in the name of non existing company, before the AO. Further, during the course of assessment proceedings, the assessee company admitted to the fact that investment in mutual funds to the extent of Rs. 2,18,50,000/- was made in the name of non existing company during the FY 2014-15 out of the sale proceeds of software supplied to outside parties by issuing invoice in the name of the non existing company.*

*7.6. At this juncture, it may be noted that recently the Hon'ble Supreme Court in the case of PCIT Vs. Mahagan Realtors Pvt. Ltd. (2022) 137 taxmann. com 91 (SC) has held that where post amalgamation, no indication was given to the AO regarding the fact of the assessee company got amalgamated and, therefore, not in existence at the time of issue of notice u/s. 153A of the Act, since the conduct of the assessee reflected that if consistently held itself as an assessee in existence, the assessment order passed in the name of the assessee amalgamating company was valid in the eyes of the law. While doing so, the Hon'ble Supreme Court has invoked the provisions of sec. 170 rws 292B of the Act and sec,481 of the Companies Act, 1956.*

*7.7. As explained elsewhere in this order: in the instant case also, the assessee conducted itself as that of an existing company by way of filing of return of income in response to notice issued u/s, 148 of the Act (supra) and, thereafter, participated in the assessment proceedings, and, therefore, the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs Mahagan Realtors Pvt. Ltd. (supra) is squarely applicable to the facts of the instant case. Accordingly, I am of the considered opinion that the impugned order cannot be treated as void ab initio.*

*7.8. Similarly, reliance is placed on the decision of the Hon'ble Madras High Court in the case of Vama Sundari Investments (Delhi) Pvt. Ltd. vs. ACIT (2021) 128 taxmann.com 239 (Mad.) wherein involving similar set of facts and circumstances as that of the case on hand, the Hon'ble High Court has held that, since offices of both the amalgamating company and amalgamated company were on the same premises and, further, the assessee, being the amalgamating non existing company, had duly acknowledged the re-opening notice issued u/s. 148 of the Act. The consequent order passed u/s. 147 of the Act could not be set-aside on the ground that the amalgamating company was not in existence at the time of issue of notice u/s. 148 of the Act.*

*7.9. Be that as it may, in spite of the fact that the assessee company is not in existence, the present appeal has been filed against the impugned assessment order on 12.04.2022 wherein the name of the appellant is mentioned as the non existing assessee company i.e., M/s. Mathletics Private Limited, bearing PAN No. AAGCM9754Q, and the appeal was verified by Mrs. Devaki Nandan Dhanuka, being one of the Directors of the erstwhile non existing company. As such, the present appeal has been filed by a non existing company which cannot be sustained in the eyes of the law, since a non existing company has no legal existence to file an appeal before the First Appellate Authority in terms of the provisions of section 246A r.w.s. 170 of the Act.*

*7.10. In normal course, being aggrieved by the order passed by the AO against the non existing company, the successor company or entity, as the case may be, is required to file an appeal before the First Appellate Authority in term of sec. 170 of the Act. Accordingly, in the instant case, the successor entity i.e., M/s. Mathletics LLP, bearing PAN NO. AAXFM4704C ought to have filed the present appeal/before the-First Appellate Authority. At this juncture, it may not be out of place to highlight the fact that in all the case laws relied upon by the assessee as well as quoted in this order (supra), the appeals were filed by the existing assessees i.e., amalgamated companies rather than by the non existing amalgamating companies.*

*7.11. In view of the above, keeping in view the provisions of sec. 246A rws 170 of the Act, I am of the considered opinion that the present appeal filed by the non existing company has no locus standi in the eyes of the law and, therefore, the same cannot be admitted so as to adjudicate the other issues raised challenging the*

*procedural aspects related to re-opening of the assessment u/s. 147 of the Act and merits of the case.*

*7.12. Thus, the present appeal filed by the assessee company is dismissed as not maintainable in ters of the provisions of sec. 246A r.w.s. 170 of the Act."*

8. Aggrieved, assessee is in appeal before the Tribunal.

9. Before us, ld. counsel has reiterated the facts and submissions made before the authorities below. Ld. counsel has also referred to the paper book containing 15 pages to demonstrate and corroborate this submissions made.

9.1. Ld. Sr. DR submitted that assessee-company has made investment in mutual funds of Kotak Mutual Funds Units and has also received profit on account of redemption of mutual funds. Ld. AO had initiated the proceedings based on specific information that investment was made in the name of the assessee company. Thus, the proceedings are validly initiated, she placed reliance on the order of authorities below for the addition made by the ld. AO

10. We have heard the rival contentions and gone through the material placed on record. Admittedly, it is a fact that there was conversion of Mathletics Pvt. Ltd. into Mathletics LLP. It is also demonstrated that in the return filed by the LLP for A.Y. 2015-16, income relating to profit earned on redemption of mutual fund units was included in the total income of the LLP, though the investment was made in the name of erstwhile private limited company. Further, it is noted that the reasons to believe recorded for initiating proceedings u/s 148 is in respect of investment of Rs. 2,18,50,000/- for which no addition has been made in the reassessment completed by the ld. AO. The reassessment has been completed by making an addition of Rs. 2,00,096/- in respect of profit earned on redemption of mutual fund

units which does not form part of the reasons to believe recorded by the ld. AO.

11. Considering these facts on record, we do find force in the submissions made by the ld. Counsel for which we draw force by placing reliance on the decision of Hon'ble Jurisdictional High Court of Calcutta in the case Infinity Infinity Infotech Parks Ltd. (supra) as well as in the case of Ranbaxy Laboratories Ltd. (supra) and Jet Airways India Ltd. (supra). Accordingly, we hold that the reassessment completed is not valid and is liable to be quashed.

11.1. Further, we note that in the reasons recorded, there is no quantification of the income escaping assessment in terms of section 149(1)(b). This issue has been dealt by Co-ordinate bench of ITAT Kolkata in the case of Dipendra Nath Chunder (supra) holding it in favour of the assessee.

11.2. Also we take note of the reliance placed by ld. CIT(A) on the decision of Hon'ble Supreme Court in the case of Mahagun Realtors Pvt. Ltd. (supra) to dismiss the appeal as not maintainable. On this aspect, from the perusal of the said judgment of Hon'ble Supreme Court, we note that it has observed that assessment is supposed to be made on the transferer company after taking into account the income of both, the transferor and the transferee company. In the present case before us, the return filed by the LLP includes the income relating to transaction in the name of company entity which is in line with the observation made by the Hon'ble Supreme Court. The observation of Hon'ble Supreme Court contained in para 41 is reproduced as under:

> *"41……. Having regard to all these reasons, this court is of the opinion that in the facts of this cases, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee. The approach and order of the AO is, in this court's opinion in*

*consonance with the decision in Marshall & Sons (supra), which had held that:*

> *'an assessment can always be made and is supposed to be made on the Transferee Company taking into account the income of both the Transferor and Transferee Company."*

12. Considering the factual matrix, the submission made and the judicial precedent, all of which discussed above, we find it proper to allow the grounds of appeal in respect of reassessment proceedings initiated u/s 147 r.w.s. 148 challenged vide ground no. 1 to 6. Accordingly, the addition of Rs. 2,00,096/- is deleted. Since we have allowed the appeal on the jurisdictional issue as stated above, grounds relating to merits of the cases are not adjudicated upon.

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

**Order pronounced in the open court on 26.04.2023**

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| **Sd/-** | **Sd/-** |
| **(SONJOY SARMA)** | **(GIRISH AGRAWAL)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Kolkata, Dated: 26.04.2023.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Mathletics LLP Formerly Mathletics (P) Ltd.
2. The Respondent: ITO, Ward-9(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata