

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 6136/Del/2016, A.Y. 2006-07

Rathi Ceramics Pvt. Ltd. 26A, Sadhana Enclave, New Delhi-110017 PAN : AAACR4592F (APPELLANT)	Vs.	ITO, Ward-15(3), New Delhi (RESPONDENT)
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Appellant by	Sh. Ved Jain, Adv. & Sh. Aman Garg, CA
Respondent by	Ms. Princy Singla, Sr.DR

Date of hearing:	02.05.2023
Date of Pronouncement:	08.05.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 25.10.2016 of CIT(A)-10, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 04.02.2014 passed u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-15(3), New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.
3. The assessee has come in appeal raising following 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.*

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 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. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the*

action of the AO in making an addition of Rs.85,00,000/- as income from undisclosed sources, u/s 68 of the Act.

(ii) That the above-said additions have been made by indulging in surmises conjecture and without bringing any adverse material on record.

9. *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 explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of the payer as well as the genuineness of the transactions.*

10. *That the learned CIT(A) has erred both on facts and in law in confirming above-said addition ignoring the fact that the same has been made on the basis of the material collected at the back of the assessee without providing copy of the same & providing opportunity to rebut the same.*

11. (i) *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. 1,75,110/- made by the AO on account of commission of 2%.*

(ii) That the commission was added @ 2% without there being any basis for the same.

12. *The appellant craves leave to add, amend or alter any of the grounds of appeal."*

3. Thereafter assessee has raised the following additional grounds :-

"13. 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.

14. On the circumstances and facts of the case, the reassessment framed in the name of M/s Rathi Ceramics 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 non est."

4. At the time of hearing Id. Counsel had stressed that the additional grounds primarily arise from questions of law as they go to the root of exercises of jurisdiction by the Ld. AO against non-existing company. It was submitted that as such the assessment order is void ab initio. Reliance was

placed on the following judgments :-

1. *C.I.T New Delhi vs m/s Spice Entertainment ltd.* 2017(12) TMI 754 Dated: 2-11-2017 (SC)
 2. *Spice Entertainment ltd. Vs. Commissioner of Service Tax [Printed As: Spiceentertainment Ltd. vs. Commissioner of Service Tax 2011 (8) TMI 544 Dated 3.8.2011 (Delhi HC)*
 3. *Pr. Commissioner of Income Tax, New Delhi vs. Maruti Suzuki India Limited 2019 (7) TMI 1449 Dated: -25-7-2019 (SC)*
 4. *Commissioner of Income Tax vs. Sony Mobile Communications IND Pvt Ltd (Now Merged With Sony India Pvt. Ltd.) 2023 (2) TMI 1074 Dated - 2.2.2023 (Delhi HC)*
 5. *Kunvarji Fincorp Pvt. Ltd. vs. Dy. Commissioner of Income Tax Circle 2(1)(1), Ahmedabad 2023 (2) TMI 357 Dated 6-2-2023, Gujarat High Court*
 6. *State Bank of India (Successor to State Bank of Travancore) Financial Reporting & Taxation, Mumbai vs. The Asstt. Commissioner of Income Tax-2(2) (1), Mumbai and DCIT-2(2)(1), Mumbai Vs. State Bank of India (Successor to State Bank of Travancore) Financial Reporting & Taxation, Mumbai 2022 (11) TMI 528 Dated: 31-10-2022 (ITAT Mumbai)*
 7. *M/s. Biocon Biologics Ltd. (Formerly known as Biocon Biologics India Ltd.) vs. The Deputy Commissioner of Income-Tax, Circle 1(1)(1) Bengaluru 2022(9), TMI 1113 dated 13.09.2022*
 8. *State Bank of India (Successor to Erstwhile State bank of Indore) vs. DCIT- Central Circle-2(2) Mumbai and ACIT- 2(2) (1), Mumbai vs. State Bank of India (Successor to Erstwhile State Bank of Indore) 2022(11)TMI 429 Dated 20.09.2022 ITAT Mumbai*
 9. *Expedia Online Travel Services India Pvt. Ltd. (As successor in Interest for Orbits India services Pvt. Ltd.) vs. DCIT, National E assessment Centre, Delhi (NEAC) 2022(10) TMI 279 Dated 4.10.2022 (ITAT Delhi)*
 10. *Savera Marketing Pvt. Ltd. vs. ITO Ward 7(4), New Delhi 2022(4) TMI 617 Dated 11.04.2022 (ITAT Delhi)*
 11. *31 Infotech Consultancy services Ltd. vs. Assistant Commssioner Of Income Tax-11(3) (1), Mumbai 2022(10) TMI 391 Dated 21.09.2022 (ITAT Mumbai)*
 12. *ITO, Ward-6 (2) Kolkata vs. M/s. IFGL Refractories Ltd. and (Vice-versa) 2022 (6) TMI 1279 Dated 28.06.2022 (ITAT Kolkata)*
- BASF India Ltd. Vs. DCIT Circle -6 (1), Mumbai 2019(11) TMI*

1719 Dated 19.11.2019 (ITAT Mumbai)”

13. Saurabh Overseas Pvt. Ltd. vs. ITO, ITA No. 6138/Del/2016, A.Y. 2006-07 (ITAT Delhi)

14. Savera Marketing Pvt. Ltd. vs. ITO, ITA No. 6139/Del./2016, A.Y. 2006-07 (ITAT Delhi)”

5. Ld. DR however relied judgment of Hon’ble Delhi High Court in **PCIT Verus Mahagun Realtors (P) Ltd. (2022) 443 ITR194(SC)** to contend that Hon’ble Supreme Court has upheld the validity of Assessment Order passed in the name of amalgamating company.

6. As the additional grounds arise out of question of law same are taken on record. Since this Bench is first dealing with question of law alone arising out of additional grounds it will be appropriate to cite the relevant law here itself. Similar issue has come up in the case of group company **M/s Saurabh Overseas Pvt. Ltd.** (Now merged with DBG Leasing and Housing Ltd.) bearing ITA No. 6138/Del/2016 - AY 2006-07 before Coordinate Bench in which on the similar set of facts, Bench vide order dated. 11.05.2022 has decided the appeal in favour of the assessee. Relevant findings are as under:

“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.”

7. The Hon’ble Supreme Court in the case of **Pr. Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki India Ltd., (2019) 416 ITR 613 (SC)**, authoritatively dealt with and answered the question of law which is now sought to be urged by the Revenue before us. It held that the assessment order framed in the name of a non-existent entity, in spite of receiving intimation that the amalgamating company ceased to exist as a result of the approved scheme of amalgamation, went to the root of the matter and was not a defect capable of being cured under Section 292B.

7.1 Hon’ble Supreme Court, in the case of **M/s. Mahagun Realtors Private Limited (supra)**, as relied by Ld. DR, has certainly upheld the validity of the assessment order in the name of amalgamating entity, although it ceases to exist pursuant to amalgamation. The judgment in the case of **Maruti Suzuki (supra)** was distinguished on facts as the order in **Maruti Suzuki (supra)** was passed only in the name of amalgamating company but in the **M/s. Mahagun Realtors Private Limited (supra)** the assessment order dated 11.08.2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies. Further the Assessee did not intimate the fact of amalgamation prior to the issue of the assessment order and also Assessee itself undertook various compliances such as furnishing of tax returns, correspondences with the Tax Authority, filing of appeal before appellate authorities etc. in the name of the amalgamating company, which had ceased to exist.

8. In the light of aforesaid proposition of law while taking into consideration the matter on record in the present case, it can be observed that the appellant company merged with M/s.DBG Leasing and Housing Ltd. vide

order dated 21.01.2011 of Hon'ble Delhi High Court, available at page no. 1 to 35 of the paper book. Ld. AO was informed of this merger on 18.06.2011 through letter filed before Ld. AO, placed at page no. 36 of the paper book. It will be beneficial to reproduce the substance and content of this letter dated June 18, 2011 as under :-

“To, *Date : June 18, 2011*
THE ASSESSING OFFICER,
Income Tax Department,
Vikash Bhawan, IP ESTATE,
Delhi-110002.
Ward Number 15(3)
Sub : Cancellation of Permanent Account Number-AAAPR4592F
Sir,
This is to inform you that pursuant to the order of the Honorable high Court of Delhi dated January 21, 2011 M/s. Rathi Ceramics Private Limited PAN No. AAAPR4592F has been merged with M/s. DBG Leasing and Housing Limited w.e.f. May 7, 2011.
In view of the above, you are requested to cancel the PAN No. allotted to M/s. Rathi Ceramics Private Limited.
Kindly do the needful and take this information on record.
With regards
For DBG Leasing and Housing Limited
Sd/-
Pradeep Rathi
Director”

9. It can be appreciated that for the relevant AY 2006-07, order u/s 143(3) of the Act was passed on 14.5.2008. Thereafter on 18.06.2011, Ld. AO was apprised of the fact of merger of assessee company with M/s. DBG Leasing and Housing Limited w.e.f. May 7, 2011 and prayer to cancel the PAN. Still the notice under 147 of the Act was issued on 21.3.2013 upon the present appellant company. The impugned assessment order shows that when notice was issued for re-assessment one Shri Rajiv Aggarwal CA appeared on 25/11/2013 and was asked to file POA, but on subsequent hearing none appeared and no POA for assessee was filed. The Ld. AO proceeded and passed the order on

4.02.2014 against the appellant company and mentioning the PAN No. AAAPR4592F, for which already request was made for its cancellation by letter dated 18.6.2011. The Bench is of considered opinion that Ld. AO fallen in error in not taking cognizance of the fact of merger of the assessee company and that it had lost legal existence for the purpose of the Act, still the assessment order was passed against non-existing entity. Such order is void ab initio. Additional grounds are allowed. **Consequently, the appeal of assessee is allowed.** Impugned assessment, order along with consequential proceedings, are declared to be Non est against the appellant.

Order pronounced in the open court on 8th May, 2023.

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Date:- 08.05.2023

Binita, SR.P.S

Copy forwarded to:

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

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**