

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2191/DEL/2023 [A.Y. 2017-18]

The Dy. C.I.T
Circle 52 (1)
New Delhi

Vs.

M/s Ameriprise India Pvt Ltd
50/9, 1st Floor, Tolstoy Lane
Janpath, New Delhi

PAN - AAFCA 3489 B

(Applicant)

(Respondent)

Assessee By : Shri Kamal Sawhney, Adv
Shri Nikhil Agarwal, Adv
Shri Puru Medhir, Adv

Department By : Shri Kanv Bali, Sr. DR

Date of Hearing : 20.12.2023
Date of Pronouncement : 22.12.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order dated
13.06.2023 by the NFAC, pertaining to A.Y. 2017-18.

2. The sum and substance of the grievance of the Revenue is that the NFAC erred in quashing the assessment order as invalid without considering the decision of the Hon'ble Supreme Court in the case of Mahagun Realtors (P) Ltd. The other grievance of the Revenue which is not emanating from the order of the NFAC relates to the addition on account of ESOP expenditure and delay in depositing the employees Provident Fund.

3. Briefly stated, the facts of the case are that the assessee filed its return of income on 31.10.2017 which was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. On 22.04.2019, Ameriprise India Pvt Limited was converted into Ameriprise India LLP under the provisions of LLP Act and on 09.05.2019, jurisdictional Assessing Officer and PCIT were informed about the change in the corporate existence of the assessee. Thereafter, notices u/s 142(1) of the Act were issued on 26.09.2019, 08.11.2019 and 11.11.2019. Each notice was replied by the assessee on 01.10.2019, 12.11.2019 and 18.11.2019. Each reply was in the name of Ameriprise India LLP. Final assessment order u/s 143(3) of the

Act was framed on 20.12.2019 in the name of Ameriprise India Pvt Ltd, a non-existent entity.

5. Assessment was challenged before the ld. CIT(A) on the ground that it has been framed in the name of a non-existent entity.

6. The aforementioned facts were brought to the notice of the ld. CIT(A) and after considering the same, the ld. CIT(A) /NFAC held as under:

"5.0 Decision on grounds of appeal and reasons thereof: Grounds were raised. Vide Ground no. 1 appellant has challenged the validity of the

In this appeal 5 assessment order on the ground that assessment order was passed on an non- existent entity as the appellant company in the name of "Ameriprise India Private Limited" (AIPL) has been converted from the existing private limited company into a Limited Liability Partnership ('LLP') in accordance with the provisions of Limited Liability Partnership Act, 2008 ('LLP Act'). The Registrar of Companies has granted a certificate for conversion of the Company to LLP with effect from 22 April 2019 under the name of Ameriprise India LLP and the above fact was duly communicated to the learned AO vide letter dated May 7, 2019. It has also been submitted by the appellant that during the course of assessment proceedings, submissions were also filed in the name of Ameriprise India LLP, giving due disclosure of conversion of Company into LLP. Therefore,

assessment order 'framed and passed on a non-existent entity is against the provision of law and liable to be quashed.

5.2 I have carefully gone through the ground of appeal, statement of fact assessment order passed by the AO, written submission uploaded and judicial decisions relied upon by the appellant on the issue. It is an admitted fact that Additional CIT (Special Range-1), Delhi, was informed about conversion of the appellant company into LLP vide letter dated 07 May, 2019 with a copy to Principal CIT-1, New Delhi. It has further been contended by the appellant that subsequently submission was also filed before the AO in the name of Ameriprise India LLP

5.3 Considering the above facts, I am of the view that appellant has discharged his onus by duly disclosing the fact of conversion of Ameriprise India Pvt. Ltd. into Ameriprise India LLP to all concerned including the AO. However, AO has ignored this fact and framed the assessment order in the name of Ameriprise India Pvt. Ltd. an non existing entity. The case laws relied upon by the appellant is fully applicable in the case of appellant including the decision of Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, New Delhi v. Maruti Suzuki India Ltd. [2019] 107 taxmann.com 375 (SC) wherein, it has been held that assessment order passed in the name of non-existing amalgamating entity would be without jurisdiction and is to be set aside. Further, Hon'ble Supreme Court in the case of Spice Entertainment [TS-504-SC-2017] had dismissed Revenue's appeal and upheld the Hon'ble Delhi HC judgment, wherein

it was held that assessment on non-existent entity is void and not curable under section 292B of the Act.

5.4 The Hon'ble Delhi High Court in a recent judgement had dismissed the appeal in the case of Commissioner of Income Tax vs Sony Mobile Communications India Pvt Ltd (company) and quashed the assessment by holding that the assessment order passed in the name of a non-existent company, despite being informed of the amalgamation, was null and void by relying upon the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki.

5.5 In view of the above facts and respectfully following the decision of Hon'ble Supreme Court as well as Jurisdictional Hon'ble Delhi High Court, I find force in the contention of the appellant that assessment order passed in the name of non-existent entity i.e. "Ameriprise India Private Limited" ('AIPL') is bad in law and without jurisdiction. Therefore, the assessment order framed and passed by the AO is quashed. Thus, Ground no. 1 of the appeal raised is allowed.

6.0 As the appellant has succeeded in Ground no. 1 of the appeal filed on technical ground challenging the validity of assessment order passed by the AO, the other grounds raised by the appellant in the present appeal has thus become academic in nature and not adjudicated on merit.

7.0 In the result, the appeal of the appellant is allowed."

7. Before us, the ld. DR vehemently stated that the NFAC has confused the facts with the facts of a case of amalgamation. It is the say of the ld. DR that the facts of the present case is neither of amalgamation nor of merger/demerger, but a simple case of change in the status of the assessee from a private limited company to a limited liability partnership. Therefore, assessment cannot be quashed as the status of the assessee continued for the year under consideration.

8. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Mahagun Realtors 443 ITR 194.

9. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities and placed strong reliance on the decision of the Hon'ble Delhi High Court in the case of Sony Mobile Communications India Pvt Ltd 456 ITR 753 and submitted a chart showing how the Hon'ble Delhi High Court has distinguished the facts with the facts of Mahagun Realtors [supra].

10. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the status of the assessee changed from private limited company to a limited liability

partnership on 22.04.2019. It is also not in dispute that immediately the assessee informed not only the jurisdictional Assessing Officer but also the PCIT.

11. It is also an undisputed fact that subsequent to the change of status, all the notices were replied by the assessee in the name of LLP. Therefore, it can be stated that the change of status was brought to the knowledge of the Assessing Officer in all possible ways. Yet, the Assessing Officer chose to frame the final assessment order in the name of a no-existent entity. The ratio laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki Ltd 416 ITR 613 squarely applies and has been rightly followed by the NFAC.

12. Decision of the Hon'ble Supreme Court in the case of Mahagun Realtors [supra] is clearly distinguishable on facts in hand. In the case of Mahagun Realtors, no intimation about merger was brought to the notice of the Assessing Officer and the return filed after amalgamation was still in the name of the amalgamated company and fact of amalgamation was not disclosed in the business/organization column and the assessment order indicated the name of both the amalgamation and the amalgamating company and during the

assessment proceedings, the assessee made the Assessing Officer believe that the amalgamating company was still in existence. All these facts before the Hon'ble Supreme Court are in favour of the assessee which facts are completely absent in the case in hand. Therefore, we do not find any reason to interfere with the findings of the Id. CIT(A).

13. In the result, the appeal of the Revenue in ITA No. 2191/DEL/2023 is dismissed.

The order is pronounced in the open court on 22.12.2023.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 22nd DECEMBER, 2023

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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