

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 622/Chd/2017
निर्धारण वर्ष / Assessment Year : 2008-09

Healthfore Technologies Ltd. (Formerly Religare Technologies Ltd.) (Successor in interest to M/s Religare Technova IT Services Ltd.) Admn. Office: G-16, Marina Arcade, Connaught Circus, New Delhi-110001	बनाम	The DCIT Circle VII Ludhiana
स्थायी लेखा सं. / PAN NO: AACCP0505H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA NO. 656/Chd/2017
निर्धारण वर्ष / Assessment Year : 2008-09

The DCIT Circle VII Ludhiana	बनाम	Healthfore Technologies Ltd. (Formerly Religare Technologies Ltd.) (Successor in interest to M/s Religare Technova IT Services Ltd.) Admn. Office: G-16, Marina Arcade, Connaught Circus, New Delhi-110001
स्थायी लेखा सं. / PAN NO: AACCP0505H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : None (Written Submission)
राजस्व की ओर से / Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख / Date of Hearing : 06/03/2024
उद्घोषणा की तारीख / Date of Pronouncement : 14/03/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

These are cross appeals filed by the Assessee and the Revenue against the order of the Ld. CIT(A)-3, Ludhiana dt. 20/01/2017 pertaining to Assessment Year 2008-09.

2. None has appeared on behalf of the assessee, however, a communication dt. 05/03/2024 was received by the Registry and has been placed on record wherein it has been submitted, on behalf of the assessee company, that there is no activity in the assessee company and it is neither in a position to appoint an Advocate to represent the matter nor to afford their professional fee and it was accordingly requested to decide the matter based on merits already elucidated in the chart and the paper books submitted.

2.1 In view of the same, the matter was taken up for hearing. The Ld. CIT, DR was heard and material available on the record perused.

3. One of the grounds of appeal taken by the assessee in its appeal read as under:

"4. That on facts and in law, the CIT(A) failed to appreciate that the Order passed by the AO in the name of M/s Religare Technova IT Services Ltd. on 24th December, 2010 was not sustainable in law since it was passed in the name of the company which had already been amalgamated with the company viz. M/s Religare Technologies Ltd. (Now known as M/s Healthfore Technologies Ltd.) vide Order of the Hon'ble High Court of Delhi dated 28th July, 2010 and the aforesaid fact had been duly submitted before the CIT(A) alongwith copy of Order of the Hon'ble High Court of Delhi. The CIT(A) failed to appreciate that the Order of the AO was void ab initio and therefore ought to have been quashed."

3.1 We find that the aforesaid ground goes to the core of the matter and we therefore deem it appropriate to examine the said ground of appeal.

3.2 In its written submission, it has been submitted on behalf of the assessee company that it was incorporated on 20/06/1997 under the name and style of M/s Prime Syscom Pvt. Ltd. Subsequently, the name got changed to M/s Fortis Technologies Pvt. Ltd. w.e.f 27/07/2007. Thereafter, the name got changed from M/s Fortis Technologies Pvt. Ltd. to M/s Religare Technova IT Services Ltd. w.e.f 01/07/2008. It was further submitted that M/s Religare Technova IT Services Ltd. got amalgamated with M/s Religare Technologies Ltd. (Now known as Healthfore Technologies Ltd.) w.e.f 01/04/2009 (being the appointed date) pursuant to order of the Hon'ble Delhi High Court dated 28/07/2010.

3.3 In aforesaid factual background, it was submitted that since the company namely M/s Religare Technova IT Services Ltd. already stood amalgamated with the company namely M/s Religare Technologies Ltd. as per the order of the Hon'ble Delhi High Court dt. 28/07/2010 w.e.f 01/04/2009, the order of assessment u/s 143(3) dt. 24/12/2010 could not be passed by the AO in the name of non-existent company and in support, reliance was placed on various authorities on the subject which are as follows:

- Spice Entertainment Ltd. Vs. CIT (2011) 247 CTR 500 (Del)
- CIT Vs. Dimension Apparels Pvt. Ltd. (2015) 370 ITR 288(Del)
- Jitendra Chandralal Navlani Vs. UOI(2016) 386 ITR 288 (Bom)
- BDR Builders & Developers Pvt. Ltd. Vs. ACIT (2017) 397 ITR 529 (Del)
- Pr. CIT Vs. Maruti Suzuki India Ltd. (2017) 397 ITR 681 (Del)
- Rustagi Engineering Udyog Pvt. Ltd. V. Dy. CIT (2016) 382 ITR 443 (Del).
- CIT v. Intel Technology India (P) Ltd. (2016) 380 ITR 272 (Kar.)

3.4 It was accordingly submitted that the Id CIT(A) failed to appreciate that the order passed by the AO in the name of M/s Religare Technova IT Services Ltd. on 24th December, 2010 was not sustainable in law since it was passed in the name of the company which had already been amalgamated with the company viz. M/s Religare Technologies Ltd. and that the order of the AO was void ab initio and therefore ought to have been quashed. It was accordingly submitted that in light of aforesaid facts of the case and the judicial pronouncements which support the case of the assessee, the order of the lower authorities be declared as unsustainable in law and be set-aside.

4. In his submission, the Ld. CIT/DR submitted that the assessment proceedings under consideration were initiated in the name and PAN no. of M/s Religare Technova IT Services Ltd. an existing company at that time by serving notice under section 143(2) on 07/09/2009 by ITO, Ward-VII(2), Ludhiana.

Thereafter notice under section 143(2) and 142(1) were issued on 26/05/2010 and served upon the assessee company on 27/05/2010. Thereafter the case was transferred to Circle-7, Ludhiana on 22/09/2010 and another notice under section 143(2) was issued on 20/10/2010 and served on the assessee company on 21/10/2010.

4.1 It was further submitted that from the perusal of the assessment order, it is apparent that though the representative of the assessee company attended to the proceedings except for responding to the show-cause dated 18/12/2010, there was however, no communication or any intimation to the AO by the assessee company as to the amalgamation of the assessee company with M/s Religare Technologies Ltd. Further, the assessment order is silent about the fact of the amalgamation of the assessee company with Religare Technologies Ltd. as approved by the Hon'ble Delhi High Court vide its order dt. 28/07/2010 as so claimed by the assessee company. It was accordingly submitted that there was no intimation or any communication by the assessee company to the AO and therefore in such circumstances given the material available on the record where the proceedings have been rightly initiated in the name of the assessee company which was in existence at the relevant point in time and under the PAN which was still operative, where the assessee company through its representative attended to the proceedings, the AO has rightly proceeded and completed the assessment by passing the order under section 143(3) dt. 24/12/2010 and there was thus no infirmity or illegality in the order so passed by the AO.

4.2 It was further submitted that even before the Ld. CIT(A), the assessee has not raised any such contention so raised and therefore it is incorrect on the part of the assessee company to contend that the Ld. CIT(A) has erred in not deciding the said matter.

4.3 In support of his contention the Ld. CIT/DR relied on the order of the Hon'ble Supreme Court in case of PCIT Vs. Mahagun Realtors Limited (2022) 137

taxmann.com 91 (SC) and submitted that the facts of the said case are *pari-materia* and therefore, ratio laid down therein shall apply equally in the instant case. It was accordingly submitted that there is no merit in the contentions so raised on behalf of the assessee company and the ground of appeal so taken be dismissed.

5. We have heard the Id CIT DR and gone through the written submissions and other material available on record. In case of **PCIT Vs. Mahagun Realtors Limited (Supra)**, the **Hon'ble Supreme Court** has held as follows:

"41. In the light of the facts, what is overwhelmingly evident- is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL. Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the CIT, and a cross appeal was filed before ITAT. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered by MRPL, and after considering the special auditor's report, brings specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) - but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The AO, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home Décor Pvt. Ltd.). The mere choice of the AO in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i.e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order - and Section 394 (2). Furthermore, it would be anybody's guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order would be issued in favour of a non-existing company (MRPL). Having regard to all these reasons, this court is of the opinion that in the facts of this case, 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."

42. Before concluding, this Court notes and holds that whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies

Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.

43. In view of the foregoing discussion and having regard to the facts of this case, this court is of the considered view, that the impugned order of the High Court cannot be sustained; it is set aside. Since the appeal of the revenue against the order of the CIT was not heard on merits, the matter is restored to the file of ITAT, which shall proceed to hear the parties on the merits of the appeal- as well as the cross objections, on issues, other than the nullity of the assessment order, on merits. The appeal is allowed, in the above terms, without order on costs."

6. As can be seen from the order of the Hon'ble Supreme Court, whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of Section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but the same would depend on the terms of the amalgamation and the facts of each case.

7. It is, therefore, essential that in the instant case, the terms of the amalgamation as so approved by the Hon'ble Delhi High Court, the appointed date, the tax filings by the assessee company, the participation and conduct of the assessee company during the assessment and the appellate proceedings, the fact of the amalgamation been intimated to the AO and other related matters needs to be thrashed out before arriving at any conclusive finding as to whether the assessment order so passed by the AO has been rightly passed or the same deserve to be set-aside.

8. The Id CIT/DR has referred to the assessment order but at the same time, it is essential that the assessment records needs to be examined in this regard. Further, it is noted that the assessee company has talked about the fact of amalgamation before the Id CIT(A) in its submissions but whether any specific contention has been raised before the Id CIT(A) is not clear from perusal of the records and there is thus no finding by the Id CIT(A).

9. Given the facts and circumstances of the present case, in absence of adequate representation and lack of necessary information/documentation

and more so, the findings of the Id CIT(A), we deem it appropriate that the matter be set-aside to the file of the Id CIT(A) to examine the same afresh as per law after providing reasonable opportunity to the assessee. The Id CIT(A) shall consider and take into considerations various authorities relied on by the assessee company as well as the decision of the Hon'ble Supreme Court referred supra. In the result, the ground no. 4 is allowed for statistical purposes.

10. Given that we have set-aside the aforesaid matter to the file of the Id CIT(A) which goes to the core of the dispute, we deem it appropriate not to adjudicate the other grounds of appeal taken by the assessee company and the Revenue in their respective appeals and the same are thus left open to be adjudicated at appropriate time, should the need for same arise in future.

11. In the result, both the appeals are disposed off in light of aforesaid directions.

Order pronounced in the open Court on 14/03/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 14/03/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar