

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA
BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No. 213/PAT/2024
Assessment Year: 2012-13

Jagdamba Ispat Pvt. Ltd.	vs	ITO, Ward-2(1), Patna
PAN: AAACJ 5860 C		
(Appellant)		(Respondent)

Present for:

Appellant by : Shri S.K. Tulsiyan, Advocate
Respondent by : Shri Sushil Kumar Mishra, JCIT, DR

Date of Hearing : 06.03.2024
Date of Pronouncement : 12.03.2024

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 01.01.2024 passed by the ld. Commissioner of Income-tax Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)'].

2. Brief facts of the case are that the assessee company amalgamated with Bhola Ram Steel Pvt. Ltd. pursuant to Patna High Court order dated 11.03.2011. Thereafter, the assessee i.e. Jagdamba Ispat Pvt. Ltd. did not file its return of income for A.Y. 2012-13 as because it became non-existing entity from 11.03.2011. The assessee had also filed PAN surrender request letter to the AO vide letter dated 10.05.2020. Soon after amalgamation, a notice u/s 148 of the Act dated 29.03.2019 was issued upon the assessee requiring the assessee to deliver the return of income for A.Y. 2012-13 within 30 days from the receipt of said notice. However, alleged notice was issued to the company

on its closed office. The ld. AO issued alleged reopening of the case of the assessee is as under:

"An enquiry report is received from ITO (Inv), Unit-, Kolkata vide F.No. ITO (Inv)/Kol/Unit-1/Info./2018-19/39/9551-9559 dated 04.03.2019 regarding report in the case of M/s Gawaria Supplier (ATXPA7588H), Word-46(), Kolkata & related beneficiary entities.

On perusal of information, it appears that the assessee M/s Jagdamba Ispat Pvt Ltd has entered into bogus transactions of Rs. 20, 00,000/- with shell company namely M/s Kali Commodities Pvt Ltd. through the bank account of Federal Bank bearing A/c No. 110302 0061244 during FY 2011-12 relevant to AY 2012-13.

It is evident that the assessee has received sums from such shell company who has opened the account and deposited the sum just before transferring the fund to the assessee. Further, it is also found that the shell companies/paper companies have no existence at their registered office and doing no business. Even, these shell company is non- filter of Income Tax Return. The information also depicts that the assessee has brought unaccounted money in the books via layering of fund through banking channel to give the colour white and the assessee is finally beneficiary of Rs. 20,00,000/-.

Hence, the amount credited to the account of assessee from the shell companies who have no existence, identity and creditworthiness doesn't satisfy the condition of section 68 of Income Tax Act, 1961 and Rs. 20,00,000/- has escaped assessment within the meaning of section 147 of Income Tax Act, 1961 for AY 2012-13."

3. Subsequent to above, a notice u/s 142(1) of the Act was issued to the assessee. However, no one turned up on the part of assessee since it was amalgamated with Bhola Ram Steel Pvt. Ltd. Therefore, the assessee has no knowledge about the issuance of notice. Ultimately, the ld. AO passed an ex-parte order u/s 144 of

the Act making an addition of Rs. 20 lakhs as unexplained money u/s 69A of the Act.

4. Aggrieved by the above order assessee went into appeal before the ld. CIT(A) where the ld. CIT(A) vide order dated 01.01.2024 upheld the action of the AO sustaining the addition of Rs. 20 lakh in the hands of assessee by dismissing the appeal of the assessee.

5. Aggrieved by the above order assessee is in appeal before this Tribunal raising multiple grounds of appeal. However, the main grievance of the assessee is regarding issuance of notice to non-existing company i.e. 11.03.2011 in pursuant to order of Hon'ble Patna High Court u/s 391 and 394 of the Companies Act due to merger in Bhola Ram Steels Pvt. Ltd. and intimation to this effect having given to the ld. AO on 10.05.2012 and PAN No. having been surrendered. Therefore, the impugned notice issued u/s 148 of the Act upon non-existing entity is bad in law and without any jurisdiction. Since notices were never served upon the transferee company i.e. Bhola Ram Steels Pvt. Ltd.

6. At the time of hearing, the ld. AR submitted before the bench that M/s. Jagdamba Ispat Pvt. Ltd. (Amalgamating Company) was amalgamated with M/s. Bhola Ram Steel Pvt. Ltd. pursuant to order of the Hon'ble Patna High Court dated 11.03.2011 and it became non-existing entity from the effective date of order 11.03.2011 and the above facts were duly informed to the ld. AO vide letter dated 10.05.2012 which is placed in the paper book at

page no. 32 filed by the assessee before this bench. The contention of the AR of the assessee is that the said letter was sent to the AO, therefore, issuance of notice u/s 148 of the Act is bad in law without jurisdiction. The ld. AR in order to substantiate his claim stated that its settled principle of law that any proceedings initiated or notices issued on on-existent entity, post-merger and post-date of intimation to the department, is bad in law. It is well settled law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. The above proposition of the assessee gets fortified by the recent decision of the Hon'ble Supreme Court in the case of PCIT vs Maruti Suzuki India Limited [2019] 416 ITR 613 (SC) pronounced on 05.07.2019.

7. The ld. AR further submitted that bench may consider the submission of the assessee and delete the addition made by the AO in the assessment order passed u/s 147 of the Act.

8. On the other hand, ld. DR relied on the decision rendered by the lower authorities on this issue.

9. We after hearing the rival submission of the parties and perused the material available on record in the light of decision rendered by Hon'ble Apex Court in Maruti Suzuki India Limited and Spice Infotainment Ltd. We note that the impugned assessment order passed by AO against the amalgamating company which was non-existent on the date of impugned order was passed. Therefore we are inclined to quash the impugned assessment order passed by the AO with the direction to delete the

addition made in the hands of assessee. In terms of the above, the appeal of the assessee is hereby allowed.

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

Order pronounced in the open court on 12.03.2024

Sd/-

**(Dr. MANISH BORAD)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 12.03.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Jagdamba Ispat Pvt. Ltd., 602, Ashiana Plaza, Budh Marg, Patna-800001.
2. The Respondent: ITO, Ward-2(1), Patna
3. The CIT,
4. The CIT (A)
5. The DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata