

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1945/Del/2020  
(Assessment Year: 2011-12)**

Dragon Builders & Developers LLP, Vs. ITO,  
House NO. 1, Back Portion, 3<sup>rd</sup> Ward-38(1),  
Floor, Pocket No. 15A, Sector-24, New Delhi  
Rohini New Delhi  
(Appellant) (Respondent)  
**PAN:AALFD0789L**

Assessee by : Ms. Mansi Jain, CA  
Revenue by: Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing 14/02/2024  
Date of pronouncement 24/04/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1945/Del/2020 for AY 2011-12, arises out of order of the Id CIT(A)-13, Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/S/250/2019-20/1024725673(1) dated 05.02.2020 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2018 by the Assessing Officer, ITO, Ward-38(1), New Delhi (hereinafter referred to as 'Id. AO').

2. At the outset, we find that there is delay in filing of appeal by the assessee by 250 days. The assessee had filed a delay condonation petition in this regard. We find that the order of the Id CIT(A) was passed on 05.02.2020. The due date for filing of appeal before this tribunal fell on 05.04.2020. Meanwhile, on 24.03.2020 nationwide lockdown was announced by the Hon'ble Prime Minister due to COVID-19 pandemic. The appeal stood

filed before us on 11.12.2020 with a delay of 250 days. In view of the relief granted by the Hon'ble Supreme Court due to COVID-19 pandemic, the delay in filing of appeal is hereby condoned and appeal of the assessee is admitted for adjudication.

3. The assessee has raised the following concise grounds of appeal before us:-

*"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 fact and circumstances of the case, Id. CIT(A) has erred both on facts and in law in passing the order without giving assessee a fair and adequate opportunity of being heard*

*3. On the fact and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming the order of Ld. AO despite the order passed in consequence of the notice u/s 148 is bad as the notice was issued in the name of a non-existing entity.*

*4. On the facts and circumstances of the case, the initiation of the proceedings under Section 147, read with Section 148, made by A.O. is bad and liable to be quashed as the condition and procedure prescribed under the statute have not been satisfied and complied with.*

*5. (i) On the fact and circumstances of the case, the order passed by the A.O. is bad in the eye of law and on facts, as the same is made on the basis of reasons recorded without there being any independent application of mind.*

*(ii) That the reassessment order passed by the A.O. is bad and liable to be quashed as the same has been reopened on the basis of the reasons which are vague and against the facts on record.*

*6. On the fact and circumstances of the case, Ld. AO has erred in reopening u/s 147 of the income tax Act, 1961 without obtaining valid approval from the prescribed authority as required u/s 151 of the Income Tax Act, 1961.*

*7. (i) On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming an addition of Rs. 2,64,82,000/- under section 68 of the Act, on account of share capital received.*

*(ii) That the above said addition has been confirmed rejecting arbitrarily the explanation and evidences produced by the assessee to prove the identity and credit worthiness of shareholder as well as the genuineness of the transaction.*

*8. (i) On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming an addition of Rs. 26,482/- on account of commission.*

*(ii) That the addition has been confirmed despite having been made without any basis for the same.*

*9. On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in confirming the addition despite the same having been made on the basis of material collected/ statement recorded at the back of the assessee without giving it an opportunity to rebut/ cross examine the same in gross violation of the principles of natural justice.*

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

4. We have heard the rival submissions and perused the material available on record. The assessee is a Limited Liability Partnership (LLP). Pursuant to the information received from DDIT, Investigation Unit-1, Noida in the case of M/s Dragon Builders and Developers Pvt Ltd, PAN AACD3618F, a search and seizure, operation was carried out on 13.04.2017 in the case of Sri Himanshu Verma (entry operator), who admitted on oath that he had maintained 300 shell companies/ concerns for providing accommodation entries in lieu of commission. 18 such entities are reflected at pages 2 and 3 of the assessment order. Further, enquiries revealed that one such entity of Himanshu Verma entities made investment in share capital/ share premium in Dragon Builders And Developers Private Limited. The Id AO made cross verification of the income tax return of Dragon Builders And Developers Private Ltd and found that paid up share capital of ₹20 lakhs is reflected as on 31.03.2011 with a increase of Rs. 15,10,000/- during the year and securities premium of ₹74,25,000/- was reflected as on 31.03.2011 with an increase of ₹34,65,000/- during the year. The Ld AO observed that assessee has shown gross receipt as zero and accordingly concluded that it was not justified to receive share capital/ share premium and proceeded to reopen the case of the assessee u/s 147 of the Act. Notice u/s 148 of the Act stood issued to Dragon Builders And Developers Private Ltd on 31.03.2018, which is enclosed in page 11 of the paper book. The said notice was issued in the name of Dragon Builders And Developers Private Ltd. The assessee filed objections to the reasons recorded vide letter dated 22.10.2018. These objections were disposed of by the Id ITO- vide letter dated 23.10.2018. In fact in the objections filed by the assessee, it was specifically brought to the notice of the Id AO that the entity in whose

name the notice u/s 148 of the Act was issued by the Id AO was not in existence at all on the date of issuance of notice. It was brought to the notice of the Id AO that Dragon Builders and Developers Pvt. Ltd got converted into LLP under the name and style of Dragon Builders and Developers LLP on 14.02.2015 with the approval of the Registrar Of Companies and all legal compliances thereon were duly made by the said LLP. Further, the assessee had also intimated to the Id AO vide letter dated 24.02.2016 which is enclosed in page 24 of the Paper Book about the said conversion of the company into LLP and had duly surrendered the PAN of the company thereon with the original PAN card of the company. The Id AO disregarded all these facts and proceeded to complete the reassessment proceedings u/s 143(3) read with section 147 of the Act on 31.12.2018 determining the total income of LLP at Rs. 2,65,16,410/- after making few additions. This action of the Id AO was upheld by the Id CIT(A).

5. At the outset:-

- i. it is not in dispute that the erstwhile company M/s. Dragon Builders and Developers Pvt. Ltd stood converted into LLP under the name and style of Dragon Builders and Developers LLP on 14.02.2015.
- ii. the fact of conversion of company into LLP was duly intimated to the Id AO by the assessee i.e. Dragon Builders and Developers LLP (assessee herein) vide letter dated 15.02.2016 filed before the Id AO on 24.02.2016. This letter is enclosed in page 24 of the Paper Book.
- iii. the PAN of the company AADCD3618F was duly surrendered by the assessee together with original PAN card before the Id AO vide letter dated 15.2.2016 filed before the Id. AO on 24.02.2016.
- iv. a new PAN was obtained for Dragon Builders and Developers LLP in the capacity of firm which is AALFD0789L.

v. a notice u/s 148 of the Act was issued on 31.03.2018 in the name of Dragon Builders and Developers Pvt. Ltd by the Id AO, on which date, the said company was not in existence at all in the eyes of law.

6. Hence, it can be safely concluded that the notice u/s 148 of the act assuming jurisdiction was issued in the name of non-existent entity. This issue is no longer res integra in view of the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Maruti Suzuki India Ltd reported in 416 ITR 613 (SC) wherein, it was held as under:-

*"33. in the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a coordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainments on 2 November 2017. The decision in Spice Entertainments has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainments."*

7. As stated earlier in the instant case, the assessee had duly informed the Id AO about the change in the status of the company into LLP and the said fact was also brought to the notice of the Id AO while filing the objections to the reasons recorded. Hence, the Id AO had sufficient opportunities to rectify the mistake done by him. Despite sufficient information being made available to the Id AO, the revenue had chosen to continue with the jurisdictional defect and proceeded with the reassessment, which in our considered opinion, is not curable even u/s 292B of the Act. Hence, we have no hesitation to quash the entire reassessment framed in the instant case. Since, the entire reassessment is quashed on legal issue, the adjudication of issues on merits would become academic in nature and the same are hereby left open.

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

Order pronounced in the open court on 24/04/2024.

-Sd/-

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

-Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 24/04/2024

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi