

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'H': NEW DELHI)**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No:- 4478/Del/2019
(Assessment Year: 2013-14)**

Carlsberg India Pvt. Ltd., (the amalgamated company, as Kool Breweries Limited stands amalgamated w.e.f. 1 st April, 2013)	Vs.	Deputy Commissioner of Income Tax, Circle 5(2), New Delhi
PAN No: AAJCS8454J		
APPELLANT		RESPONDENT

Assessee by : Shri Arun Chhabra, CA &
Ms. Jyoti Yadav, CA
Revenue by : Ms. Sapna Bhatia, CIT-DR &
Shri Amit Katoch, Sr. DR

Date of Hearing : 05.04.2024
Date of Pronouncement : 13.06.2024

ORDER

PER ANUBHAV SHARMA, JM

This appeal has been preferred by the Assessee against the order dated 28.02.2019 of CIT(A)-02, New Delhi in Appeal No. 10028/17-18 arising out of an appeal before it against the order

dated 29.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Circle-14(2), New Delhi (hereinafter referred as the Ld. AO).

2. The appellant company was initially incorporated as Kool Breweries Limited and was engaged in the business of manufacturing and sale of alcoholic beer and is wholly owned subsidiary of Carlsberg India w.e.f. 22nd October, 2012 on acquisition of shareholding by Carlsberg India.

3. The Assessment Order was passed on 29.03.2016 in the name of M/s Kool Breweries Limited, PAN AAACK5265E. Before the CIT(A), amongst other grounds raised, the assessee had challenged the assessment order on the basis that the assessment order was passed in the name of a non-existent entity, though this fact was brought specifically into the knowledge of Assessing Officer. However, CIT(A) was not satisfied and had rejected this plea with following findings :

*"6.1 **Ground no. 1 & 2** : These grounds are technical in nature against assessment made on a non-existing assessee. The appellant has contested assessment made in the name of the amalgamating company no longer in existence. Amalgamation with Carlsberg happened after a High Court order. The appellant company amalgamated with Carlsberg India which acquired 100% shares of the company. The appellant*

informed the AO accordingly. Information was given and new name was mentioned in all correspondence. But the AO passed assessment order in the old name of the appellant.

6.2 From Form no. 35, it is seen that the appeal has been filed in the same old name of the appellant. The appellant has justified the appeal filed in the old name of non-existent appellant but agitated against assessment made in the old name. Due to contradictory stand taken by the appellant, the appeal itself was liable to be treated as not admitted because a non-existent assessee cannot file appeal. However, the appeal has been admitted to meet the end of natural justice. The technical grounds are self-contradicting and self- defeating.

*6.3 U/s 292 B, the successor-in-interest is precluded from raising objection if it has participated in assessment proceeding. It is a procedural irregularity which can be cured by invoking provisions of 292 B. In this respect, it is imperative to mention the decision of the Supreme Court in **Kuldeep Kumar Dubey Vs. Ramesh Chandra Goyal [2015] 3 SCC 525 (SC)** held that the error is a mere misdescription of the party in assessment order and nothing more. This could not result in assessment order being set aside.*

There are many other High Court judgments, but in view of contradictory judgements, the view taken by the Supreme Court is to be followed. The technical ground taken by the appellant is, therefore, dismissed.”

4. Here in the Tribunal, apart from grounds on merits, the assessee has raised ground no. 1 with sub-grounds as follows:

“1. Assessment order passed by the Learned Assessing Officer dated March 29, 2016 in the name of a non-existent entity is null and void

1.1 On the facts and in the circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals) -2 [Hon'ble CIT(A)] erred in law in not holding the assessment order passed by the Learned Assessing Officer as null and void, since the same had been passed in the name of 'Kool Breweries Limited', which stood dissolved on the date of passing the assessment order as it had been amalgamated with Carlsberg India Private Limited w.e.f. April 01, 2013.

1.2 On the facts and in the circumstances of the case, the Hon'ble CIT(A) erred in law in holding the action of the Learned Assessing Officer in framing assessment in the name of a non-existent entity as a procedural irregularity, which could be cured by the provisions of section 292B of the Income Tax Act, 1961 (the Act)."

5. At the time of hearing, the Ld. DR has relied upon the judgment of Hon'ble Supreme Court in the case **PCIT (Central) v. Mahagun Realtors (P) Ltd. [2022 SCC OnLine SC 407]**, to contend that as assessee had participated in assessment so there is no error in assessment order. Ld. AR has however, relied plenty of decisions to contrary and specially, of Hon'ble Supreme Court in case of **Spice Infotainment Ltd Civil Appeal No. 285 of 2014** and in **Maruti Suzuki India Limited (2019) 07 Taxmann.com 375 (SC)**, to contend that as AO was informed of the amalgamation during the assessment, the judgment relied by Ld. DR is distinguishable.

6. Giving thoughtful consideration to the matter on regard it can be seen that admittedly M/s Kool Breweries Ltd., the predecessor of appellant before us, was amalgamated with M/s Carlsberg India Pvt. Ltd. w.e.f 01.04.2013 vide the order of Hon'ble High court of Delhi dated 10.03.2014 and Hon'ble High Court of Punjab and

Haryana dated 24.3.2014. Copies of these orders are available in the Paper Book.

7. The assessee has claimed that vide submission dated 11.12.2015, the fact of amalgamation was specifically brought to the notice of the Assessing Officer. A copy of the same is available at page no. 300 to 306 of the Paper Book. As we go through this submission dated 11.12.2015, we find that in response to a query no. 16, the assessee submitted a detailed note on the manufacturing process of products, the background of establishing of the company, and the fact of amalgamation with effect from 1.4.2013 is specifically mentioned. It is further mentioned that the merger has been accounted in accordance with the method of accounting as prescribed in Accounting Standards 14 prescribed by the Central Government under the Companies (Accounting Standards) Rules, 2006 and specific provisions of the orders of the Hon'ble High Court.

7.1 The CIT(A) in the impugned order has not disputed these factual aspects but has decided the issue against the assessee on

the plea of estoppel and that it is a procedural irregularities that can be cured by invoking provisions of section 292 B of the Act.

8. We have given thoughtful consideration to the aforesaid and we are of the firm view that the conclusion drawn by CIT(A) is erroneous. The assessee is merely required to intimate the fact of amalgamation and then it is a duty of the AO to take cognizance of all developments giving rise to a change in the composition of the entity with consequential effects on the tax liability. The assessment order is not summarily acceptance or rejection of volunteered income but the assessment order, as required to be passed u/s 143(3) of the Act has to be on the basis of hearing of evidences produced by the assessee, evidences required specifically to be produced by the AO and after taking into account all 'relevant materials' which AO gathers. The integral part of this assessment is determination of the sum payable or refund due to the assessee on the basis of such assessment. The determination of sum payable by assessee is a legally enforceable liability, for which it is essential to determine as to who is the person liable to pay the tax so determined. Thus the material filed before AO, disclosing change in

structure or composition of the assessee at entity level needs to be duly considered to ensure that assessment order is passed in the name of existing entity.

9. Further, the reliance of the CIT(A) on provisions of section 292 B is not sustainable, as the premises of condonation of any mistake, defect or omission during the assessment is that, in the first instance, the assessment should be in pursuance of provision of the Act. The assessment in the name of non-existent entity cannot be said to have been made in pursuance of the Act. So section 292B of the Act cannot be resorted to by terming it as mere irregularity.

10. Ld. AR has been successful to distinguish the **Mahagun Realtors case (supra)**, relied by Ld. DR as admittedly, the assessee had not intimated the AO regarding the fact of amalgamation. Further, in that case, the AO had made reference to both the entities in the assessment order while in the case before us, the assessment order has been framed only in the name of M/s Kool Breweries Ltd. Furthermore, in the case of Mahagun Realtors the director of the non-existent company appeared before the tax

authorities in pursuance of warrants on such company while in the case in hand, the assessee at the first opportunity had submitted to AO that M/s Kool Breweries Limited is no more in existence after amalgamation order. It appears that this submission of the assessee dated 11.12.2015 wherein the assessee had made the disclosure of amalgamation, skipped the attention at the time of passing of the assessment order as in the assessment order the AO has primarily taken into consideration the submissions of 1st March, 2016 only which are available at page Nos.312 to 321 of the paper book.

11. In the light of the aforesaid, we are inclined to allow this ground holding that the assessment order is void and nonest being passed against a non-existing entity. The appeal is accordingly allowed with consequential effects.

Order pronounced in the Open Court on 13.06.2024

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 13/06/2024.
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	3.6.24
Date on which the typed draft is placed before the dictating Member	4.6.24
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	