

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1021/DEL/2023
Assessment year: 2015-16**

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| M/s Deepak Pens and Plastics Pvt. Ltd., (Amalgamated Company) M/s Jet India Pvt. Ltd., 303, 3 rd Floor, Poddar Court, 18, Rabindra Sarani Kolkata, West Bangal-700001. PAN: AAACD 9050 G | <u>Vs</u> | ACIT, Central circle-31, New Delhi. |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Shri Satyajeet Goel, CA | |
| Department represented by | Shri Vivek Kumar Upadhyay, Sr. DR | |
| Date of hearing | 01.07.2024 | |
| Date of pronouncement | 05.07.2024 | |

ORDER

PER SAKTIJIT DEY, VP:

This is an appeal, by the assessee, against order dated 21.02.2023 of learned Commissioner of Income-tax (Appeals)-30, New Delhi for the assessment year 2015-16.

2. In ground no. 1, along with its sub-grounds, the assessee has challenged the validity of the assessment order passed u/s 147 of the Income-tax Act, 1961 (the “Act”). Since the issue raised in this ground is a purely legal and jurisdictional issue, we propose to deal with it at the outset. The other grounds raised by the assessee, if warranted, would be dealt with at a later point of time.

3. Briefly the facts relating to the issue raised in ground no. 1 are, the assessee is a resident corporate entity. For the assessment year under dispute, assessee had filed its return of income on 30.09.2015 declaring total income of Rs.1,91,09,700/-. Subsequently, the Investigation Wing of the Department received information from Securities and Exchange Board of India (SEBI) regarding generation of bogus losses/profit using reverse mechanism in options derivatives trading. The information so received from SEBI, in turn, was transmitted by the Investigation Wing of the Department to the Assessing Officer. Based on such information, the Assessing Officer noticed that in the assessment year under dispute the assessee had booked bogus losses to the extent of Rs. 50,53,050/- through trading in options derivatives. Accordingly, having formed a belief that income chargeable to tax has escaped assessment, the Assessing Officer reopened the assessment u/s 147 of the Act and issued notice u/s 148 of the Act to the assessee. In response to the said

notice assessee filed its return of income declaring the same income as was offered in the original return of income. Simultaneously, the assessee also raised objection before the Assessing Officer questioning the validity of initiation of proceedings u/s 147 of the Act. It was the say of the assessee that M/s Deepak Pens & Plastics (P) Ltd. in whose name proceedings u/s 147 have been initiated and notice u/s 148 was issued, is no longer in existence as it has been amalgamated with M/s Jet (India) Pvt. Ltd., with effect from 01.04.2018 in accordance with scheme approved by National Company Law Tribunal (NCLT), Kolkata Bench, vide order dated 20.02.2020. Thus, it was submitted by the assessee that since proceedings have been initiated against a non-existent entity, the same are not valid. However, the Assessing Officer not only rejected the objection but he proceeded to complete the assessment u/s 147 of the Act vide order dated 30.09.2021 determining the total income at Rs. 2,41,62,750/- after making addition of Rs. 50,53,050/-.

3.1 Against the assessment order so passed, the assessee preferred an appeal before learned First Appellate Authority, inter alia, on the ground that the assessment order, having been passed in the name of a non-existent entity, is invalid. Learned First Appellate Authority did not find merit in the legal issues raised by assessee. Firstly, he observed that the assessee has not intimated the fact

of amalgamation to the Assessing Officer in proper time; and secondly, he observed that the return of income has been filed by the assessee in the name of the erstwhile company.

4. Before us, learned counsel appearing for the assessee reiterated the submissions made before the departmental authorities. He submitted, the assessee had intimated the amalgamation of erstwhile company with another company while complying with the notice issued u/s 148 of the Act. He submitted, though the Assessing Officer was conscious of the amalgamation of M/s Deepak Pens & Plastics (P) Ltd. with M/s Jet (India) Pvt. Ltd., however, still he proceeded to pass the impugned assessment order in the name of the erstwhile company. He submitted, since at the time of completion of assessment M/s Deepak Pens & Plastics (P) Ltd. was not in existence, the assessment order is invalid. In support of such contention, learned counsel relied upon following decisions:

- S.S.S. Glass Pvt. Ltd. v. ITO (ITA no. 7614/Del/2018 dated 9.6.2023);
- M/s White Crow Research Private Limited v. ITO (ITA no. 7066/Del/2019 dated 20.10.2021).

5. Learned Departmental Representative strongly relied upon the observations of the First Appellate Authority.

6. We have considered rival submissions in the light of the decisions relied upon and perused material on record. The short issue arising for consideration is whether the assessment order passed in the instant case is valid or not. A perusal of the impugned assessment order reveals that it has been passed in the name of M/s Deepak Pens & Plastics (P) Ltd.. However, after receiving the notice issued u/s 148 of the Act, the assessee, vide letter dated 29.07.2021 had raised objection before the Assessing Officer against the validity of reopening of assessment u/s 147 of the Act. In the said objection the assessee has very clearly and categorically submitted that M/s Deepak Pens & Plastics (P) Ltd. is no longer in existence as it has been amalgamated with M/s Jet (India) Pvt. Ltd. with effect from 01.04.2018 by virtue of a scheme approved by NCLT vide order dated 20.02.2020. While disposing of the said objection vide communication dated 01.09.2021, the Assessing Officer has stated that neither the order of NCLT has been communicated nor any request has been made for merger of PAN of M/s Deepak Pens & Plastics (P) Ltd. with M/s Jet (India) Pvt. Ltd., the transferee company. The aforesaid fact clearly reveals that prior to completion of assessment not only the assessee had intimated the fact of merger of M/s Deepak Pens & Plastics (P) Ltd. (erstwhile company), with M/s Jet (India) Pvt. Ltd., but the Assessing Officer was also conscious of the fact of merger.

7. Thus, it is a fact on record that prior to completion of assessment the assessee had intimated the merger of M/s Deepak Pens & Plastics (P) Ltd. with M/s Jet (India) Pvt. Ltd., the successor company. Though, we can understand the issuance of notice u/s 148 of the Act in the name of the erstwhile company, as by that time the assessee had not intimated the fact of merger, however, we cannot comprehend the action of the Assessing Officer in passing the assessment order in the name of the erstwhile company, as, he was fully conscious of the merger of the erstwhile company with the successor company. In spite of the fact that the Assessing Officer was conscious of the fact of merger, which is evident from the order passed by him, while disposing of the objection, he has still gone ahead and passed the impugned order in the name of M/s Deepak Pens & Plastics (P) Ltd., which did not exist on the date of passing of the assessment order i.e. 30.09.2021 as it has already merged with M/s Jet (India) Pvt. Ltd. vide order of the NCLT dated 20.02.2020 with effect from 01.04.2018. Thus, undoubtedly, the impugned assessment order has been passed in the name of a non-existent entity. The effect of such an order, in our view, is a nullity in the eye of law in view of the decision of the Hon'ble Apex Court in the case of PCIT v. Maruti Suzuki India Ltd. (107 taxmann.com 375) and other decisions cited before us by the learned counsel for the assessee. Therefore, the assessment order, being void ab initio, deserves to be

quashed. Accordingly, we do so. Consequently, the impugned order of learned First Appellate Authority is set aside.

8. In view of our decision above, other grounds raised by the assessee have become academic, hence kept open.

9. Appeal is allowed as indicated above.

Order pronounced in open court on 05.07.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Dated:05.07.2024.

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI