

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Pradip Kumar Choubey, Judicial Member

I.T.A. No.132/KOL/2024

Assessment Year: 2012-13

Ashok Sethia **Appellant**
(erstwhile Karta of Ashok Sethia (HUF)
(PAN: AACHA3847H)

Vs.

Income Tax Officer,
Ward-43(1), Kolkata. **Respondent**

Appearances by:

Shri Sunil Sarana, AR appeared for Appellant.

Shri P. P. Barman, Addl. CIT, DR appeared for Respondent.

Date of concluding the hearing : 04.07.2024

Date of pronouncing the order : 23.07.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 18.01.2024 arising out of the assessment order u/s 144/147 of the Act by ITO, Ward-43(1), Kolkata dated 23.12.2019.

2. Though the assessee has raised as many as twelve grounds of appeal but we first take the legal issue challenging the validity of the assessment order on the ground that even when the information was given to the AO about the dissolution of the HUF, the assessment has been framed on a *non-est* entity.

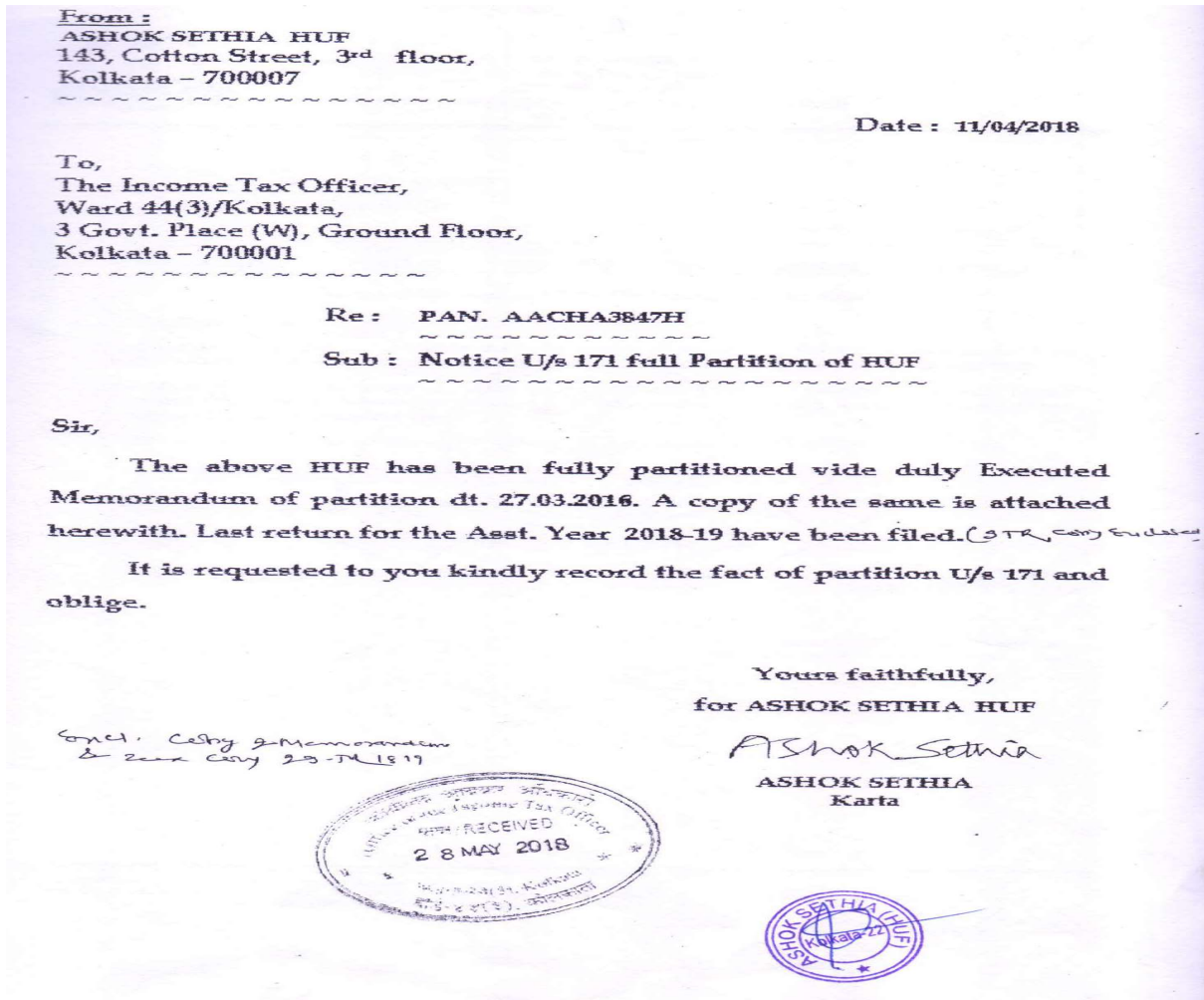
3. At the outset, Ld. Counsel for the assessee submitted that the assessee which is Hindu undivided family was dissolved and the letter dated 11.04.2018 filed with the AO intimating full partition of HUF u/s. 171 of the Act. A copy of the letter is placed at page 1 of the paper book and the stamp of the Income Tax Officer having received such information is also appearing on the said letter. Subsequently, a notice u/s. 148 of the Act has been issued on 27.03.2019 followed by the carrying out of the assessment proceeding u/s. 147 of the Act. It is submitted that when the HUF was no longer in existence, the issue of notice on a *non-est* entity is bad in law and the entire assessment proceeding carried thereafter are invalid and liable to be quashed. Reliance placed on various decisions including that in case of *Shri S. Krishnappa (HUF) Vs. DCIT, ITA No. 603/Bang/2015 dated 28.02.2020*, judgment of Hon'ble Karnataka High Court in the case of *CIT Vs. Puttaranga Naika, HUF, ITA No. 2980/2005 dated 13.09.2011* and also the judgment of Hon'ble Supreme Court in the case of *Maruti Suzuki India Ltd. reported in 416 ITR 613* which has been referred in the decision of coordinate Bench Delhi in the case of *Dragon Builders & Developers LLP in ITA No. 1945/Del/2020*.

4. The Ld. Counsel for the assessee also raised alternate plea challenging the validity of the assessment proceeding stating that the notice u/s. 148 of the Act was issued on 27.03.2019 and in compliance a letter was filed stating that original return furnished may be treated as the return in compliance to notice u/s. 148 of the Act. The last date of issuing notice u/s. 143(2) of the Act was 30.09.2019 but the notice is issued on 26.11.2019 which was beyond the period of limitation and this also makes the assessment proceeding invalid and bad in law. Reliance placed on the judgment of Hon'ble jurisdictional High Court in the case of *Sudarshan Paper & Board Pvt. Ltd., GA /1/2022, GA/2/2022 dated 05.12.2022.*

5. On the other hand, Ld. DR vehemently argued supporting the orders of the lower authorities and also stated that the assessee has participated in the proceedings and, therefore, at this stage cannot challenge the validity of the assessment proceedings.

6. We have heard the rival contentions and perused the material available on record. So far as the first legal issue raised by the assessee that the assessment proceedings have been carried out in the name of *non-est/* dead entity deserves to be quashed, we note that the assessee is Hindu undivided family and had filed its return of income for AY 2012-13 on 26.06.2012 declaring income of Rs.10,38,547/-. On 11.04.2018 a letter was filed by the Karta of HUF Mr. Ashok Sethia to ITO, Ward-44(3), Kolkata with the Sub: Notice u/s. 171 full partition of HUF. Through this letter it was informed that Ashok Sethia HUF has been fully partitioned vide duly executed Memorandum of Partition dated 27.03.2016 and the copy of the same along with the copy of last return i.e. for AY 2018-19 were also filed.


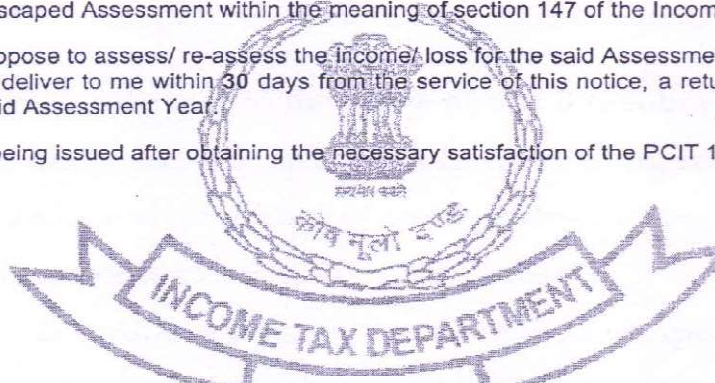
This letter is placed at page 1 of the paper book containing the stamp of the ITO, Ward-44(3), Kolkata dated 28.05.2018, which is reproduced as under:



6(a). Ld. Counsel for the assessee as an officer of Court stated that this letter was duly submitted from their office itself. The Departmental authority failed to controvert this fact by placing any contrary material.

7. Now, once it is an admitted fact that information about partition of HUF was filed on 28.05.2018, the department was aware that the assessee Ashok Sethia, HUF has been dissolved after the partition and is no more in existence, but surprisingly, after few months on

25.03.2019 from the very same ITO, Ward-44(3), Kolkata a notice u/s. 148 of the Act has issued, the same is reproduced hereunder:

| | | | |
|--|---|-----------------------------|--|
|  | GOVERNMENT OF INDIA MINISTRY OF FINANCE INCOME TAX DEPARTMENT OFFICE OF THE INCOME TAX OFFICER WARD 44(3), KOLKATA | | |
| To, ASHOK SETHIA HUF 3RD FLOOR , 143,COTTON STREET BURRABAZAR KOLKATA 700007 , West Bengal India | | | |
| PAN: AACHA3847H | AY: 2012-13 | Dated: 25/03/2019 | Notice No : ITBA/AST/S/148/2018-19/1015417149(1) |
| Notice Under Section 148 Of The Income Tax Act, 1961 | | | |
| <p>Sir/ Madam/ M/s,</p> <p>Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2012-13 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.</p> <p>I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.</p> <p>This notice is being issued after obtaining the necessary satisfaction of the PCIT 15, KOLKATA.</p> <div style="text-align: center;"></div> <p style="text-align: right;">AVIJIT DAS WARD 44(3), KOLKATA</p> <p style="text-align: right; font-size: small;">(In case the document is digitally signed please refer Digital Signature at the bottom of the page)</p> | | | |

8. Perusal of both the above documents indicates that a notice u/s. 148 of the Act has been issued on a *non-est/dead* entity and any proceedings carried out in the name of a dead entity has consistently been held to be invalid by various Hon'ble Courts and Tribunal. We first take note of the decision of coordinate bench Bangalore in the case of *Shri S. Krishnappa (HUF)* (supra) wherein also under the similar facts and placing reliance on the judgment of Hon'ble Karnatka

High Court in the case of *Puttaranga Naika, HUF* (supra) has held as under:

“6. From para 13 of this judgment as reproduced above, it comes out that it was held by Hon’ble Karnataka High Court that no assessment can be made on a HUF at the time of assessment, it has become divided because at that point of time, there was no undivided family in existence which could be taxed though when the income was received in the year of accounts, the family was joint. In the present case also, the Assessment Order is dated 31.12.2010 and as per the Assessment Order, survey under section 133A of the Income Tax Act, 1961 was carried out on 10.09.2009 and notice under section 148 of the I.T. Act, 1961 was issued and served on the assessee on 22.09.2009. As per para 9 reproduced from the order of CIT(A), it is noted by learned CIT(A) that HUF was disrupted by partition on 22.08.2009. Hence, it is seen from the facts of the present case that on 10.09.2009, when the survey action was conducted under section 133A of the IT Act and also on 22.09.2009 when notice under section 148 of the IT Act, 1961 was issued by the AO and on dated 31.12.2010 when the Assessment Order was passed by AO under section 143 r.w.s. 147 of the IT Act, 1961 for Assessment Year 2005-06, the HUF was not in existence because the same was already partitioned on 22.08.2009. This is the basis of the order of the learned CIT(A) that the Assessment Year involved is 2005-06 and at that point of time, HUF was in existence but as per the judgment of Hon’ble Karnataka High Court rendered in the case of CIT Vs. Puttaranga Naika (HUF) (supra), this situation is also considered and it is held that if on the date of assessment, the HUF is not in existence, then such HUF cannot be taxed even for an earlier year when the income was received and the HUF was in existence. Respectfully following this judgment of Hon’ble Karnataka High Court, we hold that the present Assessment Order is bad in law and the same is accordingly quashed.”

9. Further, we also take note of the recent decision of Coordinate Bench of Delhi in the case of *Dragon Builders & Developers LLP* (supra) wherein also the proceedings were carried out in the name of a *non-est* entity and the same were quashed holding them to be even not curable u/s. 292B of the Act. Hon’ble ITAT, Delhi bench in the said case has held as under:

“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 ld 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 ld 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 ld AO that the entity in whose name the notice u/s 148 of the Act was issued by the ld AO was not in existence at all on the date of issuance of notice. It was brought to the notice of the ld 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 ld 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 ld 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 ld AO was upheld by the ld 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 ld AO by the assessee i.e. Dragon Builders and Developers LLP (assessee herein) vide letter dated 15.02.2016

filed before the ld 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 ld AO vide letter dated 15.2.2016 filed before the ld. 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 ld 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 Entertainment on 2 November 2017. The decision in Spice Entertainment 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 Entertainment.”

7. As stated earlier in the instant case, the assessee had duly informed the ld AO about the change in the status of the company into LLP and the said fact was also brought to the notice of the ld AO while filing the objections to the reasons recorded. Hence, the ld AO had sufficient opportunities to rectify the mistake done by him. Despite sufficient information being made available to the ld 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.*”

10. Respectfully following the above decisions and considering the fact that alleged reassessment proceeding has been carried out in the name of a non-existent/non-est/dead entity, the same is ultra vires, bad in law and is hereby quashed. Since we have quashed the reassessment proceedings on the first legal ground, dealing with the remaining grounds would be merely academic in nature.

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

Order is pronounced in the open court on 23rd July, 2024.

Sd/-

[Pradip Kumar Choubey]
Judicial Member
Dated: 23rd July, 2024

Sd/-

[Dr. Manish Borad]
Accountant Member

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – Ashok Sethia (erstwhile Karta of Ashok Sethia (HUF) 3rd Floor, 143, Cotton Street, Burrabazar, West Bengal-700007.**
2. *Respondent – ITO, Ward-43(1), Kolkata*
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches,
Kolkata