

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3760/Del/2023  
Assessment Year: 2012-13

<b>3l Infotech Digital BPS Limited</b> <b>The Lower Ground Floor, Building No. E-1, Delhi, Delhi-110055</b> <b>PAN No.AAACL0415D</b>	<b>Vs.</b>	<b>DCIT Circle New Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	<b>Sh. Ved Jain, Advocate</b> <b>Sh. Aman Garg, CA</b> <b>Ms. Bulbul Sigal, CA</b>
Respondent by	<b>Ms. Sapna Bhatia, CIT DR</b>

Date of hearing:	23/07/2024
Date of Pronouncement:	06/09/2024

**ORDER**

**PER SUDHIR KUMAR, JM:**

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)/NFAC, Delhi [hereinafter referred to as "CIT(A)"] vide order dated 27.10.2023 pertaining to A.Y. 2012-13 and arises out of the assessment order dated 07.12.2019 under section 144 r.w.s. 147 of the IT

Act, 1961 of the Income Tax Act 1961 [hereinafter referred as 'the Act'].

2. Aggrieved by the order of the Ld CIT(A) the assessee is in appeal before us by raising the following grounds:-

*1. The Ld. CIT(A) erred in confirming the reassessment proceedings against the amalgamating company without appreciating that*

*i) the amalgamating company ceased to exist as a person pursuant to the scheme of amalgamating*

*ii) no assessment can be made against a non-existent person;*

*iii) the fact that AOK In-House Factoring Services Private Limited (Amalgamating company) got merged with 3i Infotech BPO Limited had filed its Return of Income post the approval of amalgamation ; which is wrong and hence the order passed u/s. 250 cannot be sustained and is bad in law.*

3. The brief case of the assessee is that the amalgamating company (i. e. AOK In House Factoring Services Private Limited) had not filed its return of income for A.Y.2012-13. The case of assessee was not selected for scrutiny. Subsequently the case of the assessee was re-opened by the AO and issue notice dated

31-03-2019 u/s 148 of the Act. In the response of the notice the assessee company submitted that since the company was amalgamated with M/s 3i Infotech BPO Limited vide order dated 17-10-2011 of the Hon'ble High Court approving the scheme of amalgamation w.e.f.01-04-2010. For the reason assessee company has not filed the return of income for A.Y.2012-13. The income, expenses, assets, and liabilities of the amalgamating company were incorporated into the Return of income filed by the amalgamated company for A.Y.2012-13. The Assessing officer passed the order u/s 144 r.w.s.147 of the Act assessing the total income of the assessee at Rs.28,47,73,270/-. Aggrieved the order of the AO the assessee company has filed the appeal before the Ld CIT(A) who vide his order dated 27-10-2023 dismissed the appeal against which the assessee is in appeal before us.

4. The main issue to be decided is whether the final assessment order passed by the non-existent entity is valid or not.

5. The Ld Counsel for the assessee has submitted that final assessment order passed by the AO in the name of non-existing entity is illegal, bad in law and without jurisdiction. He has further submitted that assessee company was dissolved by the Hon'ble High Court order dated 17-10-2011. The name of the

company was struck off from the rolls of companies maintained by the Registrar of companies. The assessment order cannot be passed against the non-existent company. Reliance has placed on the following decisions wherein it has been held that an assessment framed in the name of a non-existent entity/dead person would tantamount to jurisdictional defect, thus making it void -ab-initio. The AR has placed reliance on the following judgments :-

1. *Hon'ble Delhi High Court Spice Entertainment Ltd. Vs. Commissioner of Services [ ITA No.475 and 476 of 2011]*
2. *Hon'ble Supreme Court in CIT Vs. Spice Infotainment Ltd. in Civil Appeal No.285 of 2014*
3. *Commissioner of Income Tax Vs. Vived Marketing Pvt. Ltd. (ITA No. 273/2009)*
4. *M/s. IMPSAT (Pvt.) Ltd. Vs. ITO 92 TTJ (Del) 552,*
5. *S. Pampasar Distillery Ltd. V. Assistant Commissioner of Income-tax [2007] 15 SOT 331 KOL. (ITAT)*
6. *Hon'ble Delhi High Court in the case of PCIT Vs. Shri Jai Shiv Shankar Traders (P) Ltd. [2015] 64 taxmann.com 220 (Delhi)*
7. *ACIT Vs. Hotel Blue Moon (2010) 321 ITR 362 (SC)*
8. *Hon'ble Bombay High Court in the case of CWT Vs. HUF of H.H. Late J.M. Scindia (2008) 174 Taxmann 1 (Bomba)*

9. *CIT Vs. Cebon India Ltd. (2012) 347 ITR 583*

10. *Hon'ble Delhi High Court in the case of PCIT vs. Silver Line (2016) 65 taxmann.com 137 (Delhi)*

11. *Hon'ble Mumbai ITAT in the case of Sanjeev R. Arora Vs. ACIT (2013) 29 taxmann.com 287]*

6. Per contra the DR strongly supported the findings of the lower authorities and sought for the dismissal of the appeal.

7. We have heard the parties and perused the material available on the record.

8. The AR has placed reliance on the following decision of Hon'ble Delhi High Court in the case of Spice Entertainment Ltd. Vs. Commissioner of Service Tax [ ITA No.475 and 476 of 2011] wherein it was held as under :-

*“10. Section 481 of the Companies Act provides of dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution puts an end to the existence of the company. It is held in M.H. Smith (Plant Hire) Ltd. Vs. D.L. Mainwaring (T/A Inshore), 1986 BCLC 342 (CA) that “once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an*

*insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved.*

10. *After the sanction of the scheme on 11<sup>th</sup> April, 2004, the Spice ceases to upon the Income tax authorities to substitute the successor in place of the said dead person. When notice under Section 143 (2) was sent, the appellant / amalgamated company appeared and brought this fact to the knowledge of the AO. He however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s. Spice which can non existing entity on that day. In such proceedings and assessment order passed in the name of M/s. Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppels against law.*

16. *When we apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 292 B of the Act are not applicable in such a case. The framing assessment against a non-existing entity/ persons goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a dead person.*

*17. The order of the Tribunal is, therefore, clearly unsustainable. We, thus, decide the questions of law in favour of the assessee and against the Revenue and allow these appeals.”*

9. On perusal of the order of the Ld CIT(A) reveals that the assessee has submitted before the authority that the assessee company has been amalgamated with the appellant company. The assessee has also submitted the date of amalgamation and the order of the Hon'ble High court. The revenue authorities were aware about the amalgamation of AOK In-house Factoring Services Private limited with 3i Infotech BPO Limited. The AO has passed the assessment order against the non-existent company. The assessment order passed in the name of a non-existent entity would be a nullity and no consequence. In view of the above said discussion when the company has been delisted and amalgamated with the assessee company the assessment order passed by AO and confirmed by Ld CIT(A) is nullity. The matter is squarely covered in favour of the assessee and against the Revenue by the Judgment of Hon'ble Delhi High Court in the case of **Spice Entertainment Ltd. Vs. Commissioner of Service Tax [ ITA No. 475 and 476 of 2011]**. Respectfully following the decisions cited above the assessment order liable to be quashed and quashed accordingly.

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

Order pronounced in the open court on 06.09.2024.

**Sd/-**  
**(DR. B R R KUMAR)**  
**ACCOUNTANT MEMBER**

\*NEHA, Sr. PS\*

Date:- .09.2024

Copy forwarded to:

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

**Sd/-**  
**(SUDHIR KUMAR)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI