

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI ANUBHAV SHARMA , JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No. 888/DEL/2024
Assessment Year: 2012-13**

Jainco Cranes Limited, A-188, C.C. Colony, Delhi-110007. PAN: AAACJ 3411 H	Vs	Income-tax Officer, Ward-13(2), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Shri Sanjay Sehgal, CA	
Department represented by	Shri Sanjay Kumar, Sr. DR	
Date of hearing	17.10.2024	
Date of pronouncement	23.10.2024	

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has come in appeal against the order dated 13.01.2024 passed by the National Faceless Appeal Centre (NFAC), Delhi, (hereinafter referred as “learned First Appellate Authority” or in short “FAA”) in Appeal no. CIT(A), Delhi-5/10298/2019-20, for the assessment year 2012-13, arising out of the order dated 02.11.2019 u/s 147 read with section 144 of the Income-tax Act, 1961 (hereinafter referred as the “Act”), passed by the Income-tax Officer, Ward-13(2), New Delhi (hereinafter referred in short as “Ld. AO”).

2. Heard and perused the record. Arguing on ground no. 2, learned AR has submitted that the assessment order passed is void ab initio as reopening

proceedings u/s 147/148 of the Act were in regard to a company which ceased to exist on the date of issuance of notice u/s 148 of the Act.

3. Learned DR could not dispute the fact that the name of the assessee company was struck off on 31.03.2004 and, therefore, the company was not in existence in F.Y. 2011-12.

4. After going through a copy of letter dated 11.11.2019 made available at page no. 3 of the paper book we find that vide letter dated 11.11.2019 the AO was informed by the Representative of the present appellant that name of the company stood struck off on 31.03.2004 and during F.Y. 2011-12 relevant to A.Y. 2012-13 assessee company had not conducted any business activity. No balance-sheet, profit & loss account, Director's report, tax audit report in 3CD was prepared by the erstwhile company. There is no form 26AS for the year under consideration and even no bank account was maintained for the relevant financial year.

4.1 Learned DR has submitted that as the PAN of the assessee company was active, there was valid reopening u/s 147/148 of the Act.

5. The case of assessee was opened for the reason that it was found that a sum of Rs. 13,89,748/- in total was received by the assessee from Bharat Sanchar Nigam Ltd. and Chennai Telephones Accounts Officer as reflected in Form 26AS.

6. This issue was raised by the Director of erstwhile company before learned First Appellate Authority alleging that the assessment order has been passed by issuing a notice u/s 148 of the Act on a company which ceased to exist. Learned CIT(A) has heard the appeal and passed order on appeal filed by the Director of erstwhile company and the same is challenged before this Tribunal and same Director represents the erstwhile company. We consider the appeal to be sustainable.

6.1 Further, this aspect has been considered by learned First Appellate Authority with following relevant findings in paras 11 to 14 and the same are reproduced below:

“11. I have considered the order of AO, written submissions of the appellant, remand report of the AO, rejoinder of the appellant in detail. The AO reopened the case after due approval from the competent authority, on the basis that despite having receipts as per Form-26AS, no ITR was filed and hence, the said receipts escaped taxation. It is not a case of any amalgamation or conversion of company to firm, so that reopening was to be done for escapement of income belonging to any other entity but it was appellant's own receipts which were not offered for taxation. Hence, the contentions raised in the ground Nos. 1 and 3 are

12. Regarding date of order, remand report mentions the correct facts that order and notice of demand were actually dated 02.12.2019. The Form-26AS clearly states that PAN was active for the previous year and appellant duly did receive fee for professional / technical services from BSNL and Chennai Telephone Accounts Officer, C&A-1, Hqrs Zone and TDS of Rs. 1,38,975/- was deposited by deductor giving total payments of Rs. 13,89,748/- to the appellant. If the appellant can continue to use PAN for its business and obtain income, then same has to be taxed. The appellant failed to discharge the onus of explaining the business done through the appellant

company when it had ceased to exist. Hence, the decision relied upon by the appellant are distinguishable. Regarding non- applicability of section 69, the appellant has not denied that payment was not received in company's bank account and hence, under the given facts and circumstances of the case, the AO was justified in making addition of Rs. 13,89,748/-.

13. The appellant has not informed the date of order when the company was struck off and whether it was duly intimated to the Department. The appellant cannot disown the contents of Form-26AS and especially when TDS has also been done by the government entities. Even if the payments relate the earlier years period, the same were to be offered for taxation by the company or the ultimate owner of the bank account, which is the company itself. Further, reliance is placed on rationale held in the case of:-

1. *Ravinder Kumar Aggarwal vs. ITO [2023] 146 taxmann.com 205 (Delhi)* - Where a Company is dissolved in consequence to its name being struck off under section 248 of Companies Act, 2013, it shall be deemed to continue to be in existence for purpose of discharging its liabilities, therefore, where NCLT upon realizing that detriment was caused to interest of Income-tax department due to striking off, restored company to enable Department to recover its dues, impugned notice under section 148 of Income-tax Act, issued in name of company before its restoration was justified.

1. *Amresh Kumar vs. Pr.CIT [2023] 154 taxmann.com 222 (SC)* - SLP dismissed against order of High Court that where TDS certificates and 26AS statements all taken together revealed that three companies had made payments to assessee during financial year 2010-11 and assessee did not produce any contrary evidence to that despite notice to him by Assessing Officer, Commissioner rightly concluded that there was no apparent reason to doubt payments made to assessee and dismissed revision petition.

14. Thus, in view of above discussion, as the appellant has failed to demonstrate that income in Form-26AS does not belong to it, using its PAN and bank account for receiving the said income, the order of the AO treating the receipts as undisclosed and unexplained, cannot be interfered with and is, accordingly, sustained. Hence, the grounds of appeal 1 to 4 & 6 are dismissed.”

7. Learned AR has primarily relied on the judgment of Hon'ble Supreme Court in the case of **PCIT v. Maruti Suzuki India Ltd. (2019) 107 taxmann.com 375 (SC)**; and that of Hon'ble Delhi High Court in the case of **Spice Entertainment Ltd. v. CIT (2012) 247 CTR 500 (Delhi)**. However, we are of the considered view that same are not applicable and endorse the view of the learned CIT(Appeals) that it is not a case of amalgamation or liquidation of a company, therefore these judgments are not applicable.

8. However, in respect to assessment u/s 147 of the Act being done in pursuance to a notice issued u/s 148 in regard to a company whose name stood struck off even before issuance of the notice, has been specifically considered in the judgments of Hon'ble Bombay High Court in the case of **Jitendra Chandralal Navlani v. Union Bank of India (2024) 159 taxmann.com 498 (Bombay)** and **Vertiv Energy (P) Ltd. v. ACIT (2024) 160 taxmann.com 696 (Bombay)**, Hon'ble Gujarat High Court in the case of **Adani Wilmar Ltd. v. ACIT (2023) 150 taxmann.com 178 (Gujarat)**; **Adani Estate Management (P) Ltd. v. ITO (2023) 151 taxmann.com 387 (Gujarat)**, wherein exercise of jurisdiction of reopening of assessment upon company whose name stood struck off has been set aside.

9. We are of the considered view that as even before the issuance of the notice u/s 148 of the Act the name of the company stood struck off from the register of

Registrar of Companies, the very exercise of jurisdiction u/s 147 was vitiated and consequential proceedings became void accordingly. As any final order of a quasi judicial authority, based on irregular exercise of jurisdiction, makes the order void ab intio, and same is not enforceable under law.

10. The order of Ld. CIT(A) is completely silent on these legal aspects and on the basis that assessee has not established the date of striking off, the Ld. CIT(A) has not interfered. Further, reliance has been wrongly placed by Ld. CIT(A) on judgments on **Ravinder Kumar Aggarwal vs. ITO [supra]**, as that case related to case where the name of assessee company was restored by NCLT. Here also had the AO preferred to get the name of company restored, the outcome would have been different.

11. We sustain ground no. 2, arising order of Ld. CIT(A), and to that extent the impugned order is quashed. Accordingly the appeal is allowed.

Order pronounced in open court on 23.10.2024.

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

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

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

