

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.947/Del/2024

[Assessment Year : 2013-14]

DCIT, Central Circle-28, Room No.327, 3 rd Floor, E-2, ARA Centre, Jhandewalan Ext., New Delhi-110055.	vs	Uppal Housing Pvt.Ltd., 1 st Floor, East Tower, NBCC Place, Pragati Vihar, Lodhi Road, New Delhi-110003. PAN-AAACU1786A
APPELLANT		RESPONDENT
Appellant by	Shri Ramesh Chand, Sr. DR	
Respondent by	Shri Salil Agarwal, Sr.Adv., Shri Madhur Agarwal & Shri Mahir Agarwal, Advs.	
Date of Hearing	27.08.2024	
Date of Pronouncement	25.11.2024	

ORDER

PER PRADIP KUMAR KEDIA-AM :

The instant appeal has been filed at the instance of the Revenue seeking to assail the First Appellate order dated 22.12.2023 passed by Ld. Commissioner of Income Tax (A)-30, New Delhi [“Ld.CIT(A)”] arising from the assessment order dated 26.03.2022 passed u/s 147 r.w.s 144 of the Income Tax Act, 1961 [“the Act”] pertaining to assessment year 2013-14.

2. Grounds of appeal raised by the Revenue read as under:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,03,71,875/- on account of sale of immovable property even when the assessee had failed to file ITR in the relevant year and offer the same to tax?”*
2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 2,03,71,875/- even when the assessee did not submit the correct facts regarding amalgamation during assessment proceedings u/s 147 and assessee had failed to discharge its onus regarding the same?*

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in ignoring the judgements of the Hon'ble Courts, which have time and again emphasized that Petitioners who approach the Court of law with unclean hand should not be granted any relief and their claim should be rejected, including the judgement of Hon'ble Supreme Court in the case of Dalip Singh V/s State of U. P. and Ors. 2010 (2) SCC 114?*
4. *Ld. CIT has erred while providing the relief to the Assessee without giving an opportunity to Assessing Officer to examine the correct facts. This is in effect a violation of Rule 46A of the Income- tax Rules.*
5. *Ld. CIT (A) has only seen the reporting of the transaction in computation and ITR of the successor entity, whereas the correctness of the claim, which was the core issue of the assessment proceedings has not been scrutinized and addressed.*
6. *The order of Ld.CIT(A) is erroneous and is not tenable on facts and in law.*
7. *The grounds of appeal are without prejudice to each other.”*

3. The company Queens Gardens Pvt.Ltd. was amalgamated with the assessee namely, Uppal Agencies Pvt.Ltd. vide order dated 18.04.2002 by virtue of the order of Hon'ble Delhi High Court dated 18.04.2002. Thereafter, the company M/s. Uppal Agencies Pvt.Ltd. was amalgamated with M/s. Uppal Housing Pvt.Ltd. by virtue of the order of Hon'ble Delhi High Court dated 07.08.2006. In the instant case, the assessment was re-opened under section 148 of the Act vide notice dated 26.03.2021 and the assessment order was passed u/s 147 r.w.s. 144 of the Act but however, in the name of M/s. Queen Gardens Pvt.Ltd. for the Assessment Year 2013-14 in question.

4. The assessee challenged the assessment order for AY 2013-14 drawn in the name of 'Queen Gardens Pvt.Ltd.' before the Ld.CIT(A) and contended that the 'Queen Gardens Pvt. Ltd.' being a non-existent company, the notice issued u/s 148 of the Act giving rise to the jurisdiction u/s 147 of the Act, is a complete non-starter at the threshold and consequent re-assessment order passed u/s 147 of the Act is bad in law. The Ld.CIT(A) found merit in the appeal of the assessee. The Ld.CIT(A) has dealt with the issue as under:-

8. *“I have carefully perused the order passed by the AO under section 143(3) of the Act and the written submissions filed by the appellant and the grounds of appeal raised are decided as under:*
9. *Ground nos. 1, 2 and 3: In these grounds, the appellant has challenged the initiation of proceedings u/s. 147/148 of the Income Tax Act by the Assessing Officer in the name of M/s. Queens Gardens Pvt. Ltd. which was a non-existent entity on the date of initiation of proceedings as it was amalgamated with M/s. Uppal Agencies Pvt. Ltd. vide order dated 18.04.2022 of Hon'ble Delhi High Court. Further, M/s. Uppal Agencies Pvt. Ltd. was amalgamated with the appellant company vide order dated 07.08.2006 passed by Hon'ble Delhi High Court. Accordingly, the initiation of proceeding was in the name of non-existing entity and thus bad in law. The Assessing Officer has observed in the Assessment Order that the proceedings u/s. 147 was initiated against M/s. Queens Gardens Pvt. Ltd. as it was appearing as non-filler of Income Tax Return in the Income Tax Database and the letters issued to it for verification of transactions with respect to sale of immovable property was not replied. The Assessing Officer noted in the Assessment Order that the appellant failed to reply the communications issued to it, accordingly, 50% of the sale consideration was considered taxable income. The appellant submitted that M/s. Queens Gardens Pvt. Ltd. was non-existent and it was ultimately amalgamated with the appellant which had filed return for the A.Y. 2013-14 on 30.09.2013 in which the alleged sale consideration of Rs.4,07,43,750/- received on the sale of property was disclosed and long term capital gain was offered to tax which is evident from the computation of income attached in the paper book at page-42 to 44.*
- 9.1. *The observations of the Assessing Officer and the submissions of the appellant have been carefully perused. It is observed that M/s. Queens Gardens Pvt. Ltd. was amalgamated with M/s. Uppal Agencies Pvt. Ltd. with effect from 31.03.2001 and M/s. Uppal*

Agencies Pvt. Ltd. was amalgamated with the assessee company with effect from 30.11.2005. Accordingly, M/s. Queens Gardens Pvt. Ltd. was not in existence in the year under consideration and it was not supposed to file Income Tax Return. The appellant has further demonstrated that the transaction in question was declared by it in its return of income filed for the year under consideration. Accordingly, there was no escapement of income and the reasons recorded by the Assessing Officer are factually incorrect. In view of these facts, I find that the additions made by the AO cannot be sustained. Therefore, these grounds of appeal are allowed and addition is deleted.

10. *Ground no.4 pertains to initiation of penalty proceedings u/s 271(1)(c)/271(1)(b) of the Act. This ground is premature and needs no adjudication.*
11. *Ground no.5 is general in nature and does not require any specific adjudication.”*

5. We are in complete agreement with the view expressed by the Ld.CIT(A). Notice u/s 148 of the Act apparently has been issued in the name of the non-existent company. The nonest company could not file the return of income in pursuance of such notice of non-existent company.

6. It is settled position of law that assessment framed in the name of non-existent company based on enforceable of issuance of notice is of no consequence. We guided by the judgement rendered in the case of *Pr.CIT vs Maruti Suzuki India Pvt.Ltd AIRONLINE 2019 SC 714* wherein Hon'ble Supreme Court held that the assessment made in the name of Suzuki Power Train India Ltd. is a nullity since the entity has been amalgamated with the Maruti Suzuki India Ltd., an approved scheme of amalgamation and was not in existence at the time of amalgamation. The ratio of judgement in the case of *Mahagun Realtors (P.) Ltd.* also does not apply since amalgamation was complete vide order dated 07.08.2006 and notice u/s 148 was issued on 26.03.2021. The assessment framed in the instant case in the name of non-existing company thus, suffers from vice of jurisdictional defect and is not a procedural

irregularity which can be possibly cured u/s 192B of the Act. Thus, we do not see any error in the first appellate order hence, we decline to interfere therewith.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 25th November, 2024.

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI