

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3698/MUM/2024  
Assessment Year: 2010-11**

Tribhovandas Bhimji Zaveri Ltd., 241/243, Zaveri Bazar, Kalbadevi, Mumbai – 400 002  (PAN : AACCT7182P)	Vs.	Assistant Commissioner of Income Tax – 18(30), Mumbai
<b>(Assessee)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Nitesh Joshi, CA and  
Shri Manoj Dixit, CA  
Revenue : Shri P.D. Chougule, Sr. DR

Date of Hearing : 04.09.2024  
Date of Pronouncement : 19.11.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1065112902(1), dated 24.05.2024 passed against the assessment order by the Assistant Commissioner of Income Tax, Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act (hereinafter referred to as the "Act"), dated 22.12.2017 for Assessment Year 2010-11.

2. Grounds taken by the assessee are reproduced as under:

1. *The learned Commissioner of Income-tax (Appeals) erred in law in upholding the action of the Assistant Commissioner of Income Tax-18(3), Mumbai (hereinafter referred as "the Assessing Officer") erred in determining the net taxable income of the assessee at Rs.1,77,15,994/-. The assessee submit that the assessing officer has passed the rectification order dated 15th May, 2018 and revised the addition amount to Rs.2,77,15,994/-.*
2. *The learned Commissioner of Income-tax (Appeals) erred in upholding action of the Assessing Officer determining a sum of Rs.1,76,15,721/- payable by the assessee.*
3. *The assessee submits that the Learned Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer on reopening of the assessment proceedings on non-existent entity. Further, the assessee submits that the assessee firm (Tribhovandas Bhimji Zaveri, partnership firm) converted into the company with effect from 24th July, 2007. The assessee submit that the re-opening proceedings made on non-existing entity is illegal and void-ab- initio.*
4. (a) *The learned Commissioner of Income-tax (Appeals) erred in upholding action of the Assessing Officer that the unsecured loan of Rs.2,77,15,994/- is bogus and the assessee has understated its income to the tune of Rs.2,77,15,994/-.*  
  
(b) *The assessee submits that various other observations made by the Learned Commissioner of Income Tax (Appeals) in making addition of unsecured loan under the Act are not relevant and the assessee objects to the same.*
5. *Without prejudice to what is stated above, the learned Commissioner of Income-tax (Appeals) has passed an order on non-prosecution basis i.e. ex-parte order and therefore, grants us one more opportunity for pursuing appeal by remitting back the matter to the Commissioner of Income-tax (Appeals).*
6. *The assessee submits that the Assessing Officer be directed to*
  - (i) *that the re-opening order passed under section 147 of the Act on the non- existing entity is illegal and void-ab-initio and therefore ought to be cancelled.*
  - (ii) *delete the addition made of bogus unsecured loan under the Act aggregating to Rs.2.77,15,994/-:*
  - (iii) *without prejudice to what is stated above, since the order passed on non- prosecution basis, grant one more opportunity*

*and the matter be sent back to Commissioner of Income-tax (Appeals).*

*7. Each of the above grounds of appeal is independent and without prejudice to each other.*

3. Before us, ld. Counsel for assessee emphasized on ground no.3 to submit that the impugned proceedings of reopening u/s.147 and passing the assessment order thereafter are illegal and void *ab initio* since they have been undertaken on a non-existing entity. According to him, assessee firm was converted into a company w.e.f. 24.07.2007 under Chap IX of the Companies Act. The reopening proceedings were initiated on the assessee firm which did not exist at that point in time.

4. According to the ld. Counsel, assessee had brought to the notice of ld. Assessing Officer about the fact that Tribhovandas Bhimji Zaveri under PAN – AAAFT0950A was a partnership firm till 23.07.2007, i.e., broken period for Assessment Year 2008-09. Thereafter, the said partnership firm was converted into a private limited company w.e.f. 24.07.2007 under a new PAN allotted to the company as AACCT7182P. Subsequent to this conversion, all the tax returns and compliances were done under the new PAN with the assessee having a status of company, since the partnership firm ceased to exist upon its conversion. Relevant evidence was produced before the Ld. AO. It was also pointed out to the ld. Assessing Officer that PAN of the erstwhile partnership firm was not surrendered for cancellation since an appeal for one of the assessment years was pending for disposal before the ld. CIT(A).

4.1. He further asserted that assessee repeatedly submitted before the ld. Assessing Officer about the fact that:

- i) Return was not filed by the assessee in its erstwhile status of partnership firm since it got converted into a company and the PAN was active only for limited purpose for disposal of appeal pending for one of years.
- ii) It had made compliance to all the notices issued by ld. Assessing Officer from time to time and explained the factual position by visiting the office personally.

4.2. Present case was reopened for reassessment in the name of the erstwhile firm u/s. 147 of the Act for the year under consideration vide notice u/s. 148 dated 30.03.2017. The PAN mentioned in the said notice for reassessment was of that erstwhile firm. Ld. Assessing Officer observed that information was received from DIT that some persons were involved in providing bogus accommodation entries in the form of purchase bills and unsecured loans and the assessee as erstwhile partnership firm had availed of such fictitious loan of Rs.2,77,15,994/-. According to the ld. Assessing Officer, these fictitious loans were reflected in the balance sheet of the firm for AY 2010-11. According to the assessee, there is no question of balance sheet of the firm for A.Y. 2010-11, since the firm was not in existence during that period.

4.3. Return of income was filed in the status of a company for AY 2008-09 and subsequent years. Return for the year under consideration i.e., Assessment Year 2010-11 was too filed in the status of a company. The said return of the company was taken up for scrutiny and assessment

order was carried in appeal up to the Appellate Tribunal in ITA No.2454/Mum/2015, order dated 17.03.2017.

4.4. It was submitted that ld. AO was fully aware of the conversion of the firm into the company and that the firm was no longer in existence. It was further submitted that mandate of section 170 r.w.s. 184 of the Act is that a firm is to be assessed only for the period up to which it is succeeded and once the succession takes place, there is no provision under which a firm can be assessed for income alleged to have accrued during the period when the firm had ceased to be in existence. Section 170(2) provides for recovery of income from the successor if the predecessor cannot be found. However, the recovery can be only of such income which is assessed in the hands of the predecessor for the period during which the predecessor was in existence. There is no provision for assessing a person who is no longer in existence.

4.5. Ld. Counsel also referred to assessment order passed u/s.143(3) of the Act, dated 26.11.2010 for Assessment Year 2008-09 in the case of the company i.e., Tribhovandas Bhimji Zaveri Pvt. Ltd. In the said assessment order, fact relating to conversion of assessee as a partnership firm into the private limited company is taken note of. In the same assessment order, it is noted that company took over the entire business along with undertaking being its unit at Hyderabad. The relevant observations of the ld. Assessing Officer in this assessment order about the conversion is extracted below:

*“The assessee company has been incorporated on 24.07.2007 and since then the business activities have been carried on by the assessee. Thus, this is the first year of its business. The assessee has filed copy of Memorandum of Association and Article Association dated 20.06.2007. As mentioned therein, the main object of the company is carrying on and continuing the business hitherto carried on in the partnership firm by name and style of M/s. Tribhovandas Bhimji Zaveri. The partnership firm was also having an undertaking at Hyderabad with effect*

*from 01.10.2001 on which deduction u/s. 801B was claimed from A.Y. 2002-03 to 2007-08. The assessee company has taken over the entire business of the said firm alongwith the undertaking being its unit at Hyderabad and has claimed the deduction 801B being 7th year of the claim. In this case (firm), deduction u/s.801B was held to be allowable by the Hon'ble High Court of Bombay and SLP was not filed for A. Y. 2002-03 to 2004-05. Further, in the case of firm the assessment u/s. 143(3) has been made on 12.11.2010 for A.Y. 2008-09 for the period 01.04.2007 to 23.07. 2007 i.e. till the date of transfer of the business to the assessee company, wherein the A.O., the Additional Commissioner of Income Tax, Range -14(1), Mumbai, has allowed the deduction u/s.801B as claimed by the assessee.”*

4.6. It was thus pointed out that it was well within the knowledge of the Department about the conversion, more particularly when the conversion had taken place on 24.07.2007 and the assessment of the company was done on 26.11.2010 and further that notice u/s.148 for the impugned proceedings was issued on 31.03.2017.

5. On the above stated facts, corroborated by documentary evidences placed on record we hold that the impugned assessment order and notice issued u/s.148 deserves to be quashed since these have been passed/issued in the name of non existing firm. While holding so, we find force from the decision from Hon'ble High Court of Madras in the case of NRP Pvt. Ltd. vs. ACIT (2024) 162 taxmann.com 71 (Mad), wherein it was held –

*Where a partnership firm was converted into a company and it was dissolved on 14-7-2010 and Assessing Officer issued in name of firm a notice under section 148 for assessment year 2015-16 and thereafter passed assessment order in its name, since assessment order itself had been passed in name of non-existing firm, impugned assessment order and notice issued under section 148 deserved to be set aside*

5.1. In this case, the facts bear similarity with the facts of the present case before us which are extracted from para 2 as under:

*“2. It is the specific case of the petitioner that although the petitioner had intimated to the respondents regarding the change in the situation of the petitioner from Partnership Firm to a Private Limited Company under Chapter IX of the Companies Act, 1956 vide letter dated 23.04.2014, the respondent initiated proceedings against the Firm by issuance of the notice under Section 148 of the*

*Income Tax Act, on 28.03.2021 which is culminated in the impugned order dated 25.03.2022 for the Assessment Year 2015-16 under Section 147 r/w 144 of the Income tax Act, 1961.*

*3. The specific case of the petitioner is that the petitioner was a partnership firm and was converted as a Private Limited Company under Chapter IX of the Companies Act, 1956 and the firm was also dissolved by Deed of Resolution dated 14.07.2010. It is submitted that all the business are after the registration of the petitioner's company viz., PAN.No. AADCN3383M and not with the PAN.No.AACFN9222D of the partnership firm.”*

5.2. On the issue relating to PAN not deactivated by the assessee noted by the ld. Assessing Officer, we find that this aspect has been dealt by the Hon'ble Jurisdictional High Court of Bombay in the case *Diversey India Hygiene Pvt Ltd. vs. ACIT in WP No.3034 of 2022 dated 08.11.2023*, wherein in para 6, it is stated that *“the fact that PAN was not deactivated would not help Revenue because there could be cases relating to various years, when the company was in existence and it is possible those PAN numbers are picked up for scrutiny or for issuance of refund. That, in our view, will not be a sanction for Department to issue notices to a non-existing entity, particularly, when they were aware that the entity was not in existence.”*

5.3. Similar view was taken by Hon'ble Court in the case of *CLSA India Pvt. Ltd. vs. DCIT (2023) 149 taxmann.com 380 (Bom)*, wherein in para 7, it is stated that *“the stand of the Revenue that the reassessment was justified in view of the fact that the PAN in the name of the non-existent entity had remained active does not create an exception in favour of the Revenue to dilute in any manner the principles enunciated herein above.”*

The above stated decisions have considered the jurisprudence from the decisions of Hon'ble Supreme Court in the case of *PCIT vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC)* and *CIT vs. Spice Infotainment Ltd. in Civil Appeal No. 285 of 2014 dated 02.11.2017*, as

well as several other decisions by various Hon'ble High Courts. Accordingly, ground no.3 is allowed.

6. Since, the impugned assessment order and the notice issued u/s.148 has been quashed in terms of ground no.3, other grounds raised by assessee are not adjudicated upon.

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

Order is pronounced in the open court on 19 November, 2024

Sd/-  
(Anikesh Banerjee)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 19 November, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Assessee
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai