

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI

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

**ITA No. 2463/MUM/2024
Assessment Year: 2011-12**

Income Tax Officer, Ward 6(2)(1), Mumbai	Vs.	Essar Power Jamnagar Ltd., 11, Essar House, K.K. Marg, Mahalaxmi, Mumbai – 400 034 (PAN : AABCE8921G)
(Assessee)		(Respondent)

Present for:

Assessee : Shri Vijay Mehta, CA
Revenue : Shri Biswanath Das, CIT, DR

Date of Hearing : 05.09.2024
Date of Pronouncement : 19.11.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1062839468(1), dated 18.03.2024 passed against the assessment order by Income Tax Officer, Ward – 6(2)(4), u/s. 144 r.w.s. 147 of the Income-tax Act (hereinafter referred to as the "Act"), dated 29.03.2016 for Assessment Year 2011-12.

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

"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in declaring the assessment order passed as nullity without considering the fact that the assessee was in existence when the transactions were made?"

2. "Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in treating the assessment proceedings as without jurisdiction, without considering the fact that the reference can be made for revival of companies from the date of strike off, as per the instruction by the CBDT vide letter dated 29.12.2017?"

3. The Appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored"

3. The moot point to be adjudicated upon before us is in respect of validity of assessment proceedings and the assessment so made there upon on a non-existing entity which had been struck off.

4. Brief facts of the case are that assessee filed its return of income on 28.09.2012 reporting Nil income. Assessee company was struck off u/s. 560 of the Companies Act, 1956 for which master data from the web site of MCA depicting the status as "Struck off" is extracted below:

Company/LLP Master Data	
Subject	Company/LLP Details/Particulars
CIN	: U40108MH2007PLC175185
Company Name	: ESSAR POWER JAMNAGAR LIMITED
ROC Code	: RoC-Mumbai
Registration Number	: 175185
Company Category	: Company limited by shares
Company Subcategory	: Indian Non-Government Company
Class of Company	: Public
Authorised Capital(in Rs.)	:2,500,000.00
Paid up capital(in Rs.)	:910,000.00
Number of Members(Applicable only in case of company without Share Capital)	: 0
Date of Incorporation	: 19/10/2007
Address of registered office	: ESSAR HOUSE, 11 KESHAVRAO KHADYE MARG, MAHALAXMI MUMBAI Maharashtra-400034 INDIA
Email Id	: harshada.pathak@essar.com
Whether listed or not	: Unlisted
Date of Last AGM	: 30/09/2011
Date of Balance sheet	: 31-03-2011
Company Status(for e-filing)	: Strike off

Prosecution Details

SNo	Name of the Officer in Default	Court Name	Prosecution Section	Date Of Order	Status
	NIL				

4.1. According to the above extraction, last Annual General Meeting (AGM) of the assessee company was held on 30.09.2011 with its last balance sheet as on 31.03.2011. Subsequently, case of the assessee was re-opened by issuing notice u/s. 148, dated 30.03.2015, in the name of

company which had been struck off. The erstwhile Director of the assessee company whose name was struck off, replied vide letter dated 08.02.2010 and objected on the re-assessment notice by submitting that no assessment could be made on a non existing company. However, ld. Assessing Officer did not accept the objections so raised and proceeded to complete the assessment. Against the assessment so completed, matter was taken up before the first appellate authority by the erstwhile Director. It was contended that a company is incorporated under the Companies Act as a juristic person. The company takes its birth and gets life with incorporation and dies with the dissolution as per the provisions of Companies Act. On being struck off, company ceases to exist in the eyes of the law. Assessment upon a wound-up company is impermissible. Thus, it was claimed that notice issued u/s.148 and the reassessment made thereupon in the name of a non existing company is null and void.

4.2. To buttress its contentions, reliance was placed on catena of decisions which are listed as under:

1. Spice Entertainment Ltd. v. CIT, ITA No. 475 of 2011 judgment dated 08.08.2011 of Hon'ble Delhi High Court
2. CIT v. Express Newspapers Ltd. [1960] 40 ITR 38 (Mad.)
3. K. Agencies (P.) Ltd. v. CWT [2012] 347 ITR 664/20 taxmann.com 731 (Cal.)
4. CIT v. Amarchand N. Shroff [1963] 48 ITR 59 (SC)
5. CIT v. Kurban Hussain Ibrahimji Mithiborwala [1971] 82 ITR 821 (SC).
6. CIT v. Vived Marketing Servicing (P.) Ltd. ITA No. 273/2009 order dated 17.09.2009 of Hon'ble Delhi High Court
7. Khurana Engg. Ltd. v. Dy. CIT (OSD) [2014] 364 ITR 600/[2013] 217 Taxman 75 (Mag.)/34 taxmann.com 261 (Guj.)
8. Torrent (P.) Ltd. v. CIT (SCA No. 5857 of 2004, judgment dated 29.04.2013 of Hon'ble Gujarat High Court.

9. CIT v. Dimension Apparels (P.) Ltd. [2014] 52 taxmann.com 356/[2015] 370 ITR 288 (Delhi)
10. CIT v. Chanakaya Exports (P.) Ltd. ITA No. 684/2014 (Del) dated 12.11.2014 CIT v. Satwant Exports ITA No. 725 (Delhi) 2014 of dated 26-11-2014
11. CIT v. Micra India (P.) Ltd. [2015] 57 taxmann.com 163/231 Taxman 809 (Delhi)

4.3. Strong reliance was also placed on the decision of the Hon'ble Jurisdictional High Court of Bombay in the case of Jitendra Chandralal Navlani & Anr. Vs. Union of India, Writ Petition No.1069 of 2016, wherein similar issue was dealt with as under:

"However, prima facie, the impugned notice has been issued in respect of a non existing entity as M/s Addleer Security Systems Pvt. Ltd. which stands dissolved, having been struck off the Rolls of the Registrar of Companies much before its issue. Consequently, the assessment has been framed also in respect of the non-existing entity. This defect in issuing a reopening notice to a non-existing company and framing an assessment consequent thereto is a issue which goes to the root of the jurisdiction of the Assessing Officer to assess the non-existing company. Thus, prima facie, both the impugned notice dated 24th March, 2015 and the Assessment Order dated 28th March, 2016 are without jurisdiction."

5. The above stated facts are undisputed. Notice u/s.148 was issued on the assessee company whose name was struck off. Assessment has also been completed u/s.144 r.w.s. 148/147 of the Act in the name of the company which is struck off. In the said assessment order in para 3.4, ld. Assessing Officer has taken note of the fact about assessee company having struck off u/s. 560 of the Companies Act. The same is extracted below:

"3.4 EPS of the company remains consistently in negative. There does not appear to be any future out look for the company as A.Y. 2012-13 was the last return filed by the assessee. In fact entire share holding is transferred to M/s Imperial Consultant and securities Pvt Ltd in the very next year including its accumulative loss and the company is struck off u/s 560 of the companies act."

5.1. Assessee had also strongly contended that its erstwhile status was that of a public company and not a private limited company and

therefore the provisions of section 179 would not apply in the present case. Reference was made to section 3(1)(iii) of the Companies Act, 1956 for the definition of a 'private company', as well as to section 3(1)(iv) for 'public company'. It was pointed out that even the name of the company depicts that it is a public company since it does not contain the word "Private". Thus, it was submitted that the ex-Director of the erstwhile assessee company could not be held responsible for tax dues of the company, it being a public company and not a private company, as contemplated in Section 179 of the Act. Reliance was placed on the decision of Hon'ble Supreme Court in the case of PCIT vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC).

5.2. Reference was also made to CBDT Circular No.F.No.225/423/2017-ITA.II, dated 29.12.2017 wherein the Board had considered restoration of the name of the struck off company with retrospective date from the date of being struck off, where amongst several other situations, the situation included "*where proceedings u/s. 147 are contemplated in near future, as mentioned in para – 2(ii) of the said circular*". In the present case, notice u/s.148 was issued on the struck off company on 30.03.2015 and the assessment was completed in the name of the struck off company on 29.03.2016 which is much prior to the said CBDT circular. Also nothing is brought on record to establish that the status of the assessee company has been restored with retrospective date.

6. In the given set of facts and circumstances, it is undisputed that notice u/s. 148 and the re-assessment thereafter are in the name of assessee company whose name had been struck off making it a non existing entity. 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 entity. While holding so, we find force from the decision from Hon'ble High Court of Bombay in the case of Jitendra Chandralal Navlani (supra).

6.1. We also rely on 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 listed above. Accordingly, grounds raised by the Revenue in this respect are dismissed.

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

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