

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 3893/Mum/2023
(Assessment Year: 2013-14)**

ITO, Ward-4(3)(1), Room No. 648, 6th Floor, Aayakar Bhawan, K.K. Road, Mumbai-400020.	Vs.	Vishal Fashion Pvt. Ltd. (Earlier known as Raj Ratan Infracon Pvt. Ltd.) 6 th Floor, Unit 1/2/3, Parth Business Plaza, Mith Chowli, Link Road, Malad (West), Maharashtra-400064. PAN : AAECR0190D
Appellant)	:	Respondent)

**C.O. No. 239/Mum/2024
(Assessment Year: 2013-14)**

Vishal Fashion Pvt. Ltd. (Earlier known as Raj Ratan Infracon Pvt. Ltd.) 6 th Floor, Unit 1/2/3, Parth Business Plaza, Mith Chowli, Link Road, Malad (West), Maharashtra-400064. PAN : AAECR0190D	Vs.	ITO, Ward-4(3)(1), Room No. 648, 6th Floor, Aayakar Bhawan, K.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Rajesj Upadhyaya, AR
Revenue / Respondent by : Shri R.R. Makwana, Sr. DR
Date of Hearing : 28.11.2024
Date of Pronouncement : 05.12.2024

ORDER

Per Padmavathy S, AM:

This appeal by the revenue and the Cross Objections (CO) of the assessee are against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 08.09.2023 for AY 2013-14. The grounds raised in the appeal by the revenue and in the CO by the assessee are as under:

"1. "Whether On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in passing the order without appreciating the fact that no communication about the amalgamation order was made with Department. Only a notice about proposed amalgamation was made vide email dated 11.02.2019?"

2. "Whether On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in passing the order without appreciating the fact that the issue of amalgamation was never raised during the assessment proceedings and the assessee has filed return of income in the same name and PAN in response to the notice U/s. 148 of the Act?"

3. "Whether On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in passing the order without appreciating the fact that the Hon'ble Supreme Court in the case of M/s. Mahagun Realtors (P) Ltd in SLP No. 4063 of 2020 has held that the assessment order cannot be invalidated upon amalgamation?"

C.O. No. 239/Mum/2024- Grounds:

"On facts and circumstances of the case as well as on law, the JAO has erred in law and on facts to invoke provisions of section 147 and issue of notice U/s. 148 of the act. Ld. CIT(A) has also erred in not adjudicating the ground of reopening as he has decided appeal on merits."

2. The assessee is a company and filed the return of income for AY 2013-14 on 31.08.2013 declaring an income of Rs.40,620. The AO received an information that the assessee has entered into transactions to the tune of Rs.5,20,00,000/- with

one M/s.Jolly Private Limited and that the said company belongs to a group providing bogus accommodation entries. Accordingly the AO held the said transaction as bogus and issued notice under section 148 of the Income Tax Act (the Act) reopening the assessment of the assessee. The assessee filed the return in response to the notice under section 148 of the Act. The AO issued subsequently issued notices under section 143(2) and under section 142(1) calling for details pertaining to the impugned transactions. Since the assessee did not respond to the notice calling for details, the AO added the entire amount as unexplained income in the hands of the assessee. Aggrieved the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee raised a legal contention that the AO has issued notice of reassessment and has passed the order of reassessment in the name of a non-existing entity i.e. Raj Ratan Infracon Private Limited which is merged with Vishal Fashions Private Limited vide National Company Law Tribunal, Ahmedabad Bench, Ahmedabad Order dated 08/01/2019. The CIT(A) allowed the appeal in favour of the assessee by holding that –

Adjudication

Ground No. 1:- The appellant has contended that the assessment order passed by Ld. AO is on a non existing company and the same is not sustainable in law in view of various judicial decisions.

As per the documents submitted by the appellant in his paper book, it is observed that vide order dated 08.01.2019, Hon'ble National Company Law Tribunal, Ahmedabad Bench had allowed the merger of M/s Raj Ratan Infracon Pvt. Ltd. (the appellant) with M/s Vishal Fashions Pvt. Ltd. The appellant vide letter dated 08.02.2019 had informed the then assessing officer i.e. Income Tax Officer Ward 4(3)(2), Mumbai regarding the amalgamation order and requested him to do the needful.

Now, the Ld. Assessing Officer issued a notice u/s 148 on 31.03.2021 on the appellant for reopening the assessment for Assessment Year 2013-14 and thereafter framed the impugned assessment order u/s 143(3) r.w.s. 144 on 29.03.2022, thus raising a demand of Rs.5,20,00,000/- on the appellant.

On the perusal of the facts and circumstances as stated above, it is evident that the Ld. AO had served the notice u/s 148 of the Act on an entity which had already merged into another company and hence had now become non-existent and no income tax proceedings could be proceeded with in this case.

Various judicial precedents have also highlighted this fact. Reliance is placed on the decision of Hon'ble Supreme Court in the case of Principal CIT vs. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC). The same judicial principle has been followed in the case of Anokhi Realty Pvt. Ltd. vs. ITO Ward1(1)(3), Ahmedabad by Hon'ble High Court of Gujarat in R/Special Civil Application No. 17613 of 2021 vide his order dated 07.08.2023.

In view of the above, the notice u/s 148 as well as the consequential order u/s 143(3) deserve to be quashed.

In view of the facts and circumstances has stated above the ground of appeal no. 1 is Allowed.

3. The revenue is in appeal against the order of the CIT(A). The ld DR submitted that the AO was not informed of the merger and letter dated 08.02.2019 was not the final order of amalgamation but only an intimation calling for any objection for the proposed merger. The ld DR further argued that the assessee filed the return of income in response to notice under section 148 in the name of the merged entity i.e. Raj Ratan Infracon Private Limited on 15.08.2021 and therefore the claim that the merger is brought to the notice of the AO is not correct. Accordingly the ld DR submitted the decision of the Hon'ble Supreme Court in the case of Maruti Suzuki is not applicable in assessee's case and that the CIT(A) failed to consider the decision of the Hon'ble Supreme Court in the case of M/s.Mahagun Realtors (P) Ltd (SLP 4063 of 2020).

4. The ld AR on the other hand submitted that the revenue is very much aware of the merger since the assessee filed a letter date 08.02.2019 regarding the merger and therefore submitted that the issue is covered by the decision of the Hon'ble

Supreme Court in the case of Maruti Suzuki. On the CO, the ld AR submitted that the merits of the issue has not been examined by the lower authorities, and that if the legal issue is decided against the assessee the appeal should be restored back to the lower authorities.

5. We heard the parties and perused the material on record. The assessee's case was reopened based on the information that the assessee has entered into certain transaction from parties who accommodation entry providers. Since the assessee did not furnish any details pertaining to the alleged bogus accommodation entries, the AO completed assessment under section 147 of the Act, by making an addition of Rs.5,20,00,000 as unexplained income in the hands of the assessee. The CIT(A) allowed appeal considering the legal contention of the assessee that the notice and order of reassessments are issued in the name of the a non-existing entity i.e. Raj Ratan Infracon Private Limited which has since merged with M/s.Vishal Fashion (P) Ltd. On perusal of the materials on record we notice that the vide letter dated 08.02.2019, the assessee has written to the AO informing the proposed merger of various entities including Raj Ratan Infracon Private Limited with M/s.Vishal Fashion (P) Ltd calling for representation as directed by the National Company Law Tribunal (NCLT). The reassessment was initiated vide notice under section 148 dated 31.03.2021 and we notice that the assessee post the initiation of the reassessment proceedings, did not communicate the final order of NCLT approving the merger. We further notice that the assessee has filed the return of income in response to the notice under section 148 in the name of the merged entity i.e. Raj Ratan Infracon Private Limited. It is also relevant to note that the assessee filed the Form 35 before the CIT(A) in the name of the merged entity i.e. Raj Ratan Infracon Private Limited and that the order of the CIT(A) under section 250 of the

Act is also in the name of the merged entity i.e. Raj Ratan Infracon Private Limited. Considering these facts, in our view, there is no merit in the submission of the assessee that the merger details have been communicated to the AO since it was only the proposal for merger that was submitted and that too prior to the initiation of the reassessment proceedings. The fact that all the communications including the appeal filed before the CIT(A) was filed in the name of the merged entity i.e. Raj Ratan Infracon Private Limited also does not support the assessee's claim. Accordingly we hold that the CIT(A) is not correct in allowing the appeal without considering the ratio of the decision of the Hon'ble Supreme Court in the case of M/s.Mahagun Realtors (P) Ltd(supra) and the grounds of the revenue in this regard are thus allowed.

6. In the CO the assessee has raised the contention that the lower authorities have not considered the impugned issue on merits. From the perusal of the AO's order we notice that the AO has made the alleged bogus accommodation entry as unexplained income of the assessee for the reason that the assessee has not responded to the notices calling for details in this regard and that the assessee has not discharged the onus. The CIT(A) allowed the appeal in favour of the assessee considering only the legal contention and has not given any finding on merits. Considering the facts and circumstances peculiar to the case in the interest of natural justice and fair play, we are inclined to give one more opportunity to the assessee to contend the issues on merits before the lower authorities. Accordingly, the issues are restored back to the AO for fresh consideration on merits with a direction to call for necessary details and decide in accordance with law. The assessee is directed to file the details as may be called for and cooperate with the

assessment proceedings without seeking adjournments without genuine reasons. Accordingly the CO of the assessee is allowed for statistical purposes.

7. In result, the appeal of revenue is allowed and the CO of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 05-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai