

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITAs No.4989 & 4991/Del/2019  
Assessment Years: 2009-10 & 2012-13

DCIT,  
CC-07,  
New Delhi.

Vs Varun Beverages (International) Ltd.,  
R/o F-2/7, Okhla Industrial Area,  
Phase-I,  
New Delhi.

PAN: AAACG7763M

(Appellant)

(Respondent)

Assessee by : Shri Rajat Jain, CA &  
Shri Akshat Jain, CA  
Revenue by : Shri Javed Akhtar, CIT-DR  
Date of Hearing : 05.12.2024  
Date of Pronouncement : 11.12.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the revenue against the orders dated 11.03.2019 of the Commissioner of Income-tax (Appeals)-24, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeals No.122/2018-19 and 124/18-19, respectively, arising out of the appeal before it against the orders dated 28.03.2014 passed u/s 143(3) of the Income

Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, CC-12, New Delhi (hereinafter referred to as the Ld. AO).

2. The only question involved in these two appeals of the Revenue is whether the CIT(A) was justified in quashing the assessment on the ground that the assessment was framed in the name of nonexistent entity.

3. The ld. DR has submitted that as the Assessing Officer was not informed of the fact of amalgamation, therefore, the AO cannot be faulted. It was also submitted that the Assessing Officer or the search team was not aware of the alleged fact of merger of the assessee with M/s Varun Beverages Ltd.

4. In this context, the relevant facts and the findings coming from the impugned order of the ld.CIT(A) are worth being reproduced:-

*“5.3.1 Vide additional Ground No. 2 of appeal, the appellant has challenged the initiation and completion of the assessment proceedings under section 153A r.w.s. 143(3) of the Act in the name of non existing company, which cannot be cured under section 292B of the Act as held by the Hon'ble Delhi High Court in the case of M/s Spice Infotainment Ltd. Vs. CIT [(2012) 274 ITR (Del) 500]. Hence, assessment order passed in the case of non-existing company is without jurisdiction and is bad in law and null and void. After due consideration of written submission of the appellant, remand reports of the AO and rejoinder filed by the appellant on remand reports, I find that consequent upon search action u/s 132 of the Act on 27.03.2012 at the premises of the appellant assessment proceedings were initiated by issuing notices u/s 153A dated 08.04.2013 for the AYs 2006-07 to 2011-12 in the name of M/s Varun Beverages (International) Limited. As far as AYs 2008-09 to 2010-11 are concerned the appellant filed return of income on 20.06.2013 in response to notice u/s 153A of the Act in the name of M/s Varun Beverages (International) Limited. For AY 2012-13 notice u/s 142(1) of the Act calling for return of income was also issued on 08.04.2013. However, for AY 2012-13 the appellant had already filed return of income u/s 139(1) of the Act on 29.09.2012 in the name of M/s Varun Beverages (International) Limited. It is further noticed that scheme of amalgamation for merger of the M/s Varun Beverages (International) Limited with M/s Varun Beverages Limited was approved*

*by the Hon'ble High Court of Delhi vide order dated 12.03.2013 w.e.f. 01.01.2012. Accordingly M/s Varun Beverages (International) Limited got amalgamated with M/s Varun Beverages Limited w.e.f. 01.01.2012. Therefore, on the date of issue of notice u/s 153A of the Act for AY 2009-10 no company in the name of M/s Varun Beverages (International) Limited existed in the records of the Registrar of Companies (ROC).*

*5.3.2 The AO made the assessment order for AY 2009-10 on 28.03.2014 in the name of M/s Varun Beverages (International) Limited which got amalgamated with M/s Varun Beverages Limited w.e.f. 01.01.2012 as per the order of the Hon'ble High Court of Delhi dated 12.03.2013. Therefore, on the date of initiation of assessment proceedings for AY 2009-10 on 08.04.2013 M/s Varun Beverages (International) Limited was in fact not existing. In the assessment order the AO has not recorded amalgamation of M/s Varun Beverages (International) Limited with M/s Varun Beverages Limited. Thus the assessment proceedings u/s 153A of the Act for AY 2009-10 were not only initiated in the name of M/s Varun Beverages (International) Limited but the assessment order u/s 153A/143(3) of the Act was also made in the name of M/s Varun Beverages (International) Limited.*

*5.3.3 As pointed out by the AO in his remand report dated 11.01.2019 the appellant did not object to issue of notice u/s 153A of the Act in the name of M/s Varun Beverages (International) Limited but made compliance to the said notice by filing return of income in the same name. During the assessment proceeding the appellant continued to make compliance/correspondence under the name of M/s Varun Beverages (International) Limited. The AO has also stated that the appellant never objected to the assessment proceedings being carried out in the name of M/s Varun Beverages (International) Limited at any stage. In this connection the AR of the appellant vide rejoinder dated 25.02.2019 has pointed out-*

*“.....While, the assessee company vide letter dated 23/01/2014 filed for the AY 2012-13 clearly stated that as per Delhi High Court order dated 12/03/2013, the assessee company was amalgamated with M/s Varun Beverages Ltd. with effect from 01/01/2012 and therefore the Balance Sheet of the assessee company up to 31/12/2011 has been drawn up and e-filed its revised return of income on 27/11/2013. The assessee company has also furnished the copy of order of Delhi High Court dated 12/03/2013 and Income tax return along with computation of income, Audited Balance Sheet as on 31/12/2011 and Tax Audit Report w/s 44AB of the Act for the assessment year under consideration. Further, the Ld. AO himself concurrently assessed the case of the appellant for the assessment year 2012-13 at the revised returned of income of Rs. 13,07,34,130/- declared by the appellant, therefore, at any stretch of imagination it cannot be said that*

*the Ld. AO was unaware of the fact that the appellant company was amalgamated with M/s Varun Beverages Ltd.....”*

*On perusal of the records I find that M/s Varun Beverages (International) Limited filed original return of income for AY 2012-13 on 29.09.2012 declaring total income of Rs. 8,28,69,890/-. The AO after considering the revised return for AY 2012-13 filed by M/s Varun Beverages (International) Limited on 27.11.2013 necessitated due to amalgamation...u/s 143(3) of the Act on 28.03.2014 and assessed the total income at Rs. 21,59,50,075/- after taking into account revised total income of Rs. 13,07,34,130/- shown by M/s Varun Beverages (International) Limited in its revised return. Needless to add, the AO concurrently finalized assessment u/s 153A/143(3) of the Act for AYs 2008-09, 2009-10 & 2010-11 on the same date i.e. 28.03.2014 when he completed the assessment u/s 143(3) of the Act for AY 2012-13. This incontrovertible fact clearly reveals that the AO was fully aware of the fact that M/s Varun Beverages (International) Limited got amalgamated with M/s Varun Beverages Limited w.e.f. 01.01.2012. Thus it is clear that even after being aware of the fact of amalgamation of M/s Varun Beverages (International) Limited with M/s Varun Beverages Limited the AO completed the assessment for AY 2009-10 in the name of M/s Varun Beverages (International) Limited.*

*5.3.4 On perusal of the facts of the case I find that on the day of initiation of proceedings u/s 153A as well as on the date of completing the assessment order M/s Varun Beverages (International) Limited did not exist on records of ROC. A company is an artificial juridical person and it derives its existence by its status under the Companies Act. As long as company exists on records of ROC, the company exists for all legal purposes. As in the present case M/s Varun Beverages (International) Limited got merged with M/s Varun Beverages Limited w.e.f. 01.01.2012 no entity in the name of M/s Varun Beverages (International) Limited existed in law. It is however observed that in the returns filed in response to notice u/s 153A of the Act for all the assessment years the name of the company was given as M/s Varun Beverages (International) Limited. While assessing the case of M/s Varun Beverages (International) Limited for AY 2012-13 the AO was aware that M/s Varun Beverages (International) Limited had got merged with M/s Varun Beverages Limited w.e.f. 01.01.2012 as he took note of the total income declared in the revised return filed u/s 139(5) of the Act necessitated by amalgamation. When the assessment for AY 2009-10 was finalized u/s 153A/143(3) of the Act on 28.03.2014 i.e. the same date on which AY 2012-13 was finalized u/s 143(3) of the Act, the AO cannot deny that he was not aware of the fact of amalgamation of M/s Varun Beverages (International) Limited with M/s Varun Beverages Limited w.e.f. 01.01.2012.*

5.3.5 Further, the AO in his remand report dated 14.02.2019 has brought to notice the fact that in the column relating to "whether this return is being filed by representative assessee?" the appellant has ticked the option (No). However, I agree with the AR of the appellant that the case of the appellant does not fall under the category where its return is to be filed by the representative assessee because as per section 160 of the Act representative assessee does not include the name of amalgamated company as representative assessee for the amalgamating company

5.3.6 Considering the above facts it is noted that the appellant has not objected to the issuance of notice in the name of M/s Varun Beverages (International) Limited and duly participated in the assessment proceedings. In such scenario the moot question is whether assessment order framed in the name of M/s Varun Beverages (International) Limited which did not exist on the date of initiation of proceedings u/s 153A of the Act is a valid and legal order. In my considered view even if the appellant company had filed the return in response to notice issued u/s 153A of the Act in the name of M/s Varun Beverages (International) Limited, participated in the assessment proceedings and brought the fact of its amalgamation to the knowledge of the AO, it became incumbent upon AO to substitute the name of the amalgamated company M/s Varun Beverages Limited in place of the amalgamating company M/s Varun Beverages (International) Limited in the assessment order u/s 153A /143(3) of the Act. Such a defect cannot be treated as procedural defect and mere participation by the appellant would be of no effect as there is no estoppel against law. In similar situation the Hon'ble Delhi High Court in the case of M/s Spice Infotainment Ltd. Vs. CIT (2012) 247 CTR (Del) 500 has held as under:

"10. Section 481 of the Companies Act provides for dissolution of the company. The Company Judge in the High Court can order dissolution of a company on the grounds stated therein. The effect of the dissolution is that the company no more survives. The dissolution has an end to the existence of the company. It is held in M.H. Smith (Plant Hire) Ltd. Vs. DL. Mainwaring (T/A Inshore), 1986 BCLC 342 (CA) that once a company is dissolved it becomes a non-existent party and therefore no action can be brought in its name. Thus an insurance company which was subrogated to the rights of another insured company was held not to be entitled to maintain an action in the name of the company after the latter had been dissolved".

11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exit w.e.f. 1st July, 2003. Even if Spice had filed the returns, it became incumbent upon the Income tax authorities to substitute the successor in place of the said dead person. When notice under Section 143 (2) was sent, the appellant/amalgamated company appeared and brought this fact to the

*knowledge of the AO. He, however, did not substitute the name of the appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the appellant would be of no effect as there is no estoppel against law.*

*12. Once it is found that assessment is framed in the name of non-existing entity, it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292B of the Act. Section 2928 of the Act reads as under-*

*"292B. No return of income assessment, notice, summons or other proceedings furnished or made or issue or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reasons of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceedings is in substance and effect in conformity with or according to the intent and purpose of this Act."*

*13. The Punjab & Haryana High Court stated the effect of this provision in CIT Vs. Norton Motors, 275 ITR 595 in the following manner:*

*"A reading of the above reproduced provision makes it clear that a mistake, defect or omission in the return of income, assessment, notice, summons or other proceeding is not sufficient to invalidate an action taken by the competent authority, provided that such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the provisions of the Act. To put it differently, Section 292B can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his/its jurisdiction, the same cannot be cured by having resort to Section 292B*

*14. The issue again cropped up before the Court in CIT Vs. Harjinder Kaur (2009) 222 CTR 254 (P&H) That was a case where return in question filed by the assessee was either signed by the assessee nor verified in terms of the mandate of Section 140 of the Act. The Court was of the opinion that such a return cannot be treated as return even a return filed by the assessee*

*and this inherent defect could not be cured inspite of the deeming effect of Section 292B of the Act. Therefore.....*

*"Having given our thoughtful consideration to the submission advanced by the learned Counsel appellant we are of the view that the provisions of Section 292B of the 1961 Act do not authorize the AO to ignore a defect of a substantive nature and it is, would not be treated as invalid intent and purpose therefore, that the aforesaid provision categorically records that a return if the same "in substance and effect is in conformity with or according to the intent and purpose of this Act." Insofar the return under reference is concerned in terms of section 140 of the 1961 Act, the same cannot be even bear her signatures and possible for the return under reference is conformity wish or according to the concerned, In terms of Section 140 of the treated to be even a return filed by the respondent assessee, as the same does not even bear her signatures and had not even been verified by her. In the aforesaid view of the matter it is not possible for us to accept that contention advanced by the learned Counsel for the appellant on the basis of Section 292B of the 1961 Act. The return under reference. which had been taken into consideration by the Revenue was an absolutely invalid return as it had a glaring inherent defect which could not be cured in spite of the deeming effect of Section 2928 of the 1961 Act.*

*15. Likewise, in the case of Sri Nath Suresh Chand Ram Naresh Vs. CIT (2006) 280 ITR 396, the Allahabad High Court held that the issue of notice under Section 148 of the Income Tax Act is a condition precedent to assessment order to be passe e passed under section 147 of the Act and when such a notice the validity of any is not issued and assessment made, such a defect cannot be treated as cured under Section 2928 of the Act. The Court observed that this provisions condones the invalidity which arises merely by mistake, defect or omission in a notice, if in substance and effect it is in conformity with or according to the intent and purpose of this Act. Since no valid notice was served on the assessee to the consequent proceedings no application were mill and void and reassess the income, all a case of irregularity. Therefore, Section 2928 of the Act had no application.*

*16. When apply the ratio of aforesaid cases to the facts of this case, the irresistible conclusion would be provisions of Section 2928 of the Act are not applicable in such a case. The framing of assessment against a non-existing entity/person goes to the root of the matter which is not a procedural irregularity but a jurisdictional defect as there cannot be any assessment against a dead person".*

*17. The order of the Tribunal is, therefore, clearly unsustainable. We, thus, decide the questions of law in favour of the assessee and against the Revenue and allow these appeals*

18. We may, however, point out that the returns were filed by Us Spice on the day when would be permissible to carry out the assessment on the basis of those returns after taking it war in existence it the proceedings afresh from the stage of issuance of notice under Section 143 (2) of the Act. In these circumstances, it would be incumbent upon the AO to first substitute the name of the appellant in place of M/s Spice and then issue notice to the appellant. However, such a course of action can be taken by the 40 only if it is still permissible as per law and has not become time barred

5.3.7 As pointed out by the AR of the appellant in the rejoinder dated 25.02.2019 similar view has also been observed by the Hon'ble Delhi High Court in the case of Commissioner of Income-tax-III v. Dimension Apparels (P.) Ltd [2014] 52 taxmann.com 356 as under-

"22. On the last contention, i.e. with respect to participation by the previous assessee, i.e the amalgamating company (which ceases to exist), again Spice Entertainment Ltd. (supra) is categorical; it was ruled on that occasion that such participation by the amalgamated company in proceedings did not cure the defect, because "there can be no estoppel in law" Vived Marketing Servicing (P.) Ltd. (supra) had also reached the same conclusion. "The similar view has also been observed by the Hon'ble Delhi High Court in the case of Principal Commissioner of Income-tax-6, New Delhi v. Maruti Suzuki India Ltd. [2017] 85 taxmann.com 330

5.3.8 Similar view has also been observed by the Hon'ble Delhi High Court in the case of Principal Commissioner of Income-tax-6, New Delhi v. Maruti Suzuki India Ltd. [2017] 85 taxmann.com 330-

14. The submission that under Section 2928 of the Act, the successor-in-interest is precluded from raising an objection if it has participated in the assessment proceedings was negative in Spice Infotainment Lid's case (supra) where it was held once it is found that the assessment is framed in the name of a non-existent entity it does not remain a procedural irregularity of the nature which could be cured by invoking the provisions of Section 292-B of the Act

5.3.9. The AO in his remand report dated 11.01.2019 has submitted that similar matter has been decided by the Hon'ble Supreme Court in the case of M/s Skylight Hospitality LLP vs. ACIT (2018).....93(SC) wherein the Hon'ble Supreme Court has clearly held that reassessment notice issued in the name of erstwhile company despite ceasing to exist as it had been converted to LLP would not invalidate reassessment proceedings as wrong name mentioned in the said notice was merely a clerical error which could be corrected u/s 292B. However, I find that factual matrix in the case of M/s Skylight Hospitality LLP vs. ACIT (2018) 92 taxman 93(SC) is different from the present case as in that case notice was issued u/s 148 of the Act in

*the name of M/s Skylight Hospitality Pvt. Ltd. which ceased to exist but the assessment was framed in the name of existing entity M/s Skylight Hospitality LLP. The Hon'ble Apex Court held that mere issue of notice in wrong name is a procedural defect which can be cured u/s 292B of the Act. In the present case not only the notice but also the assessment order was passed in the name of non-existing company which has been contested by the appellant in the present appellate proceedings which in my view is a jurisdictional defect and cannot be cured u/s 292B of the Act as held by the Hon'ble High Court of Delhi in the case of M/s Spice Infotainment Ltd. Vs. CIT (2012) 247 CTR (Del) 500. Further, it is noted that the Hon'ble Supreme Court has dismissed the appeal and SLP of the Revenue vide order dated 02.11.2017. As contended by the AR of the appellant, in the case of M/s Skylight Hospitality LLP vs. ACIT (2018) 92 Taxman 93(SC) the Hon'ble Delhi High Court has distinguished the case of M/s Spice Infotainment Ltd. Vs. CIT (2012) 247 CTR (Del) 500 as under:*

*"In the said situation, the amalgamating company had filed an appeal and issue of validity of Assessment Order was raised and examined. It was held that the assessment order was invalid. This was not a case wherein notice under Section 147/148 of the Act was declared to be void and invalid but a case in which assessment order was passed in the name of and against a juristic person which had ceased to exist and stood dissolved as per provisions of the Companies Act. Order was in the name of non-existing person and hence void and illegal.*

*Therefore from the reading of the aforesaid order of the Hon'ble Apex Court, it is evident that the ratio of the judgment in the case of M/s Spice Infotainment Ltd. has not been overruled. On the contrary the ratio of the judgment in the case of M/s Spice Infotainment Ltd. has been distinguished which clearly implies that it remains valid. Hence, keeping in view the fact that the factual matrix in the case of M/s Skylight Hospitality LLP vs. ACIT (2018) 92 taxman 93(SC) is different from the present case the ratio of the said judgment is not applicable."*

*5.3.10 In view of the facts stated above, I hold that the assessment order u/s 153A for AY 2009-10 in the name of non existing company suffers from jurisdictional defect which cannot be cured u/s 292B of the Act as held by the Hon'ble Delhi High Court in the case of M/s Spice Infotainment Ltd. Vs. CIT (2012) 247 CTR (Del) 500. Therefore, respectfully following the judgement in the case of M/s Spice Infotainment Ltd. Vs. CIT (2012) 247 CTR (Del) 500 where subsequently the Hon'ble Supreme court has dismissed the SLP of the Revenue vide order dated 02.11.2017 the assessment order made in the name of M/s Varun Beverages (International) Limited is hereby quashed. Accordingly, additional Ground No. 2 of appeal is allowed."*

3. After taking into consideration the aforesaid findings of the ld. CIT(A), we are of the considered view that there is no error in the findings. It is undisputed fact that on the day of initiation of proceedings u/s 153A as well as on the date of completing the assessment order M/s Varun Beverages (International) Limited did not exist on records of ROC. The ld. AR has established before us on the basis of the return filed and the communications of both the entities during the assessment proceedings that the fact of amalgamation w.e.f. 01.02.2012 was categorically brought into the knowledge of the Assessing Officer. Though we are not entering into the question of the valid assumption of jurisdiction itself u/s 153A, however, the fact that even if it is assumed that for want of knowledge the AO or the search officials cannot be faulted in taking out search proceedings in the name of the nonexistent entity, still, the fact of ultimate assessment was also drawn in the name of a non-existing entity made the assessment order void ab initio and the detailed and reasoned findings of the ld.CIT(A) require no interference. The issue covered in ground No.6 is sustained.

**4. The appeals of the Revenue are dismissed.**

Order pronounced in the open court on 11.12.2024.

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 11<sup>th</sup> December, 2024.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi