

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE,
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No.4821/Del/2018
(ASSESSMENT YEAR-2009-10)

Asst.CIT Central Circle-30 New Delhi-110055	Vs.	M/s Shalimar Corp. Ltd. (M/s Topgrain Distributors) 28, Grant Lane Kolkata-700012 PAN:AADCS9234L
(Appellant)		(Respondent)

Assessee by	Shri Subhash Agarwal, Adv.
Department by	Shri Dharm Veer Singh, CIT-DR

Date of Hearing	12/08/2024
Date of Pronouncement	22/10/2024

ORDER

PER VIMAL KUMAR, JM:

1. The appeal of the Department of Revenue is against order dated 26/04/2018 of Learned Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of Assessment Order dated 19/12/2016 of the Income Tax Officer, Ward-5(1), Kolkata [hereinafter referred to as "Ld. AO"] for Assessment Year 2009-10.
2. Brief facts are that M/s Topgrain Distributors Private Limited had not filed its return of income for the Assessment Year 2009-10.

ITD system showed that the assessee did not file any return of income for Assessment Year since inception. Notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') dated 31/03/2016 was issued to the assessee allowing 30 days time for submissions of return but no return was filed. Notice u/s 142(1) was issued on 22/07/2016 asking for details of bank accounts of the assessee for the Financial Year 2008-09 along with books of accounts and form No.3CD which was duly served. Notice was affixed on 04/08/2016 by the Departmental Inspector. A final show cause notice of hearing was issued on 07/12/2016, which was affixed on 12/12/2016. None appeared on behalf of the assessee. After expiry of last date for making compliance to the notice, there was hardly any alternative before Ld. A.O. to complete the assessment by best judgment on available record u/s 144 of the Act. Information was received from the ADIT (Inv.)-1/ Lucknow/Shalimar vide letter dated 17/03/2016 received in the office of the 20/03/2016. As per the information a search and seizure action u/s 132 of the Act, M/s Topgrain Distributors Private Limited received Rs.47,59,68,000/- from such arranged transaction which is assessed under this charge. So, Rs.47,59,68,000/- was treated as unexplained to cash u/s 68 of the Act vide order dated 19/12/2016.

3. Appellant/assessee, preferred appeal before Ld. CIT(A) which was allowed vide order dated 26/04/2018.

4. Being aggrieved, the Department of Revenue preferred appeal with following grounds:-

"1 That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in not appreciating the fact that notices u/s. 148 of the Act was served properly on the last known address of the assessee, particularly in view of the facts that neither did the assessee intimate the department regarding the merger/amalgamation with another company nor about the change of address of the company.

2. That on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in not appreciating the fact that the case has been reopened u/s 148 after examining the information received from ADIT (Inv.-1), Lucknow and due application of mind and proper satisfaction has been recorded by then A.O. and the case has been reopened after getting the proper approval from the concerned authorities u/s. 151 of the Act.

3. That the grounds of appeal are without prejudice to each other.

4. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

5. Learned Authorized Representative for the Department submitted that as per PAN data base, M/s Topgrain Distributors Pvt. Ltd., which amalgamated with M/s Shalimar Crop. Ltd., has an active PAN AA ACT9690C, with Address as 28, Grant Lane, Calcutta, West Bengal-700012. Thus, 28, Grant Lane, Calcutta, West Bengal-700012 is a valid office address in PAN database of the department. Therefore, service of various notices including notice under section 148 of the I.T. Act upon the assessee, M/s Topgrain Distributors Pvt. Ltd. at the address M/s Topgrain Distributors Pvt. Ltd. had filed its return of income for A.Y.2009-10 with PAN AADCT1728J Paper Book filed by the assessee. This shows that the said company was having two distinct active PAN, against the law. The Department has prescribed a procedure for de-

duplication/surrender of PAN in case an assessee has more than one PAN. The assessee is required to make application to the A.O. The assessee has not produced any such application making such request. There was failure on the part of assessee on this count. There is nothing on record brought by the assessee so as to prove that it had filed any letter or communication before the assessing officer about its amalgamation with M/s Shalimar Corp. Limited. There is failure on the part of the assessee on this count having vital consequences as A.O. having jurisdiction over PAN: AA ACT9690C was having no knowledge of any such amalgamation. The concerned A.O. while acting in respect of PAN AA ACT9690C was under bonafide belief that Assessee i.e. M/s Topgrain Distribution Pvt. Ltd. was in existence at the time of proceedings in question, as this was an active PAN lying within the jurisdiction of the said AO. Therefore, case laws relied by assessee are distinguishable on facts from the instant case and will, therefore, not be applicable to the instant case. Hon'ble High Court of Delhi in case of Commissioner of Income Tax vs. Sony Mobile Communications, ITA No.115/2019 dated 18/05/2021 has held as under:-

"In my view, the decisive and critical aspect is the intimation of the factum of dissolution of the amalgamating company. In Spice Entertainment (supra), this fact brought to the notice of the Assessing Officer (AO) by the amalgamated company on 2nd April, 2004. However, despite the said intimation, the Assessing Officer (AO) vide order dated 28th March, 2005 passed the order under Section 143(3) of the Act and framed the assessment in the name of Spice Corp. Ltd., the amalgamating company, which admittedly had been dissolved as on that date. Even in the case of

Maruti Suzuki India Limited (supra), the Court noted this crucial aspect- that the Assessing Officer was informed that the amalgamating company ceased to exist as a result of the approval scheme of amalgamation."

6. Learned Authorized Representative for assessee submitted that the transferor company M/s Topgrain Distributors Pvt. Ltd. got merged with M/s Shalimar Corp Ltd. (Formerly, SAS Hotels and Properties Pvt. Ltd.) before the issue of notice u/s 148. Assessee filed additional grounds and submitted documents. Ld. CIT(A) called for remand report from the Ld. A.O. Scanned copy of the remand report dated 28/03/2018. at page 7 of Ld. CIT(A)'s order. In remand report, Ld. A.O. has wrongly stated that the assessee did not make any intimation to the department regarding merger/amalgamation. Learned CIT(A) was fair enough to delve into the records of the A.O. and reproduced the screenshots of the vital documents in the order. At page 11 of his order, he has reproduced a letter dated 17/03/2016 by the ADIT (Inv.)-1 addressed to the ITO, Ward-5(1), Kolkata wherein it was stated that Topgrain's case was required to be centralized at Lucknow. In the said letter, it has further been mentioned that a proforma show cause notice) for transfer and centralization of case to Lucknow) has been enclosed. A screen shot copy of the said proforma show cause notice is reproduced at page 14 of CIT(A)'s order. In show cause notice, at para 2, it has been clearly mentioned that during the search and seizure action on Shalimar group on 18/06/2015, it was found that Shalimar Corp Ltd. was formed by amalgamation of SAS Hotels on 31/03/2011 pursuant to the scheme of amalgamation, sanctioned

by the Hon'ble High Court of Bombay. PAN No. of M/s Topgrain Distributors Pvt. Ltd. in the said letter is mentioned as AADCIT1728J under which the said company had been filing its return of income for A.Y. 2009-2010 and other years till its amalgamation. The above clearly shows that the department was aware of the fact that M/s Topgrain Distributors Pvt. Ltd. did not exist on the date of issue of notice u/s 148 and also the fact that said company was filing its return of income under PAN No.AADCTI1728J (mentioned at para 3 of the draft show cause notice). The assessee had also submitted a rejoinder dated 26/03/2011 to the AO's report (placed at page 8 of CIT(A)'s order) wherein the assessee had submitted that as per the norms, it is mandatory to inform the department of merger of companies. Information was sent to the concerned A.O. of Topgrain Distributors (P) Ltd. along with the scheme of merger by the Court approving the merger. Ld. CIT(A) has rightly held at para 12 of his order (page 3.1) that the assessment order passed on the non-existing entity is a nullity and is void ab initio. Hon'ble High Court of Delhi in the case of M/s Spice Infotainment Ltd. vs. CIT (2012) (CTR 500) has held that an assessment order on a non-existing entity is void ab initio. Hon'ble Delhi High Court in the case of Pr. CIT vs. Maruti Suzuki Limited 397 ITR 681 (Delhi) has held that the jurisdictional aspect is crucial in tax matters. A proper and validly existing entity is a prerequisite for the lawful exercise of jurisdiction by the assessing authority.

7. From examination of record, it is crystal clear that Ld. CIT(A) after referring to submissions of the assessee, additional grounds and documents as well as Ld. AO's remand report dated 21/03/2019, letter dated 17/03/2016 and rejoinder dated 26/03/2011 to the AO's remand report held that the assessment order was passed on non-existing entity. As per ratio to the judgment in M/s Spice Informant Ltd. vs. CIT's case (supra), it is well settled that an assessment order on a non-existing entity is void ab initio. Resultantly, the submission of Learned Authorized Representative of Department of Revenue as well as grounds of appeal are devoid merit. Impugned order of Ld. CIT(A) is legal.

8. In the result, the appeal filed by the Department of Revenue is dismissed.

Order pronounced on this day 22nd October, 2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 22/10/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI