

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं.1360/दिल्ली/2025 (नि.व. 2012-13)
ITA No.1360/DEL/2025 (A.Y.2012-13)

Dazzle Developers P. Ltd.,
PHD House, 4/2 Siri Institutional Area,
August Kranti Marg, Hauz Khas,
Delhi 110016
PAN: AACCD-1643-J
बनाम Vs.

..... अपीलार्थी/Appellant

Income Tax Officer, Ward-7(2),
New Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/Appellant by : S/Shri Sanchit Jain, Chartered Accountant &
Uttam Yadav
प्रतिवादीद्वारा/Respondent by : Shri Manoj Kumar, SR.DR

सुनवाई की तिथि/ Date of hearing : 22/05/2025

घोषणा की तिथि/ Date of pronouncement: : 19/08/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 19.04.2024, for Assessment Year 2012-13.

2. Shri Sanchit Jain, appearing on behalf of the assessee at the outset submitted that the assessment order has been passed in the name of a non existing company. Therefore, the assessment order lacks valid jurisdiction.

2.1. Narrating facts of the case, he submitted that notice u/s. 148 of the Income Tax Act,1961(hereinafter referred to as 'the Act') was issued by the AO on

31.03.2019 for AY 2012-13. In response to the said notice, the assessee vide application dated 08.04.2019 informed the Assessing Officer (AO) that the name of the assessee has already been struck off from the Register of Companies and is dissolved w.e.f. 31.01.2018. Thus, the company is no more in existence. The assessee also placed on record copy of the order from Registrar of Companies dated 31.01.2018 notifying that pursuant to section 560(5) of the Companies Act, 1956, the name of assessee has been struck off from the register and the company is dissolved. Despite, the fact that the AO was informed about dissolution of assessee, the AO proceeded with the assessment and completed assessment u/s. 144 r.w.s. 147 of the Act vide order dated 08.12.2019 making addition of Rs.30,00,000/- u/s. 68 of the Act. Aggrieved by the said assessment order, the assessee carried the issue in appeal before the CIT(A). The CIT(A) dismissed appeal of the assessee. Hence, the present appeal.

The Id. AR of the assessee submitted that once the name of the assessee has been struck off in the register of companies maintained by the Registrar of Companies, the company ceases to exist, hence, no assessment can be made in the name of a non existing entity. Assessment made in the name of a non existing entity is invalid and *void ab inito*. In support of his submissions, he placed reliance on the decision in the case of CIT vs. Vived Marketing Services P. Ltd. in Income Tax Appeal No. 273 of 2009 decided on 17.09.2009 by the Hon'ble Delhi High Court and in the decision of Pandian Anbalagan vs. ITO in Writ Petition 11841 of 2022 decided on 31.10.2023 by Hon'ble Madras High Court. The Id. AR submits that if at all the Assessing Officer wanted to initiate proceedings against the company under the provision of Income Tax Act, the appropriate action for the Department was to approach National Company Law Tribunal (NCLT) in

accordance with the provisions of section 252 of the Companies Act, 2013 r.w.r 11 and 87 of the NCLT Rules. The Id. AR submits that even today, the said company has not been revived. To substantiate his contention, he placed on record copy of status report dated 21.05.2025 from the Ministry of Corporate Affairs, at page 58 and 59 of the paper book.

3. Per contra, Shri Manoj Kumar representing the department placed reliance on the findings of CIT(A) in para 5, 5.1 and 5.2 of the impugned order and prayed for dismissing appeal of the assessee.

4. Both sides heard, orders of the authorities below examined. The assessee in ground no. 2 of appeal has assailed validity of notice issued u/s. 148 of the Act and consequent assessment order. The AO had issued notice u/s. 148 of the Act to the assessee on 31.03.2019, in response to the said notice, the assessee filed objections on 08.04.2019 *inter alia* intimating the AO that the name of the assessee company has been struck off from the Register of companies, by the Registrar of Company, Ministry of Corporate Affairs and the said company has already been dissolved w.e.f. 31.01.2018. A copy of said order from the Registrar of Company was also enclosed along with objections filed by the assessee. Once, the AO was informed about the fact of assessee's non existence by virtue of striking off the name from the register and dissolution u/s. 560(5) of the Companies Act, 1956, the right course of action for AO was to take necessary steps for revival of the company before proceeding with assessment.

5. In the case of Rainwari Finance & Investment Company P Ltd. 163 taxmann.com 83 (J&K.), the Hon'ble High Court held that once a company is dissolved u/s. 560(5) of the Companies Act it ceases to exist, therefore, no order

of assessment can be validly passed against it under Income Tax Act and even it's passed it would be a nullity.

6. The Hon'ble Jurisdictional High Court in the case of CIT vs. Vived Marketing Services P. Ltd. (supra) held that where the company has been dissolved and its name is struck off from the register with Registrar of Companies u/s. 560(5) of the Companies Act, the said company ceases to exist in the eyes of law, hence, no valid assessment can be made in the name of dissolved company.

7. The Hon'ble Madras High Court in the case of Pandian Anbalagan vs. ITO (supra) holding a similar view observed:

"6. It is admitted by both sides that against the Company, which was struck off as early as on 21.10.2019, the re-assessment notice dated 31.03.2021 was issued and the re-assessment order dated 30.03.2022 was passed by the respondent.

7. As far as the submission made by the learned counsel for the respondent is concerned, Section 176 of the Income Tax Act mainly talks about the discontinued business and it does not mention anything about struck off of the company. Further, Section 176 of the Income Tax Act states that if any company discontinued from business and had not carried on any other business, the re-assessment order can be passed against the Principal Officer of the Company. However, the assessment order cannot be passed once the company is struck off, since the same will be construed as passing of order against a dead person.

8. Therefore, this Court is of the view that the right course available for the respondent/Department is only to approach the NCLT in terms of provisions of Section 252 of the Companies Act read with Rules 11 and 87 of the NCLT Rules for the revival of the Company. After revival of the Company, it is open for the respondent/Department to initiate proceedings under Section 147 of the Income Tax Act. Hence, the impugned order is liable to be quashed."

8. Thus, in light of undisputed fact that when notice u/s. 148 of the Act was issued by the AO, the assessee company had already ceased to exist as its name

was struck off from the register with Registrar of Companies and company was dissolved under the provisions of section 560(5) of the Companies Act, 1956 and in light of aforesaid decisions, the assessment order dated 08.12.2019 is without jurisdiction, hence, the same is quashed.

9. In the result, impugned order is *set aside* and appeal of the assessee is allowed.

Order pronounced in the open court on Tuesday the 19th day of August, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 19/08/2025

NV/-

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar) ITAT, DELHI