

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.320/Kol/2025
Assessment Year: 2014-15**

**Raghupati Mercantiles Pvt. Ltd.....Appellant
Room No.4, C/o India Bearing House,
34, Strand Road, 1st Floor,
Opp. Armenian Ghat, Kol- 1..
[PAN: AACCR9479D]**

vs.

ITO, Ward-49(1), Kolkata.....Respondent

Appearances by:

Shri Sandeep Vijn, AR, appeared on behalf of the appellant.

Shri S. B. Chakraborty, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 25, 2025

Date of pronouncing the order : September 11, 2025

ORDER

Per Pradip Kumar Choubey, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 28.12.2024 of the National Faceless Appeal Centre [hereinafter referred to as the "Id. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 [hereinafter referred to as the "Act"].

2. The brief facts of the case of the assessee are that the assessee did not file return of income for the assessment year 2017-18. An information was received from DCIT, Circle-20(1), New Delhi and it was noticed that the assessee M/s Raghupati Mercantile Pvt. Ltd. have given unsecured loan to M/s Punj Lloyd Upstream Ltd. of Rs.50,00,000/- and source of such unsecured loan remained unexplained during the financial year 2013-14. After obtaining approval from the competent authority, the Assessing Officer issued notice u/s 148 along with order u/s 148A(d) of the Act but the assessee remained silent and failed to file

return of income. The assessee filed its compliance in pursuance to notice u/s 142(1) of the Act and the assessee objected the reopening on the ground of issuance of notice to non-existent entity but the Assessing Officer did not find the objection tenable and added the said income of Rs.50,00,000/- u/s 69A of the Act.

3. Aggrieved by the said order, the assessee preferred appeal before the Id. CIT(A), wherein, the appeal of the assessee has been allowed for statistical purposes by sending the appeal of the assessee before the Assessing Officer for fresh adjudication on merit.

4. Being aggrieved and dissatisfied, the assessee preferred appeal before us. The main contention of the assessee in the course of argument is that the order passed against a non-existent entity is bad in law. The Id. AR submits that the assessee in its reply before the Assessing Officer has already informed that the company was not in existent and the company was converted to LLP even though the order and the notice issued was issued against a non-existent company so it is bad in law. He has cited decision of Hon'ble Supreme Court passed in PCIT vs. Maruti Suzuki reported in 416 ITR 613 and also the order passed by the ITAT Kolkata Bench in the case of Madhuban Dealers Pvt. Ltd. reported in 69 CCH 152.

5. Contrary to that, the Id. DR supports the impugned order.

6. Upon hearing the submissions of the counsels of the respective parties and on perusing the impugned order as well as documents filed by the assessee, we find that there is no denying to this fact that the notice u/s 148 of the Act was issued in the name of the assessee and the copy of the said notice is extracted hereinbelow:



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 9(1), KOLKATA/**

To, RAGHUPATI MERCANTILES PRIVATE LIMITED ROOM NO. - 4 C/O. INDIA BEARING HOUSE , 34, STRAND ROAD, 1ST FLOOR OPP : Armeinian Ghat KOLKATA 700001 , West Bengal India	
--	--

PAN: AACCR9479D	AY: 2014-15	Dated: 16/04/2021	DIN & Notice No : ITBA/AST/S/148/2021-22/1032474717(1)
---------------------------	-----------------------	-----------------------------	--

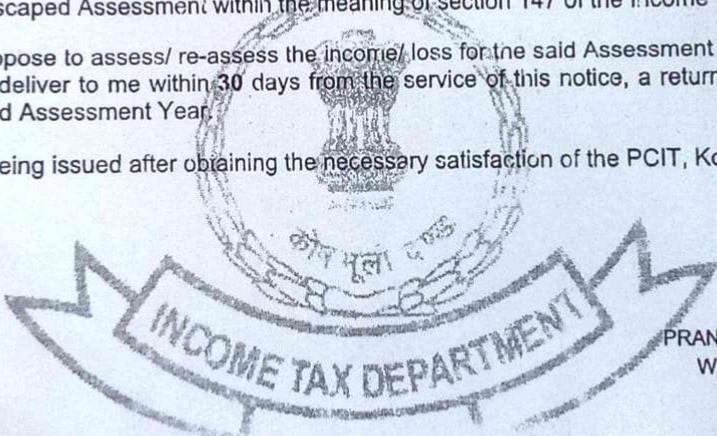
Notice Under Section 148 Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2014-15 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT, Kolkata-1



PRANAB KUMAR BISWAS
WARD 9(1), KOLKATA/

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

6.1 We further find that the assessee had already filed certificate of registration of conversion of the assessee to Raghupati Mercantiles LLP and the said document is extracted hereinbelow:



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Registrar, Kolkata
Nizam Palace, 2nd MSO Building 2nd Floor, Kolkata, West Bengal, 700020, India

FORM 19

[Refer Rule 32(1) of the LLP Rules, 2009]

CERTIFICATE OF REGISTRATION ON CONVERSION

OF
RAGHUPATI MERCANTILES PRIVATE LIMITED
TO
RAGHUPATI MERCANTILES LLP

LLP Identification Number: AAG-1769

It is hereby certified that RAGHUPATI MERCANTILES LLP is this day registered pursuant to section 58(1) of the LLP Act, 2008

Given at West Bengal this Thirteenth day of April Two thousand sixteen.

DS REGISTRAR
OF COMPANIES
WEST BENGAL



Registrar, Kolkata

Note: The corresponding form has been approved by DIP NARAYAN CHOWDHURY, Deputy RoC and this certificate has been digitally signed by the Registrar through a system generated digital signature under rule 36(3)(ii) of the Limited Liability Partnership Rules, 2009

The digitally signed certificate can be verified at the Ministry website (www.mca.gov.in).

Working Address as per record available in Registrar office
RAGHUPATI MERCANTILES LLP
PRATIMA APARTMENT, 4TH FLOOR, FLAT NO -5, KAIKHALI CHIRIAMORE,
KOLKATA Parganas North,
West Bengal, 700052, India

Certified true Copy

[Signature]
Signature

Page 1 of 1

6.2 We have gone through the order of the Hon'ble Supreme Court passed in the PCIT vs. Maruti Suzuki India Ltd. (supra) in which the Hon'ble Apex Court has held as under:

“Assessment-Assessment against a non-existing entity—Jurisdictional defect--Assessee filed return of income-During assessment proceeding, AO noted that assessee was a JV between SMC and MSIL-Assessee was known upon incorporation as SMIL-Subsequently, w.e.f. 8 June 2005, its name was changed to SPIL--Return of income was filed in name of SPIL-A scheme for amalgamation of SPIL and MSIL was approved by High Court in terms of which all liabilities and duties of transferor company should stand transferred to transferee company without any further act or deed-MSIL intimated AO of amalgamation-Assessee's case was selected for scrutiny by issuance of a notice u/s 143(2) followed by a notice u/s 142(1) to amalgamating company-On reference, TPO passed an order u/s 92CA (3) determining ALP of royalty at 3% and making an adjustment in respect of royalty paid by assessee for relevant PY-A draft assessment order was passed in name of SPIL increasing assessee's income-DRP issued its order in name of MSIL- However, final assessment order was passed in name of SPIL-ITAT set aside final assessment order on ground that it was void ab initio, having been passed in name of a non-existent entity by AO--High Court had confirmed ITAT's order-Held, framing of assessment against a non-existing entity/person was a jurisdictional defect-Despite fact that Assessing Officer was informed of amalgamating company having ceased to exist as a result of approved scheme of amalgamation, jurisdictional notice was issued only in its name-Basis on which jurisdiction was invoked was fundamentally at odds with legal principle that amalgamating entity ceases to exist upon approved scheme of amalgamation-Participation in proceedings by assessee in circumstances could not operate as an estoppel against law-Revenue's appeal dismissed.

Held:

In Spice Entertainment, a Division Bench of the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under [Section 143 \(2\)](#) being addressed, the amalgamated company had brought the fact of the amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppel against law. (Paras 20 & 21)

Despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law.”
(Para 33)

6.3 Keeping in view the decision of the Hon'ble Apex Court and considering the facts of the case, we do not have no hesitation to hold that the company was not in existent on the date of issuance of notice as well the order passed u/s 148 of the Act. Hence, the order and the notice issued are bad in law and accordingly quashed.

7. In the result, the appeal of the assessee is allowed.

Kolkata, the 11th September, 2025.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated: 11.09.2025.

RS

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches