

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'ए' बेंच, हैदराबाद

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

श्री मंजूनाथ जी, माननीय लेखा सदस्य एवं श्री रवीश सूद, माननीय न्यायिक सदस्य
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.962 & 966/Hyd/2025
(निर्धारण वर्ष/ **Assessment Year : 2014-15 & 2015-16**)

Ch. Marthanda Rao and Co Hyderabad PAN : AADFC5418K (अपीलार्थी/ Appellant)	Vs.	ITO Ward-14(1) Hyderabad (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri C.Maheshwar Reddy, CA, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Madan Mohan Meena, DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	10.09.2025
घोषणा की तारीख/Date of Pronouncement	:	30.09.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The captioned appeals filed by the assessee firm are directed against the respective orders passed by the Commissioner of

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Income Tax (Appeals), NFAC, dated 24.01.2025, which in turn arises from the orders passed by the A.O for the A.Y 2014-15 and A.Y 2015-16 dated 25.03.2022 and 23.03.2022, respectively. As a common issue is involved in the present appeals, therefore, the same are being taken up and disposed off vide a consolidated order. We shall first take up the appeal filed by the assessee firm in ITA 962/Hyd/2025 for A.Y 2014-15, and the order therein passed shall apply to the other appeal. The assessee firm has assailed the impugned order on the following grounds of appeal before us:

- “1. The order of the Ld. CIT(A), NFAC is erroneous in law as well as the facts of the case.
2. The Ld. CIT(A), NFAC has just merely passed the order by setting aside the order of the AO which is not valid.
3. The Ld. CIT(A), NFAC has passed the order without going into the facts and circumstances of the case.
4. The Ld. CIT(A), NFAC ought to have observed that when there is no legal existence of the Appellant firm, then the order passed by the AO itself (is invalid as held by various judicial decisions and hence the order of the Ld. CIT(A) is erroneous in law.
5. The Ld. CIT(A), NFAC ought to have observed that the AO has made the addition without proper appreciation of the facts and circumstances of the case.

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6. The Ld. CIT(A), NFAC has passed an impugned order as setting aside the order of the AO, without considering material evidences submitted by the Appellant which prove the fact that the additions made by the AO were already included in the return filed by the company M/s CMR Projects Ltd.; accordingly the order passed by the Ld. CIT(A), NFAC is infructuous and bad in law.

7. The Appellant craves to add/leave/ alter / modtly any other ground of appeal at the time of hearing.”

2. Succinctly stated, the assessee firm, i.e., the appellant, was engaged in civil and infrastructure business, and was thereafter stated to have been converted into a company under Part IX of the Companies Act, 1956, effective 04.01.2012, initially named as M/s CMR Projects Ltd, which was subsequently renamed M/s Vensa Infrastructure Ltd.

3. Thereafter, the A.O. initiated proceedings in the case of the assessee firm under section 147 of the Act. Notice u/s 148 of the Act, dated 30.03.2021, was issued to the assessee firm.

4. During the course of the assessment proceedings, the AO observed that the assessee firm had not filed its return of income despite being in receipt of income from multiple streams, viz. (i).

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contractual receipts: Rs. 32,58,63,354/-; (ii). Interest income: Rs. 86,629/-; and (iii). cash deposits in bank accounts: Rs. 60,00,000/-.

As the assessee firm did not comply with the notices issued by the A.O under sections 142(1) and 144 of the Act, and neither furnished any documents or explanations, therefore, he was constrained to treat the aforementioned receipts/income as having been sourced out of the assessee's unexplained money under section 69A of the Act.

5. Aggrieved, the assessee firm carried the matter in appeal before the CIT(A). The CIT(A), NFAC, set aside the AO's order, observing that the matter required proper examination with respect to the correct legal entity, conversion of the firm into a company, and income already disclosed by the successor company. The CIT(A), taking cognizance of the fact that the A.O. had framed the assessment vide his order passed u/s 144 of the Act, thus, in exercise of the powers vested with him vide the "Proviso" to Section 251(1) of the Act, set aside the matter to his file with a direction to frame a fresh assessment.

6. The assessee firm, being aggrieved with the CIT(A) order, has carried the matter in appeal before us.

7. We have heard the Ld. Authorized Representatives of both parties, perused the orders of the lower authorities and the material available on record.

8. The Ld. Authorised Representative for the assessee firm (for short, "A.R"), at the threshold of hearing of the appeal, submitted that the present appeal involves a delay of 60 days. Elaborating on the reasons leading to the delay, the Ld. A.R. submitted that the same had crept in due to the death of Shri Phani Shankar Chenna, Head of Finance & Accounts, who was looking after the income tax matters. The Ld. AR submitted that due to the death of Shri. Phani Shankar Cheema (supra), neither the appeal order was timely communicated to the assessee appellant, nor email ID and mobile number in the Income Tax portal were updated. The Ld. A.R. to buttress his aforesaid contention, had drawn our attention to the "affidavit" filed by the assessee appellant. The Ld. A.R., submitted that the assessee appellant on learning about the CIT(A) order, had,

after engaging a Chartered Accountant electronically filed the present appeal on 30.05.2025

9. Per contra, the Ld. D.R. objected to the seeking of the condonation of the delay involved in the present appeal by the assessee firm.

10. We have given thoughtful consideration to the reasons leading to the delay of 60 days in filing the present appeal by the assessee firm. We have examined the application and documents, and find that the delay in filing the appeal had arisen due to genuine reasons beyond the control of the assessee firm. Accordingly, we have no hesitation in condoning the delay involved in filing of the present appeal before us.

11. On merits, the Ld. A.R submitted that the CIT(A) had erred in merely setting aside the AO's order without considering the merits of the case, viz. (i). that the assessee firm had no legal existence at the time of assessment; (ii). that the incomes/receipts assessed in the hands of the assessee firm were already included in the return of

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income filed by the successor company, viz. M/s CMR Projects Ltd, which was subsequently renamed M/s Vensa Infrastructure Ltd.; and (iii). that the CIT(A), while summarily setting aside the matter, had lost sight of the material evidence that was submitted by the assessee appellant before him. Elaborating further on his contention, the Ld. A.R. submitted that the CIT(A), while setting aside the matter, had failed to even examine whether or not the assessment was made against the correct legal entity and whether the income was already disclosed in the successor company's return. The Ld. A.R. submitted that the A.O. was well conversant about the fact that the assessee firm was converted into a company under Part IX of the Companies Act, 1956, effective 04.01.2012, initially named as M/s CMR Projects Ltd, which was subsequently renamed M/s Vensa Infrastructure Ltd. The Ld. A.R to fortify his aforesaid contention, submitted that the Jurisdictional Assessing Officer (JAO) had, vide his order passed under Section 154 of the Act, dated 05.04.2019 for the A.Y 2013-14, i.e., much prior to the framing of the impugned assessment, vide his order passed under

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Section 147 r.w.s 144 r.w.s 144B of the Act, dated 23/03/2022 for the subject year i.e. 2014-15, taken cognizance of the submission of the successor company, viz. M/s Vensa Infrastructure Limited, that the partnership firm, i.e., M/s Ch. Marthanda Rao & Co. was converted into a limited company i.e. M/s CMR Projects Limited w.e.f 01/04/2012, and thereafter the company name M/s CMR Projects Limited was changed to M/s Vensa Infrastructure Limited w.e.f 12.05.2015. The Ld. A.R submitted that the JAO had vide his aforesaid order passed u/s 154 of the Act, dated 05.04.2019 found the said factual position so brought to his notice to be correct. The Ld. A.R had drawn our attention to the order u/s 154 of the Act for A.Y. 2013-14, dated 05.04.2019 passed by the JAO in the case of M/s Vensa Infrastructure Limited, i.e., the successor company of the assessee firm, Page 66-67 of the APB. Apart from that, the Ld. A.R submitted that the Principal Commissioner of Income-tax-6, Hyderabad, based on information gathered by him from the TDS return that, though the assessee firm during the subject year i.e., A.Y 2014-15, had taxable income, which included contract receipts of

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Rs. 33.55 crores (approx.), but had not filed its return of income, thus, initiated prosecution proceedings under Section 276CC of the Act. The Ld. AR submitted that M/s CMR Projects Limited, i.e., the successor of the assessee firm, had vide its reply brought to the notice of the Ld. Pr. CIT that the assessee firm, viz. M/s Ch. Marthanda Rao & Co. (PAN: AADFC5418K) had remained in existence till 02.05.2012, and thereafter was converted into a limited company, viz. M/s CMR Projects Limited w.e.f 04.05.2012, and the latter had thereafter continued to execute the contract works which were already undertaken by the assessee firm. The Ld. A.R submitted that the Ld. Pr. CIT finding the facts brought to his notice by M/s CMR Projects Limited (supra) to be in order, had dropped the prosecution proceedings that were initiated by him in the case of the assessee firm. The Ld. A.R submitted, that now when the department was well aware of the fact that the assessee firm, viz. M/s Ch. Marthanda Rao & Co. (PAN: AADFC5418K) was converted into a limited company, viz. M/s CMR Projects Limited w.e.f 04.05.2012, therefore, there could be no justification for the A.O to

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have framed the impugned assessment, vide his order passed under Section 147 r.w.s 144 r.w.s. 144B of the Act, dated 23.03.2022 in the hands of the assessee firm i.e a non-existent entity.

12. Per Contra, the Ld. D.R. submitted that the CIT(A) had in all fairness and in the interest of justice, set aside the matter to the file of the A.O. for fresh adjudication after carrying out necessary verifications and affording a reasonable opportunity of being heard to the assessee appellant.

13. We have thoughtfully considered the facts involved in the present case in the backdrop of the orders of the lower authorities. Admittedly, it is a matter of fact borne from the record as had been brought to our notice by the Ld. A.R., that the department was well aware about the conversion of the assessee firm into a company under Part IX of the Companies Act, 1956, effective 04.01.2012, initially named as M/s CMR Projects Ltd, which was subsequently renamed M/s Vensa Infrastructure Ltd. We say so, specifically for the reason that the Jurisdictional Assessing Officer (JAO) had, vide his order passed under Section 154 of the Act, dated 05/04/2019 for

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the A.Y 2013-14, i.e., 3 years (approx.) prior to the framing of the impugned assessment, vide his order passed under Section 147 r.w.s 144 r.w.s 144B of the Act, dated 23/03/2022 for the subject year i.e. 2014-15, taken cognizance of the submission of the successor company, viz. M/s Vensa Infrastructure Limited, that the partnership firm, i.e., M/s Ch. Marthanda Rao & Co. was converted into a limited company i.e. M/s CMR Projects Limited w.e.f. 01/04/2012, and thereafter the company name M/s CMR Projects Limited was changed to M/s Vensa Infrastructure Limited w.e.f. 12.05.2015. Rather, we find that the JAO had vide his aforesaid order passed u/s 154 of the Act, dated 05.04.2019 found the said factual position so brought to his notice to be correct. Also, we find that the Principal Commissioner of Income-tax-6, Hyderabad, had vide his letter dated 11.07.2017 initiated prosecution proceedings under Section 276CC of the Act in the hands of the assessee firm for the subject year i.e. A.Y 2014-15, and in reply M/s CMR Projects Limited, i.e., the successor of the assessee firm, had brought to his notice that the assessee firm, viz. M/s Ch. Marthanda Rao & Co.

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(PAN: AADFC5418K) had remained in existence till 02.05.2012, and thereafter was converted into a limited company, viz. M/s CMR Projects Limited w.e.f 04.05.2012, and the latter had thereafter continued to execute the contract works which were already undertaken by the assessee firm. We, thus, based on the aforesaid facts find substance in the Ld. AR's claim that now when the department was well aware of the fact that the assessee firm, viz. M/s Ch. Marthanda Rao & Co. (PAN: AADFC5418K) was converted into a limited company, viz. M/s CMR Projects Limited w.e.f 04.05.2012, therefore, there was no justification for the A.O to have framed the impugned assessment, vide his order passed under Section 147 r.w.s 144 r.w.s. 144B of the Act, dated 23.03.2022 in the hands of the assessee firm i.e a non-existent entity.

14. We are of firm conviction that, as the assessee firm ceased to exist upon conversion into M/s CMR Projects Ltd. and was subsequently renamed as M/s Vensa Infrastructure Ltd., therefore, any assessment framed in the name of the non-existent firm without considering the income declared by the successor company and the

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submissions/evidence of the assessee/appellant would be invalid. Our view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Spice Infotainment Ltd. v. CIT (Civil Appeal No. 285 of 2014, dated 02.11.2017**, wherein it was held that assessments made on a company that has ceased to exist due to amalgamation or conversion are invalid. Also, a similar view had been taken by the **Hon'ble Supreme Court** in the case of **Pr. CIT Vs. Maruti Suzuki India Limited (2019) 416 ITR 613 (SC)**, wherein it was held that assessments cannot be conducted on a non-existent entity and income disclosed by the successor entity must be considered to avoid double taxation.

15. We though principally concur with the Ld. A.R. that assessment cannot be conducted on a non-existent entity, but the same would require to be examined afresh with reference to statutory compliance, proper entity, and verification of all relevant facts, documents, and submissions provided by the assessee appellant. At this stage, we may herein observe that if the claim of the Ld. A.R. that the assessee firm was converted into a company

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under Part IX of the Companies Act, 1956, effective 04.01.2012, initially named as M/s CMR Projects Ltd, which was subsequently renamed M/s Vensa Infrastructure Ltd., and the incomes/receipts assessed in its hands as its unexplained money u/s 69A of the Act had been accounted for by the successor company in its return of income for the year under consideration, is found to be in order, then, the impugned additions made in the hands of the assessee firm cannot be sustained and shall stand vacated. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **ITO vs. Ch. Attchaiah (1998) 218 ITR 239 (SC)**, wherein it has been held that the income is to be assessed in the hands of the right person and the right person alone. Accordingly, if the claim of the Ld. A.R. that the assessee firm had ceased to exist on its conversion into a company under Part IX of the Companies Act, 1956, effective 04.01.2012, initially named as M/s CMR Projects Ltd, which was subsequently renamed M/s Vensa Infrastructure Ltd. is found to be correct, then, the A.O was divested of his jurisdiction to have assessed the income belonging to the successor company in the

hands of the erstwhile assessee firm, i.e., the entity that had ceased to exist. We may herein observe that the CIT(A), instead of summarily setting aside the matter to the file of the A.O in exercise of the powers vested with him under the “Proviso” to Section 251(1) of the Act, ought to have verified the factual position by calling for a “remand report” on the said core issue, as the same had a strong bearing on the taxability of the subject income in the hands of the assessee firm.

16. In view of the above, the appeal filed by the assessee firm is allowed to the extent of setting aside the assessment order dated 23.03.2022. The matter is remanded to the AO to make a fresh assessment in accordance with law, taking into account, viz. (i). the legal existence of the assessee firm and its conversion into a company; (ii). the income already disclosed by the successor company; and (iii). the principles laid down by the Hon’ble Supreme Court in Spice Infotainment (supra), Maruti Suzuki (supra), and ITO vs. Ch. Attchaiah (supra). The AO shall pass a reasoned order after giving the assessee appellant a fair opportunity of being heard.

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17. In the result, the order passed by the CIT(A) is modified in terms of our aforesaid observations, and the appeal filed by the assessee firm is allowed for statistical purposes in terms of our aforesaid observations.

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18. As the facts and the issue involved in the present appeal remain the same as was there before us in the case of the assessee firm in its appeal for the immediately preceding year in ITA No. 962/Hyd/2025 for A.Y 2014-15, therefore, the order therein passed shall apply *mutatis mutandis* for the purpose of disposing off the present appeal.

19. In the result, the appeal filed by the assessee firm is allowed for statistical purposes in terms of our aforesaid observations

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20. Resultantly, both the appeals filed by the assessee firm are allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced U/Rule 34(4) of the Appellate Tribunal Rules, 1963 on 30/09/2025

<p>Sd/- (मंजूनाथ जी) (MANJUNATHA G.) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>
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Hyderabad, dated 30.09.2025.

##*L.Rama /SPS

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आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	Shri CH Marthanda Rao and Co., C/o B.Narsing Rao & Co., LLP, Plot No.554, MLA Colony, Jubilee Hills, Hyderabad
2.	राजस्व/ The Revenue	:	The ITO, Ward-14(1), Aayakar Bhawan, Hyderabad
3.	The Principal Commissioner of Income Tax, Hyderabad		
4.	विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad